1996

SICA: The First Twenty Years

Constantine N. Katsoris

_Fordham University School of Law_, ckatsoris@law.fordham.edu

Follow this and additional works at: https://ir.lawnet.fordham.edu/ulj

Part of the Dispute Resolution and Arbitration Commons

Recommended Citation


Available at: https://ir.lawnet.fordham.edu/ulj/vol23/iss3/1

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.
SICA: The First Twenty Years

Cover Page Footnote
The Fordham Urban Law Journal was initially funded by Lou Stein, Esq. of the Class of 1926. After the Journal became well established, he directed his energies and resources towards the establishment at Fordham of the Stein Center for Law and Ethics. Mr. Stein passed away earlier this year, and I dedicate this article in tribute of the memory of this man who shared his dreams with the school he loved and the profession he chose.

This article is available in Fordham Urban Law Journal: https://ir.lawnet.fordham.edu/ulj/vol23/iss3/1
SICA: THE FIRST TWENTY YEARS

Constantine N. Katsoris*

Contents

I. The Evolution of the Arbitration Rules Presently in Effect at the Various Self-Regulatory Organizations (SROs) .................................. 485
A. Judicial Developments .................................. 486
B. Creation of SICA and the Role of the SEC .......... 488
C. The Present Uniform Code .......................... 490

II. Analysis of Present Uniform Code of Arbitration ....... 492

Section:
1. Arbitration .................................... 492
2. Simplified Arbitration ............................ 492
3. Hearing Requirements—Waiver of Hearing .... 493
4. Eligibility ..................................... 493
5. Dismissal of Proceedings ..................... 494
6. Settlements ................................... 495
7. Tolling of Time Limitation(s) for the Institution of Legal Proceedings ............. 496
8. Designation of the Number of Arbitrators .... 497
9. Notice of Selection of Arbitrators ............. 499
10. Challenges .................................... 500
11. Disclosures Required by Arbitrators .......... 500
12. Disqualification or Other Disability of Arbitrators ................................... 501
13. Initiation of Proceedings ..................... 502
14. Designation of Time and Place of Hearings .... 505
15. Representation by an Attorney ................. 506

* Wilkinson Professor of Law, Fordham University School of Law; J.D. 1957, Fordham University School of Law; LL.M. 1963, New York University School of Law; Public Member of Securities Industry Conference on Arbitration since its inception in 1977; Public Member of National Arbitration Committee of the NASD, 1974-81; Public Arbitrator at NASD (since 1968) and NYSE (since 1971); Arbitrator Trainer at NASD and NYSE (since 1994).

The Fordham Urban Law Journal was initially funded some twenty-five years ago by Lou Stein, Esq., of The Class of 1926. After the Journal became well established, he directed his energies and resources towards the establishment at Fordham of the Stein Center for Law and Ethics. Mr. Stein passed away earlier this year, and I dedicate this article in tribute of the memory of this man who shared his dreams with the school he loved and the profession he chose.
16. Attendance at Hearings .......................... 509
17. Failure to Appear ................................ 509
18. Adjournments ................................... 509
19. Acknowledgement of Pleadings ............... 511
20. General Provisions Governing a Pre-Hearing Proceeding ....................................... 511
21. Evidence ........................................ 513
22. Interpretation of and Enforcement of Arbitrator Rulings ........................................... 514
23. Determinations of Arbitrators ................ 514
24. Record of Proceedings ........................... 514
25. Oaths of the Arbitrators and Witnesses ...... 515
26. Amendments ..................................... 515
27. Reopenings of Hearings ........................ 515
28. Awards .......................................... 516
29. Agreement to Arbitrate ........................ 519
30. Schedule of Fees ................................ 519
31. Requirements When Using Pre-Dispute Arbitration Agreements With Customers ........... 520

III. The SRO Codes ........................................ 521
A. Tracing the Uniform Code ...................... 521
B. Large and Complex Cases ....................... 522
C. Mediation .......................................... 523

IV. The Role of the AAA .................................. 525

V. Contemporary Issues: The NYSE Symposium and the Ruder Report .............................. 527
a.) Cap on Punitive Damages ..................... 529
b.) Selection of Arbitrators ....................... 531
c.) Mandatory Lists of Discoverable Items ......... 531
d.) Elimination of Six Year Rule ................. 531
e.) Increased Resources and a Single Forum .... 532

VI. Continuing Role of SICA ............................ 533

VII. Conclusion ........................................... 536

Appendices:
A. Uniform Code of Arbitration .................. 539
B. Arbitration Cases Handled by SROs .......... 563
C. Chart Tracing Uniform Code Into Individual SRO Codes ............................................ 565
I. The Evolution of the Arbitration Rules Presently in Effect at the Various Self-Regulatory Organizations (SROs)

The resolution of customers' securities disputes by arbitration can be traced back to 1871 at the New York Stock Exchange (NYSE). Since that time numerous other self-regulatory organizations (SROs) have established arbitration programs for the resolution of such disputes.

To fully understand the rules presently governing arbitration at SRO forums, and elsewhere, we must look at the development of the present system. We must explore the judicial developments that have channeled such disputes into arbitration and also examine legislative attempts to alter or influence the process of securities arbitration. Finally, we must look at the establishment and impact of the Securities Industry Conference on Arbitration (SICA) over the past twenty years, the SRO's participation in the process, the oversight role of the Securities and Exchange Commission (SEC or Commission), and the alternative forum offered by the American Arbitration Association (AAA) in this area.

Securities arbitration is a vast topic concerning various issues, many of which could be the subject of their own article. This article is an overview of the area which, by necessity, must be brief and concise, and unfortunately cannot fully explore and develop each of these issues. Accordingly, the coverage is intended to be broad and to express the views of litigants from both sides of the spectrum. On the other hand, the author does, from time to time, express his personal opinions based upon his experiences and

2. See HOBLIN, supra note 1, at 1-2.
3. See infra notes 8-20 and accompanying text.
4. See infra notes 21-22 and accompanying text.
7. See infra notes 279-303 and accompanying text.
observations as an arbitrator and a Public Member of SICA as to what is necessary to preserve the public's trust in the integrity of the SRO arbitration process. Absent such trust, securities arbitration cannot remain the basically mandatory system that it is today.

A. Judicial Developments

An unresolved dispute between an investor and his broker ordinarily ends in arbitration because of an agreement entered into at the time a customer opens a brokerage account.8 Indeed, such agreements are common, particularly in the case of margin or option accounts.9

Under the United States Arbitration Act (Federal Arbitration Act or Arbitration Act), agreements to arbitrate future disputes are, in general, specifically enforceable.10 Prior to 1987, however, there was an exception recognized for customers' claims which arose under the Securities Act of 193311 (1933 Act or Securities Act).12 Faced with the Hobson's choice between the mandate of the Arbitration Act to arbitrate, and provisions in the Securities Act intended to protect the customer's rights, the Supreme Court

8. SRO rules require that their membership consent to arbitrate disputes upon the demand of their customers. By belonging to the SRO, its members agree to be bound by the SRO's rules. Consequently, customers of an SRO may compel a member of an SRO to arbitrate even without a written agreement to arbitrate; however, absent a written contract, the member cannot compel the customer to arbitrate. Hoblinsupra note 1, at 2-3 - 2-4.

9. It would appear that such agreements are largely in effect with respect to margin, option and commodity accounts, and, to a lesser degree, cash accounts. See Ann C. Stansbury & Justin P. Klein, The Arbitration of Investor-Broker Disputes: A Summary of Development, 35 ARB. J. 30, 32 (1980); see also C. Fletcher, Dynamism In Securities Arbitration, Securities Arbitration Practice and Procedures Seminar 14 (1989). A “1988 SEC study of 65 brokerage firms showed that 61% of all cash accounts had no arbitration agreement in effect; 6% of margin accounts had no arbitration agreement; and, 5% of option accounts had no arbitration agreement.” Id. This difference probably stems from the fact that the latter two usually involve greater risk or an extension of some form of credit by the firm to the customer, thus increasing the need for speedy resolution of problems through arbitration.

10. 9 U.S.C. §§ 1-14 (1982). Section 2 of the Arbitration Act provides: [A] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration, a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. Id. at § 2 (emphasis added). Because the Federal Arbitration Act applies to claims arising from transactions involving interstate commerce, id., and because securities dealings usually involve such transactions, state securities claims, as well as those arising under the federal securities laws, are usually arbitrable.


in Wilko v. Swan—expressing some mistrust of arbitration—concluded that Congress' desire to protect investors would be more effectively served by holding unenforceable any pre-dispute arbitration agreements relating to issues arising under the 1933 Act. Subsequently, most federal courts presumed that the Wilko prohibition also extended to the Securities Exchange Act of 1934 (1934 Act or Exchange Act), and thus, despite the existence of pre-dispute arbitration agreements, refused to compel arbitration of customers' claims arising under the 1934 Act—even when intertwined with an arbitrable non-federal securities claim.

In 1987, however, the Supreme Court in Shearson/American Express, Inc. v. McMahon specifically ruled that the Wilko exemption did not apply to 1934 Act claims. Further, in 1989, in Rodriguez de Quijas v. Shearson/American Express, the Court expressly overruled Wilko and held that pre-dispute arbitration agreements were enforceable, including claims arising under the 1933 Act. Therefore, as a result of the McMahon and Rodriguez decisions, most securities disputes are now arbitrated pursuant to pre-dispute arbitration agreements.

In the aftermath of McMahon, however, both Congress and the legislatures of several states made attempts to render pre-dispute securities arbitration agreements unenforceable; but, such efforts were unsuccessful.

---

14. Id. at 438. As to the Wilko court's mistrust of arbitration, see also infra notes 345-47 and accompanying text.
16. See Constantine N. Katsoris, Securities Arbitration After McMahon, 16 FORDHAM URB. L.J. 361, 364-67 (1988) [hereinafter Katsoris II]. See also Constantine N. Katsoris, The Securities Arbitrators' Nightmare, 14 FORDHAM URB. L.J. 3, 7 (1986) [hereinafter Katsoris III]. While the Supreme Court in Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985), did not specifically resolve the issue of whether Wilko applied to the 1934 Act claims, it did hold that when an arbitrable claim is joined with a non-arbitrable Wilko claim, it would not order the two be tried together, even though they were intertwined. Katsoris III, at 8.
17. 482 U.S. 220 (1987). See also NYSE SYMPOSIUM, supra note 5, at 1507-08.
22. See Securities Indus. Ass'n v. Connolly, 883 F.2d 1114 (1st Cir. 1989), cert. denied, 495 U.S. 956 (1990); Securities Indus. Ass'n v. Connolly—Massachusetts Arbi-
B. Creation of SICA and the Role of the SEC

Prior to 1976, the various SROs had differing rules for the administration of securities arbitration disputes.23 In June 1976, the SEC solicited comments from interested persons on the feasibility of developing a “uniform system of dispute grievance procedures for the adjudication of small claims.”24 After conducting public hearings at which written and oral comments were received, the SEC’s Office of Consumer Affairs issued a report recommending the adoption of procedures for handling investor disputes and the creation of a new entity to administer the system.25 Prior to implementing that proposal, however, the Commission invited further comment.26

In response to this request, several SROs proposed the establishment of a securities industry task force to consider the development of a “uniform arbitration code and the means for establishing a more efficient, economic and appropriate mechanism for resolving investor disputes involving small sums of money.”27 As a result of this proposal, SICA was established in April 1977, consisting of

---

23. See Katsoris I, supra note 12, at 283.
26. Id. at 955, 956.
representatives of various SROs, the public, and the Securities Industry Association (SIA).

In accordance with its mandate, SICA initially developed a simplified arbitration procedure for resolving customers’ small claims ($2,500 or less) and published an informational booklet describing these procedures (Small Claims Booklet). Recognizing that the development of a small claims procedure was merely a first step, SICA proceeded to develop a comprehensive Uniform Code of Arbitration (Uniform Code or Code) for use in larger claims, with the small claims procedures becoming part of the Uniform Code. In addition, SICA prepared an informational booklet for prospec-

28. The following SROs were represented: the American (ASE), Boston (BSE), Cincinnati (CSE), Midwest (MSE), New York (NYSE), Pacific (PSE) and Philadelphia (PHLX) Stock Exchanges, the Chicago Board Options Exchange (CBOE), the Municipal Securities Rulemaking Board (MSRB) and the National Association of Securities Dealers, Inc. (NASD). Fifth Report, supra note 27, at 3.

29. Peter R. Cella, Jr., Esq. Mortimer Goodman, Esq. and the author were appointed Public Members of SICA at its creation in 1977. Id. In 1983, Justin Klein, Esq., was added as a fourth Public Member of SICA. Id. Mortimer Goodman did not seek re-appointment as a Public Member as of the end of 1989, and a new public member, James Beckley, Esq., was appointed in his place. The current Public Members’ terms shall expire, one each year, beginning on December 31, 1993. Constantine N. Katsoris, Should McMahon Be Revisited?, 59 Brook. L. Rev. 1113, 1117 n.27 (1993) [hereinafter Katsoris IV]. All new members serve for four years and are eligible for one additional four-year term. The Public Members whose terms are not expiring will determine the appointment of new members, or reappointment. Id. The appointment, or reappointment, may be vetoed by a two-thirds vote of the non-public members of SICA. Id. Accordingly, in 1995, Thomas R. Grady, Esq. was appointed to replace Justin Klein, and in 1996 Professor Thomas J. Stipanowich was appointed to replace Peter R. Cella. Moreover, at a special meeting in July 1995, SICA decided that upon the expiration of the author’s term at the end of 1996, the Public Members on SICA will revert to three, as was the case when SICA was first created. Public Members, whose terms have expired, continue to be invited as guests to SICA meetings to act in an advisory capacity. See also infra note 30 as to other guests regularly invited to SICA meetings.

30. Fifth Report, supra note 27, at 3. The SIA is a trade association for the securities industry. In addition, members of the staff of the SEC, the Commodities Futures Trading Commission (CFTC), the American Arbitration Association (AAA) and the North American Securities Administrators Association (NASAA) are regularly invited to attend the SICA meetings.


tive claimants (Procedures Booklet)\textsuperscript{33} explaining, in simple terms and by examples, the arbitration procedures under the Code. To a large extent, SICA's Uniform Code incorporated and harmonized the rules of the various SROs and codified various procedures that the SROs had previously followed, but had not formalized in their existing rules.\textsuperscript{34}

C. The Present Uniform Code

The Uniform Code of Arbitration was adopted by the participating SROs during 1979 and 1980,\textsuperscript{35} and appears in the Second Report of SICA to the SEC.\textsuperscript{36} Since its initial adoption and before the McMahon case in 1987, various revisions were made to the Code and the Procedures Booklet. These changes were reported in the Third, Fourth and Fifth Reports of SICA to the SEC.\textsuperscript{37}

In 1987, the SEC, recognizing the broad implications of the McMahon decision, dispatched to SICA a list of recommendations for changes to SRO arbitration procedures, and solicited SICA's comments on these proposed changes.\textsuperscript{38} Most of these issues addressed by the SEC had already been under consideration at SICA, and SICA responded that it was generally in agreement with the SEC's


\textsuperscript{34} See Katsoris I, supra note 12, at 284.

\textsuperscript{35} Fifth Report, supra note 27, at 4. Once SICA adopts a new rule, each SRO must then generally go back to their respective organization for approval in order to get a rule change which is then usually submitted to the SEC for approval. Accordingly, there is often a time lag between SICA approval and SRO adoption.


\textsuperscript{37} See Third Report, supra note 33, at 3; Fourth Report, supra note 32, at 3-4; Fifth Report, supra note 27, at 4-6.

\textsuperscript{38} See Letter from SEC to SICA (Sept. 10, 1987) [hereinafter SEC Letter], reprinted in James H. Schropp, Securities Arbitration, New Approaches to Securities Counseling and Litigation After McMahon 141-53 (1988). The SEC's proposals principally revolved around such issues as: selection, qualification, background, training and evaluation of arbitrators; challenges for cause; method of transcribing and preserving the record of arbitration hearings; written outline and explanation of the basis for an award; pre-hearing discovery, depositions and exchange of documents; expanding the use of educational pamphlets; increased pressure on SRO arbitration systems brought about by the anticipated increased case load; adherence to Rule 19b-4; notification of abuses to disciplinary authorities; and large cases. \textit{Id.}
Because there were honest disagreements on certain points, however, extensive discussions between SICA and the SEC ensued, leading to many changes to the Code, which were adopted and reported in SICA's Sixth Report.40

Since the adoption of the Uniform Code, SICA has met quarterly, (or more frequently when necessary) to monitor the performance of the Code in action with a view towards further fine-tuning, adjusting, and amending its provisions based upon its own observations and comments from those interested in the arbitration process. Moreover, since the Sixth Report, SICA has made many significant amendments to the Code which are discussed in SICA's Seventh41 and Eighth Reports.42 The present Uniform Code, as of March 1996, is attached hereto as Appendix A.43

A few months following McMahon, on October 19, 1987, the securities markets experienced "Black Monday," when the Dow Jones Industrial Average plunged 508 points (a 22.6% decline) in one trading day.44 Between the 1987 mandate of the Supreme Court in McMahon regarding arbitrability, and the disruption of the securities markets on Black Monday, SRO arbitrations exploded in 1988 to over 6,000 filings—more than double the number of cases filed in 1986.45 To date, over 65,000 cases, including small claims, have been filed with the participating SROs since the initial approval of the Code.46

---

40. See SIXTH REPORT, supra note 20, at 1-3. This Report was sent to the SEC in the summer of 1989.
41. See SEVENTH REPORT OF THE SEcurities INDUSTRY CONFERENCE ON ARBITRATION 6 (July 1991) [hereinafter SEVENTH REPORT].
42. See EIGHTH REPORT OF THE SEcurities INDUSTRY CONFERENCE ON ARBITRATION 3 (June 1994) [hereinafter EIGHTH REPORT]. The Ninth Report of SICA to the SEC is scheduled to be released this summer.
43. See Uniform Code of Arbitration, infra Appendix A.
45. The bulk of said arbitrations are handled before the NASD and NYSE. See infra Appendix B.
46. The bulk of said arbitrations are handled before the NASD and the NYSE. A breakdown of the arbitrations handled by the arbitration facilities of the various SROs appears infra Appendix B.
II. Analysis of Present Uniform Code of Arbitration

Section 1 — Arbitration

Section 1 of the Code delineates the jurisdictional reach of SRO arbitration, which permits an SRO to accept a matter upon the demand of a customer or nonmember, even absent an agreement;\(^47\) however, it also recognizes an SRO's right to decline the use of its facilities where the dispute, claim, or controversy is not a proper subject matter for arbitration.\(^48\)

Section 1 remained basically unchanged from the original version until the addition of subdivision (d), which was adopted, after much debate, and specifically prohibits the submission of a claim as a class action.\(^49\) This prohibition of class actions, however, had no effect upon the consolidation or joinder of claims, which are still specifically permitted by Section 13(d) of the Code. Furthermore, the Code permits claimants to join in a class action pending in Court despite an agreement to arbitrate;\(^50\) however, the claimants may file such claims in arbitration only if they have elected not to participate in or have withdrawn from the class action.\(^51\)

Section 2 — Simplified Arbitration

Section 2 of the Code deals with Simplified Arbitration procedures\(^52\) whereby small claims can be resolved more quickly and at less cost than larger claims; otherwise, the cost to arbitrate could often exceed any recovery.\(^53\) Initially this section applied only to disputes where the dollar amount in controversy did not exceed $2,500. This amount was later increased to $5,000,\(^54\) and, finally to

---

47. Uniform Code of Arbitration § 1(a), infra Appendix A.
48. Id. § 1(b). See also Gutfreund v. Weiner, 68 F.3d 554 (2d Cir. 1995). When the New York Stock Exchange declined to arbitrate a shareholder's derivative suit against defendants whose employment agreements specified that forum, the Second Circuit refused to compel arbitration in another forum. Id. at 557.
49. See Eighth Report, supra note 42, at 6-7.
50. Id.
51. Id. See also Uniform Code of Arbitration § 31(e), infra Appendix A, which provides, inter alia, that pre-arbitration dispute agreements must state that no person shall seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a class action or who is a member of the putative class who has not opted out, until either: the class certification is denied; or, the class is decertified; or, the customer is excluded from the class by the court.
52. Uniform Code of Arbitration § 2, infra Appendix A.
53. In essence, this enhances the fairness of arbitration procedures, for even those with small claims can partake.
54. See Fourth Report, supra note 32, at 3.
its present $10,000\textsuperscript{55} limit. As a result, deposits and other costs increased from a flat $15 fee to a present sliding dollar related claim scale ($15 to $200).\textsuperscript{56} Additionally, various amendments were made to the Code to resolve possible inconsistencies or ambiguities concerning simplified arbitration and other sections of the Code, including pre-hearing discovery procedures.\textsuperscript{57}

Section 3 — Hearing Requirements — Waiver of Hearing

This section provides that, except for small claims, each dispute, claim or controversy shall require a hearing, unless waived by the parties.\textsuperscript{58}

Section 4 — Eligibility

Section 4 establishes a six year time limitation for the submission of a claim to arbitration (Six Year Rule) from the time of the occurrence or event giving rise to the claim.\textsuperscript{59} This six year provision does not extend applicable statutes of limitation.\textsuperscript{60} The Six Year Rule was inserted as a matter of administrative convenience at a time when: (i) arbitration was basically voluntary on the public's part; (ii) there were no formal discovery rules; and, (iii) limited partnerships, which have been the subject of much litigation since the late 1980's, were not contemplated.\textsuperscript{61} It was never the intent of SICA to invalidate claims by this rule, but merely to articulate that claims over six years old could not be submitted to an SRO forum for arbitration.\textsuperscript{62}

Unfortunately, some courts have interpreted the Six Year Rule as barring such claims.\textsuperscript{63} To correct that misunderstanding, subdivisions (b) and (c) were added in 1993 to Section 4, giving the Director of Arbitration the authority to make a final determination as

\begin{itemize}
\item \textsuperscript{55} Uniform Code of Arbitration § 2(a), infra Appendix A. SEC Approves NASD Proposal to Raise Ceiling for Simplified Arbitrations, SEC. REG. & L. REP. (BNA) No. 20, at 560 (Apr. 15, 1988).
\item \textsuperscript{56} See FOURTH REPORT, supra note 32, at 3; Uniform Code of Arbitration § 2(c), infra Appendix B.
\item \textsuperscript{57} SEVENTH REPORT, supra note 41, at 6.
\item \textsuperscript{58} Uniform Code of Arbitration § 3, infra Appendix A.
\item \textsuperscript{59} Uniform Code of Arbitration § 4, infra Appendix A.
\item \textsuperscript{60} Id.
\item \textsuperscript{61} See NYSE SYMPOSIUM, supra note 5, at 1533-49; See also Katsoris IV, supra note 29, at 1123.
\item \textsuperscript{62} Katsoris IV, supra note 29, at 1123.
\item \textsuperscript{63} See NYSE SYMPOSIUM, supra note 5, at 1534.
\end{itemize}
to whether a claim is eligible for submission to arbitration. Furthermore, these amendments to the Six Year Rule made it clear that a finding of ineligibility by the Director of Arbitration shall not constitute a bar to asserting the underlying claim in a judicial forum, despite the existence of a pre-dispute arbitration agreement. Unfortunately, no SRO has yet adopted these amendments. The NASD filed a much expanded version of these amendments in a Rule 19(b) filing, but subsequently withdrew it after much opposition and many questions were raised regarding its adoption.

The Six Year Rule has inadvertently and needlessly complicated the arbitration process. Indeed, various courts are in conflict as to who should decide the threshold issue of eligibility: the courts or the arbitrators. The AAA has no similar provision, despite securities industry involvement in the development of its securities arbitration rules. This is perhaps one of the reasons brokerage firms do not include the AAA as an alternative to the SRO forums in their arbitration agreements. For these and other reasons, abolition of the Six Year Rule from the SICA Code has been suggested by the author, and recently endorsed by the Ruder Report.

Section 5 — Dismissal of Proceedings

The original version of Section 5 gave arbitrators the discretion to dismiss the arbitration proceedings at any time upon their own initiative or upon the joint request of the parties. The section was subsequently changed, before McMahon, to its present version, by

64. But see Eighth Report, supra note 42, at 4 (noting that further clarification of this issue has been proposed).
65. Uniform Code of Arbitration § 4(c), infra Appendix A.
66. See NYSE Symposium, supra note 5, at 1539 n.79.
68. See NYSE Symposium, supra note 5, at 1534. See also Dominic Bencivenga, Securities Threshold; Should Judges or Arbitrators Decide Eligibility?, N.Y. L.J., Nov. 9, 1995, at 5.
69. NYSE Symposium, supra note 5, at 1539. A more complete discussion of the Ruder Report (entitled, Securities Arbitration Reform: Report of the Policy Task Force to the Board of Governors National Association of Securities Dealers, Inc. (January 1996)) follows below, infra at part V.
extending the discretionary power to arbitrators to dismiss claims in situations where only one party so requests, and by making the dismissal mandatory where the request is jointly made by the parties.71 Rightly or wrongly, most arbitrators rarely dismiss a matter before the hearing, preferring to hear part or all of the case before doing so, particularly in pro se cases.72

Finally, in September, 1995, SICA made two amendments to Section 5. First, it amended subdivision (a) to enable the arbitrators, upon dismissal of the arbitration, to refer the parties not only to their judicial remedies, but also to any other dispute resolution forum agreed to by the parties without prejudice to any claims or defenses available to any party, or other remedies provided by law. Furthermore, SICA also added subdivision (b), which specifically provides that arbitrators may dismiss a claim, defense or proceeding with prejudice as a sanction for willful and intentional failure to comply with an order of the arbitrators if lesser sanctions have proven ineffective.

Section 6 — Settlements

This section provided that "all settlements upon any matter submitted shall be at the election of the parties," and it remained unchanged from the original version73 until recently. After the Sixth Report, SICA removed the words "upon any matter," as redundant, so that the section now simply reads: "[a]ll settlements submitted shall be at the election of the parties."74

In 1993, the NASD sua sponte filed with the SEC a Rule 19(b) filing that would have established a formal procedure for parties, in arbitration proceedings involving at least $250,000 in total damages, to make pre-hearing settlement offers (Offer of Award

71. See Third Report, supra note 33, at C-3.
74. Uniform Code of Arbitration § 6, infra Appendix A. With greater frequency, settlement agreements include a confidentiality clause which prohibits the customer from disclosing settlement terms and the underlying facts of the dispute. In this regard, NASD Notice To Members 95-87 "admonishes broker-dealers not to use confidentiality provisions which might impede NASD investigations." NASD NTM 95-87 Warns Firms Re Confidentiality Clauses in Settlement Accords. Sec. Arb. Commentator, Jan. 1995, at 19.
The proposed rule change was to expire after two years.\textsuperscript{76} It would have \textit{required} parties who reject such settlement offers to pay the offering party's reasonable costs (including expert witness fees) and attorneys fees incurred after the offer was made, if the award granted in the ensuing arbitration was not more favorable to the rejecting party than the settlement offer.\textsuperscript{77}

Although this proposal, on its face, seemed to encourage settlements of large and costly disputes, it was the unanimous conclusion of the Public Members of SICA and most of the other SROs that, on balance, such a rule change would have an unwelcome and decidedly coercive effect upon public claimants to accept a settlement offer rather than risk being assessed with the excessive costs and attorneys fees of the opposing party.\textsuperscript{78} Moreover, since the threshold sum of $250,000 included punitive damages, the proposed rule would have had the additional effect of compelling claimants to reduce or eliminate a punitive damage claim so as to avoid crossing the threshold and thereby being subjected to the Offer of Award Rule.\textsuperscript{79}

A proposal similar to the Offer of Award Rule found little support among the other SICA members,\textsuperscript{80} including the arbitration directors of the other SROs.\textsuperscript{81} The NASD withdrew its Offer of Award Rule in 1994.\textsuperscript{82}

\textbf{Section 7 — Tolling of Time Limitation(s) for The Institution of Legal Proceedings}

This section originally provided for the tolling of time limitations for the institution of legal proceedings from the time when all parties filed duly executed Submission Agreements and continued for such period as the SRO retained jurisdiction over the matter.\textsuperscript{83}

\begin{thebibliography}{83}
\bibitem{77} Katsoris IV, \textit{supra} note 29, at 1149.
\bibitem{78} \textit{Id}.
\bibitem{79} \textit{Id.} at 1149-50.
\bibitem{80} \textit{Id.} at 1150-51.
\end{thebibliography}
The section was subsequently expanded, prior to *McMahon*, to its present version which requires: (1) that applicable time limitations for the institution of legal proceedings shall be tolled from the time a duly executed Submission Agreement is filed by the claimant or claimants (instead of all the parties); and (2) that the six year limitation period for the bringing of arbitration proceedings, as provided in Section 4, is to be extended by any period during which a court of competent jurisdiction retains jurisdiction over the matter submitted. The reasoning is that it would be unfair to a claimant for such limitations to continue to run once the claim is submitted to arbitration, or is being adjudicated in court.

Section 8 — Designation of the Number of Arbitrators

This section deals with the composition of the arbitration panels. It grants the SRO Director of Arbitration the authority to choose the panel and its chairman, and directs that the majority of the panel of arbitrators shall not be from the securities industry (public arbitrators), unless the public customer or "non-member" requests otherwise.

The selection of arbitrators at SRO forums does not employ the so-called *tri-partite* selection system, whereunder each party picks an arbitrator and the two appointees pick a third. Rather, the SRO arbitration forums select the proposed arbitration panels, and Section 10 of the Code provides that each party shall have one peremptory challenge, and unlimited challenges for cause.

The original section provided for panels of three members for matters in controversy which did not exceed $100,000 and five

84. See Fourth Report, *supra* note 32, at C-3; Uniform Code of Arbitration § 7(a), *infra* Appendix A.

85. Fourth Report, *supra* note 32, at C-3; Uniform Code of Arbitration § 7(a), *infra* Appendix A.

86. Uniform Code of Arbitration § 8(a), *infra* Appendix A. The term "nonmember" was added to the section after *McMahon*. See Sixth Report, *supra* note 20, at 6.


88. Id. See also Edward W. Morris, *Arbitrator Assignment — The Case For Agency Selection*, Sec. Arb. Commentator, Feb. 1989, at 1, 3. Section 10 of the Uniform Code authorizes the Director of Arbitration to grant additional peremptory challenges, if doing so best serves the interest of justice.
members for matters in excess of that amount. For reasons of economy and efficiency, that has been pared down to three person panels for controversies exceeding $10,000, or where no money claim is involved or disclosed. In claims involving $10,000 or less, only one arbitrator is appointed; and, the NASD has extended this one arbitrator rule to claims involving $30,000 or less, unless a party demands a panel of three. Nevertheless, some public arbitrators who may not be familiar with securities industry practices might feel uncomfortable sitting alone without the benefit of the knowledge and experience of an industry arbitrator.

Although this section always provided that the majority of the arbitrators on any panel involving a public customer or non-member be public arbitrators (i.e. not affiliated with the securities industry), no further guidance was given by the original Code regarding who qualified as a public arbitrator. The original version of the Procedures Booklet, however, described public arbitrators as “individuals who are neither associated with, nor employed by a broker-dealer or securities industry organization.” SICA initially left this test flexible so that the experience of many needed and qualified persons would not be lost. As time went on, however, it became apparent that the category of public arbitrators had to be more clearly defined. Accordingly, Guidelines for the Classification of Public Arbitrators were added to the Procedures Booklet.

After McMahon, however, SICA further tightened the classification of public arbitrators by amending Section 8 of the Code to specifically exclude as public arbitrators: (1) brokers and registered investment advisers and persons who are retired from the securities industry; (2) persons who had been employed in the industry in the past three years; (3) professionals, i.e., attorneys or accountants, who devote 20% or more of their work efforts to securities industry clients; and (4) spouses of industry personnel.

---

89. See Third Report, supra note 33, at C-4.
90. See Sixth Report, supra note 20, at 6.
92. Id. Section 2(i) of the Uniform Code specifically provides that the single arbitrator can request the appointment of two additional arbitrators.
93. See Fifth Report, supra note 27, at 32.
94. See Procedures Booklet, supra note 33, at 3.
95. See Fifth Report, supra note 27, at 17.
96. See Sixth Report, supra note 20, at 6-7. The NYSE guidelines for the classification of public arbitrators are even more stringent. See Katsoris II, supra note 16, at 378 n.98. Indeed, such NYSE guidelines provide that “[a]ny close question on arbi-
Furthermore, subsection (v) was later added (to subdivision (a)(2) of Section 8 of the Code), which expanded the definition of securities arbitrators to include an individual who is registered under the Commodities Exchange Act or is a member of a registered futures association or any commodities exchange or is associated with any such person(s).97

As a result of some criticism of the present method of selection, some SROs are experimenting with, or considering adopting, a procedure for a random generation of lists of potential arbitrators similar to that used at the AAA, instead of having arbitrators appointed by the SRO itself. Such a change has recently been suggested by the Ruder Report.98

Section 9 — Notice of Selection of Arbitrators

Before McMahon, Section 9 merely required the Director of Arbitration to inform the parties of the names and business affiliations of the arbitrators at least eight business days prior to the date of the initial hearing session.99 Since McMahon, the section has been significantly expanded.100

The Director of Arbitration now must also inform the parties of the arbitrators’ employment histories for the past ten years in addition to expanded disclosures required by Section 11.101 Moreover, a party’s right to make further inquiry of the Director concerning an arbitrator’s background is now included in the rule.102 Previously, this right was only mentioned in the Procedures Booklet.103 In addition, the expansion of Section 9 grants the Director the power to designate a replacement arbitrator in the event an appointed arbitrator becomes disqualified, resigns, dies, refuses, or

97. See Uniform Code of Arbitration, infra Appendix A.
98. See RUDER REPORT, infra note 307 and accompanying text; NYSE SYMPOSIUM, supra note 5, at 1679-93. See also supra notes 86-8 and accompanying text.
99. See SECOND REPORT, supra note 36, at A-5. At its September, 1995 meeting, SICA increased this notice requirement to fifteen days prior to the date of the initial hearing.
100. See SIXTH REPORT, supra note 20, at 7.
101. Id. In September, 1995, SICA extended this disclosure requirement to fifteen (from eight) business days prior to the date fixed for the initial hearing session.
102. Id.
103. See PROCEDURES BOOKLET, supra note 33, at 6.
otherwise is unable to perform prior to the first hearing. Consis-
tent with the other provisions of Section 9, the replacement provi-
sion also imposes disclosure requirements upon the replacement
arbitrator, so as to meaningfully preserve the right to challenge the
replacement arbitrator under Section 10. Vacancies occurring
after the commencement of the first hearing are specifically cov-
ered by Section 12.

Section 10 — Challenges

Initially, Section 10 dealt only with peremptory challenges and
granted one such challenge to each party only when panels con-
sisted of more than one arbitrator. Thereafter the peremptory
challenge was extended (similar to the present rule) to all panels
(regardless of size). The new section limits multiple claimants,
respondents and third-party respondents to one peremptory chal-
lenge, unless the Director determines that, in the interest of justice,
the granting of such additional challenges is warranted. The sec-
tion was further amended at that time to specifically permit unlim-
ited challenges for cause.

Section 11 — Disclosures Required by Arbitrators

Section 11 initially required each arbitrator to disclose to the Di-
rector of Arbitration any circumstances which might preclude such
arbitrator from rendering an objective and impartial determina-
tion. The section was soon expanded to specifically authorize
the Director to remove such an arbitrator before the commence-
ment of the first hearing, or in the absence of removal, to inform
the parties of any such information.

---

104. See Uniform Code of Arbitration § 9, infra Appendix A.
105. See Uniform Code of Arbitration §§ 9, 10, infra Appendix A. In September,
1995 SICA extended the parties’ time for background inquiries and peremptory chal-
lenges of the replacement arbitrators to ten days (from five).
106. Id.
108. See FOURTH REPORT, supra note 32, at C-4.
109. Id.; see also Uniform Code of Arbitration § 10, infra Appendix A. Originally,
a party had five business days after notification of the panel’s identity, unless ex-
tended by the Director of Arbitration. See SECOND REPORT, supra note 36 at A-5.
SICA has recently amended Section 10 to increase the period for exercising peremp-
tory challenges from five business days to ten business days from notification. See
Uniform Code of Arbitration § 10, infra Appendix A.
110. See FOURTH REPORT, supra note 32, at C-4.
111. See SECOND REPORT, supra note 36, at A-5.
112. See THIRD REPORT, supra note 33, at C-5.
After *McMahon*, the section was expanded to parallel Canon II of the Code of Ethics for Arbitrators in Commercial Disputes (Code of Ethics) by explicitly imposing a duty upon the arbitrator to disclose *any* potential conflict, a duty which continues throughout the proceeding.\(^\text{113}\) To facilitate this process, arbitrators now receive a copy of the Arbitrators’ Code of Ethics each time they are assigned to a case in order to highlight the types of disclosures required. In addition, arbitrators receive a copy of SICA’s Arbitrator’s Manual (Manual) which was developed to instruct arbitrators concerning their duties and responsibilities.\(^\text{114}\)

**Section 12 — Disqualification or Other Disability of Arbitrators**

Before *McMahon*, this section simply provided that if an arbitrator became disabled or disqualified after the commencement of the first session, the Director of Arbitration could either appoint a replacement or allow the arbitration to proceed with the remaining panel.\(^\text{115}\) In either case, further hearings required the consent or waiver of the parties.\(^\text{116}\) In the absence of consent or waiver, the hearings had to start *de novo*.\(^\text{117}\) Because this often resulted in wasted time and effort, the section was amended after *McMahon* to allow the hearings to continue before the remaining arbitrators when a vacancy occurs, unless one of the parties objects.\(^\text{118}\) In the event of an objection, the Director shall appoint a new member to fill the vacancy.\(^\text{119}\) The section, as it presently stands, preserves the

---

\(^{113}\) For example, the Code of Ethics requires that an arbitrator reveal any direct or indirect financial or personal interest in the outcome of the arbitration, and any existing or past financial, business, professional, family or social relationships, which are likely to affect impartiality or that might reasonably create an appearance of bias. See Katsoris V, *supra* note 87, at 437.


\(^{116}\) *Id.*


\(^{118}\) See id. at 8.

\(^{119}\) *Id.; see also* Uniform Code of Arbitration § 12, *infra* Appendix A. In this con-     nection, an interesting decision was rendered in New York in McMahon & Co. v. Dunn New-Fund I Ltd., where a State Supreme court judge overturned an arbitration award rendered by an AMEX arbitration panel in a 5½ year proceeding and only two of the five members of the panel were members of the original panel. See Matthew Goldstein, Change in Arbitrators Void $1.5 Million Award. N.Y. L.J., Nov. 24, 1995 at 1, “While the substitutions were made in accordance with Stock Exchange guide-
requirements of background disclosure, as well as the right to challenge the new panel member.\textsuperscript{120}

\textbf{Section 13 — Initiation of Proceedings}

Initially this section set out the requirements for the commencement of an arbitration proceeding by setting out the general pleading and service requirements regarding such items as the Statement of Claim, Submission Agreement, Answer, Counterclaim and/or Cross-claims, and Claims over.\textsuperscript{121} This section also permitted joinder and consolidation, which would be initially ruled upon by the Director of Arbitration, leaving the ultimate decision to the arbitration panel.\textsuperscript{122}

SICA subsequently tightened this section by permitting arbitrators to bar evidence at a hearing where only a general denial was pleaded, or where available defenses were not pleaded.\textsuperscript{123} The authority to bar evidence at the hearing was further extended to situations where a party fails to file a timely answer.\textsuperscript{124}

After \textit{McMahon}, and largely for purposes of trimming increasing costs, SICA amended Section 13 to require the parties to serve upon each other all pleadings after the service of the Statement of Claim.\textsuperscript{125} The SROs continue to be responsible for serving the Statement of Claim.\textsuperscript{126} Thereafter, the parties are required to serve all other parties with any other pleading and file copies with the Director of Arbitration.\textsuperscript{127} To facilitate this new procedure, Section 13(b) specifically permits service by mail or other means of delivery.\textsuperscript{128}

After its issuance of the Sixth Report, SICA amended Section 13(d) to its present form. SICA revised subparagraph (1) thereof to parallel the language of Federal Rule of Civil Procedure 20(a)
on permissive joinders.\textsuperscript{129} SICA also revised subparagraph (2) of 13(d) to clarify that multiple claimants may file together, eliminating the implication that filings must first be made separately and then joined; but, as to such jointly filed claims, the Director of Arbitration is authorized to sever such claims.\textsuperscript{130} Furthermore, although SICA retained the Director of Arbitration's right to consolidate separately filed claims, the section clearly provides that the arbitrator(s) shall make all final determinations on these issues.\textsuperscript{131}

SICA also studied the complex issues involving class actions in arbitration and concluded—for a variety of reasons, including the difficult problem of class determination and notice—that a court order be a prerequisite for SRO acceptance of a class action matter for arbitration.\textsuperscript{132} Absent such a court order, parties similarly situated may still avail themselves of the remedies of joinder and consolidation provided under this section.\textsuperscript{133}

Occasionally, a rule slips through SICA which hopefully does not survive a Rule 19(b) filing. Such a rule was barely approved by SICA at its January 1994 meeting where Section 13 of the Uniform Code was amended by adding a new subdivision (a).\textsuperscript{134} This amendment (Attachment Rule) was intended to curb the growing practice of attaching irrelevant, prejudicial and/or extraneous materials to pleadings.\textsuperscript{135}

Under the Attachment Rule, if one of the parties objected to an attachment and the issue could not be resolved by the parties, the objectionable pleading would be referred to the Director of Arbitration for a ruling on the propriety of the attachments, and would not be delivered to the arbitrators until the Director's ruling was complied with.\textsuperscript{136} The rule specifically provided, however, that attachments which were redacted could still be offered as evidence at the hearing subject to the arbitrators' ruling.\textsuperscript{137} Furthermore, the decision of the Director regarding the attachments in question

\begin{itemize}
  \item \textsuperscript{129} Id. § 13(d)(1).
  \item \textsuperscript{130} Id. § 13(d)(2); see also Katsoris V, supra note 87, at 438-39.
  \item \textsuperscript{131} Uniform Code of Arbitration § 13(d)(3)-(4), infra Appendix A.
  \item \textsuperscript{132} See SEC. ARB. COMMENTATOR, Sept. 1989, at 7; see also generally Note, Daniel R. Waltcher, Classwide Arbitration and 10(b)-5 Claims in the Wake of Shearson/ American Express, Inc. v. McMahon, 74 CORNELL L.R. 380 (1989). See also supra notes 49-51 and accompanying text.
  \item \textsuperscript{133} See Uniform Code of Arbitration § 13(d), infra Appendix B.
  \item \textsuperscript{134} Katsoris IV, supra note 29, at 1145.
  \item \textsuperscript{135} Id. at 1146.
  \item \textsuperscript{136} Id.
  \item \textsuperscript{137} Id.
\end{itemize}
could not be used by any party to support or oppose the admission of any disputed document to the arbitrators at the hearing.\textsuperscript{138}

The Attachment Rule was primarily intended to prevent the arbitrators from being prejudiced by the objectionable material during the period between their receiving and reviewing the pleadings and the actual hearing, since they would see it if later offered separately at the hearing. Although the proposal may have had some merit, we must not lose sight of the basic attributes of arbitration: speed, economy, and fairness, both in fact and appearance.\textsuperscript{139}

Thus, the Attachment Rule must be measured against other alternatives or consequences that may arise or be considered. First of all, it would appear that one could easily circumvent the Attachment Rule by simply weaving highlighted excerpts and quotes of objectionable materials directly into the text of the pleading. Is the Director or Arbitration next going to be asked to search and destroy portions of the pleading proper? Such a course would hardly be advisable.

To the greatest extent possible, SROs should not be making substantive decisions, because their role is intended to be purely administrative, and they are still perceived by some, rightly or wrongly, as being a forum influenced by the securities industry. Thrusting SRO personnel into motion pleading practice would only add to their suspicion. These types of decisions are best left to the panel of arbitrators, the majority of whom are public members.\textsuperscript{140}

Admittedly, arbitrators could make such decisions before the first hearing, but even such a procedure would add some delay and expense to the process.

Moreover, the pleadings are not accepted into evidence until introduced into the record at the first hearing session. Even then, arbitrators generally do not consider them for the truth or falsity of their contents, but merely as the pleader’s allegations. Accordingly, any objections to such attachments can be expeditiously and effectively handled at the first hearing session before the arbitrators. In fact, when the pleadings go to the arbitrators, they could be marked to highlight those attachments which have been objected to. If arbitrators are incapable of expunging from their minds excludable evidence, then they should not remain as arbitrators. Moreover, although irrelevant attachments to pleadings are troublesome, it has been this author’s experience that such attach-

\textsuperscript{138} Id.

\textsuperscript{139} Katsoris IV, supra note 29, at 1146.

\textsuperscript{140} Id.
ments often have an additional, unintended effect of suggesting a weakness in the pleader's case.

When the Attachments Rule was presented to SICA at its January 1994 meeting, it was passed by the narrowest of margins. Four SROs and the SIA voted for the Rule, two SROs abstained, and all four of the Public Members voted against it. When one further considers that there are 15 voting members of SICA, and the Attachments Rule received only five affirmative votes (1/3 of the overall membership and less than the majority of those present), with total public opposition, it can safely be said that this controversial rule did not constitute a mandate.

Indeed, the Attachment Rule was not approved by any SRO board, nor the subject of a Rule 19(b) filing; and, in 1995, SICA quietly expunged the Attachment Rule from the Uniform Code.

Section 14 — Designation of Time and Place of Hearings

This section initially provided that "[u]nless the law directs otherwise," the Director of Arbitration determines the time and place for the initial hearing upon notice of at least eight business days; thereafter, the arbitrators would determine the time and place of subsequent hearings.

Subsequent to the Sixth Report, however, SICA has amended Section 14, eliminating the reference "unless the law directs otherwise." This was done so as to nullify selection of hearing provisions incorporated into brokerage contracts, thus preventing a member firm from unfairly controlling the selection of a hearing location, and thereby causing the customer to bear unreasonable expense to pursue a claim.

Moreover, in September, 1995, SICA extended the notice provision regarding the first hearing date from eight to its present fifteen days.

141. Id. at 1147. At its very next meeting, SICA passed a rule requiring that any rule change could only be effected by at least a majority of those members present at a meeting.
142. Id.
144. SICA Meeting of Jan. 27, 1995.
145. See Second Report, supra note 36, at A-8. The period for notification was increased from 8 business days to 15 at SICA's September, 1995 meeting. See Uniform Code of Arbitration § 14, infra Appendix A.
146. See Uniform Code of Arbitration § 14, infra Appendix A.
Section 15 — Representation by an Attorney

This section simply intended to provide that all parties have the right to representation by counsel. In 1991, however, SICA began to receive complaints that claimants were being represented in SRO arbitrations—not by friends, not by their accountants or business associates, not by their relatives—but by professional groups who were not attorneys (Non-Attorney Representatives, or NARs).

For a variety of reasons, SICA initially viewed this as a subject which could best be handled at the state level, because attorneys general and bar associations have the principal responsibility for dealing with questions relating to standards and qualifications to practice law. Thus, they are better suited to handle this multifaceted problem at the local level. But the complaints persisted, and they raised questions as to whether customers were being adequately represented in SRO arbitrations. The AAA has no such restricting provisions in its arbitration rules dealing with this issue. Nevertheless, SICA recognized its obligation to address this thorny issue. Its motive was to protect the overall interests of the thousands of claimants using SRO forums annually; and, it did so by thoroughly examining this issue of representation.

Because of the enormous stakes and widely divergent opinions, SICA decided, for the first time in its history, to solicit public comment—like the SEC and other regulatory agencies do prior to adopting a rule—in order to elicit the views of the public and affected parties. Accordingly, SICA held two special meetings at which numerous individuals and organizations appeared—including organizations of non-attorney representatives.

---

149. NARS Report, supra note 148, at 515.
150. Id.
151. Id.
152. Id. An interesting development occurred in a California case, where a NARs consented to a permanent injunction whereby in essence agreed not to commence any future arbitration proceedings against the brokerage firm and its employees, Sutro & Co., Inc., v. Richard L. Sacks, et al., Case No. 965943, (Supreme Ct. of Cal. San Francisco County, Nov. 17, 1995).
Initially, SICA received unfavorable publicity, because some in the press came down *instinctively* on the side of consumerism; that is, that there should be *free access* to the system.\(^{154}\) There were even suggestions that SICA was controlled by lawyers, and therefore its inquiry sought to protect its own. Those innuendos, however, were unwarranted.\(^{155}\) On several occasions, this author urged the press to look at this issue fairly, because it would react quite differently when some destitute person wrongly lost all of his or her savings and recovered nothing because of incompetent or unethical representation.\(^{156}\)

Undaunted, SICA listened carefully and examined all of the issues honestly and constructively, and issued its *Report of the Securities Industry Conference on Arbitration on Representation of Parties in Arbitration by Non-Attorneys* (NARS Report).\(^{157}\) It is noteworthy that since this Report was issued, the United States Supreme Court rendered its landmark decision in *Mastrobuono v. Shearson Lehman Hutton, Inc.*,\(^ {158}\) which, *inter alia*, upheld arbitrators' authority to award punitive damages. If nothing else, that decision's recognition of punitive damages heightens the concern as to the quality and adequacy of claimants' representation.

It is SICA's view that claimants should have broad access to the SRO arbitration process and a wide choice of representation.\(^ {159}\) At the same time, SICA is concerned about the adequacy of such representation and its effects upon the integrity of the SRO process.\(^ {160}\) As a practical matter, however, because of the large number of arbitration cases filed throughout the country with the SROs each year, the SROs are ill-equipped to police or review the quality of such representation.\(^ {161}\) Nevertheless, based upon the information gathered during SICA's investigation, the NARS Report con-

\(^{154}\) *Id.* See also SAC Report on Non-attorney Representation, SEC. ARB. COMMEN-
\(^{155}\) tATOR, Jan. 1994, at 3-6.
\(^{156}\) *NARS Report*, supra note 148, at 506.
\(^{157}\) *Id. See also* Michael Siconolfi, *Imperfect Advocate*, WALL ST. J., NOV. 14, 1995, at A1,

In a seductive pitch to injured investors who distrust lawyers: A firm led by former broker—not lawyers—will represent you in your brokerage disputes, pledging low fees and high returns . . . But a group of IAS clients and former employees complain that the . . . investment recovery firm has instead found a variety of ways to take them to the cleaners.

\(^{158}\) *Id.*
\(^{159}\) *NARS Report*, supra note 148, at 507-56.
\(^{161}\) *Id.*
cluded that certain activities of NARs may in fact constitute the unauthorized practice of law.\textsuperscript{162} SICA further concluded that claims made by some of the NARs tend to be inaccurate and misleading and, as such, raise questions under state or federal false advertising statutes or other consumer regulations.\textsuperscript{163} Accordingly, SICA sent its NARS Report to bar associations and attorney licensing bodies in the fifty states, the District of Columbia and Puerto Rico.\textsuperscript{164} SICA also sent its Report to the attorneys general and/or state regulatory officials with jurisdiction over advertising in each of the fifty states, the District of Columbia and Puerto Rico, and to the Federal Trade Commission.\textsuperscript{165}

Presently, some states bar NARs from representing parties in arbitration or other forms of alternative dispute resolution as the unauthorized practice of law.\textsuperscript{166} SICA's NARS Report concluded that these states should consider some form of regulation of NARs.\textsuperscript{167} This regulation should include a form of registration or licensing of NARs in order to track, maintain, and make available consumer complaints regarding the conduct of particular NARs.\textsuperscript{168}

In addition, the NARS Report also recommended that state regulation of NARs should focus on the areas of concern identified by the Report, including but not limited to: (1) development and enforcement of ethical standards; (2) guidelines with respect to advertising; and, (3) guidelines for written fee schedules and refund policies.\textsuperscript{169}

Finally, SICA amended Section 15 to provide that all parties have the right to be represented by an attorney (instead of by counsel, as previously provided), and added that: "Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law and should be determined by an appropriate court or other regulatory agency. In the absence of a

\begin{itemize}
  \item \textsuperscript{162} Id. at 524.
  \item \textsuperscript{163} NARS Report, supra note 148, at 524.
  \item \textsuperscript{164} Id.
  \item \textsuperscript{165} Id.
  \item \textsuperscript{166} Id.
  \item \textsuperscript{167} Id.
  \item \textsuperscript{168} Id. See also Michael Siconolfi, \textit{Imperfect Advocate}, \textit{Wall St. J.}, Nov. 14, 1995, at A1.
  \item \textsuperscript{169} Id. See also Michael Siconolfi, \textit{Imperfect Advocate}, \textit{Wall St. J.}, Nov. 14, 1995, at A1.
\end{itemize}

"Some critics question the competence of nonattorney advisers to deal with an increasingly complex securities arbitration process. Lawyers complain, for one thing, about the lack of oversight. 'If we do something wrong, we're out of here; they [NARs] just move on to the next victim' charges H. Thomas Fahn, a Los Angeles lawyer."

\textit{Id.}

\textsuperscript{169} NARS Report, supra note 148, at 524.
court order, the arbitration proceeding shall not be stayed or other-
wise delayed pending resolution of such issues.\textsuperscript{170}

\textbf{Section 16 — Attendance at Hearings}

Section 16 provides that except for parties and their attorneys, the arbitrators decide the attendance or presence of other persons at the hearings. This section was modified in 1995 to reflect the change in Section 15 of the Code, substituting the term “attorney” for “counsel.”\textsuperscript{171}

\textbf{Section 17 — Failure to Appear}

This section, from its inception, has provided for a hearing to be held and an award rendered despite the fact that a party fails to appear at a hearing after due notice was given.\textsuperscript{172}

\textbf{Section 18 — Adjournments}

Originally, Section 18 merely authorized arbitrators to grant adjournments.\textsuperscript{173} Unfortunately, the issue of adjournments became a chronic problem. A horseback survey at several of the SROs revealed that approximately one-third of the cases heard had their first hearing date adjourned after the panel has already been appointed.\textsuperscript{174} Furthermore, even this first adjourned date was often subsequently adjourned one or more additional times before the first actual hearing was held.

\textsuperscript{170} SICA Meeting of Sept. 14, 1995.


“Arbitrators should consider that expert witnesses often serve an important role in assisting parties and their counsel in the presentation of their cases, and also may be asked to testify about what has been said at the hearing in additional to the facts known to them prior to the hearing. Barring countervailing reasons, expert witnesses who are assisting parties in the presentation of their cases should be permitted to attend all hearings. Generally, there is a presumption that expert witnesses, as opposed to witnesses testifying as to the facts pertinent to the case, will be permitted to attend the entire proceeding.” \textit{Id}.\textsuperscript{172}

\textsuperscript{172} See \textit{SECOND REPORT}, supra note 36, at A-8. In such cases, however, the arbitrators would be wise to exercise extra caution to ensure that due notice was in fact given, taking into account all relevant circumstances.

\textsuperscript{173} See \textit{SECOND REPORT}, supra note 36, at A-8.

Despite the fact that all the parties may have agreed to these adjournments, they still have a crippling effect on the arbitration process. Such repeated adjournments often result in having to replace arbitrators, who have already cleared the challenge and conflict processes, because their schedules cannot accommodate the new adjourned date or dates. This causes additional delay, because the SRO staff must then find a replacement arbitrator or arbitrators, who also had to clear the challenge and conflict hurdles de novo. Moreover, such repeated adjournments discourage many excellent and qualified arbitrators from serving, either because it resulted in their replacement after having already qualified, or because of the inconvenience of having to needlessly reserve several adjourned dates before the first hearing was held.

Thus, these seemingly harmless adjournments undercut the two advantages of arbitration: speed and economy. The more adjournments granted, the longer resolution was delayed, and the more expensive it became for the parties and the arbitration forum in administering the system.

No one suggests that legitimate requests for adjournments should not be granted. Parties should be given the benefit of the doubt in this regard. A practice of automatically granting adjournments merely because both parties consent, however, strains and undermines the legitimate goal of keeping arbitration speedy, economical and fair.

Before *McMahon*, SICA addressed this problem by amending Section 18 to provide that if a party requested an adjournment (after the arbitrators have already been appointed) and the adjournment was granted, that party had to pay a fee equal to the initial deposit of costs, but not to exceed more than $100. It became evident that this penalty was not a sufficient deterrent. Accordingly, after the Sixth Report, SICA replaced what was then subdivision (b) with a new one providing not only for increased and escalating fees (up to $1,000), but making them mandatory at the time of the request, unless waived by the Director of Arbitration. The majority of the Public Members of SICA, however, did not support this latest amendment because it made the increased fee a

175. *Id.*; see also Uniform Code of Arbitration §§ 10, 11, 12, infra Appendix A.
176. See Katsoris II, supra note 16, at 381.
177. Unnecessary and repeated adjournments can be very disruptive of the schedules and availability of arbitrators, and on the SRO forums themselves.
178. See *Fifth Report*, supra note 27, at 35.
condition precedent (unless waived by the Director) to seeking an adjournment from the arbitrators.\textsuperscript{180} Such a pre-condition could impose a severe hardship on many public claimants, and should be rescinded.\textsuperscript{181}

In sum, Section 18 articulates the policy that, to the extent possible, adjournments be limited to those instances where they are relatively necessary. It would be ironic that after all the effort to improve the substance and image of securities arbitrations, the \textit{virus} of unnecessary adjournments should sap its vitality and usefulness.\textsuperscript{182}

\textbf{Section 19 — Acknowledgement of Pleadings}

Since the original Code was adopted, Section 19 required the arbitrators to acknowledge, to all parties present, that they have read the pleadings filed by the parties.\textsuperscript{183}

\textbf{Section 20 — General Provisions Governing A Pre-Hearing Proceeding}

The present Section 20 incorporates the provisions of the original Code Sections 20 (Subpoena Process)\textsuperscript{184} and 21 (Power to Direct Appearances).\textsuperscript{185} Under those provisions, the parties were \textit{expected} to voluntarily exchange documents as would "serve to expedite the arbitration."\textsuperscript{186} There was, however, no established mechanism to ensure that parties cooperated in document production. Accordingly, some parties did not produce documents until the day of the hearing. Such practice was patently unfair and often resulted in trial by ambush.\textsuperscript{187}

---

\textsuperscript{180} Uniform Code of Arbitration § 19, \textit{infra} Appendix A.

\textsuperscript{181} \textit{Id.} (emphasis added). Moreover, this condition precedent has not been adopted by the NYSE. \textit{See} N.Y. Stock Exch. R. 617(b), in N.Y.S.E. \textit{Guide} (CCH) 52617 (1995).

\textsuperscript{182} \textit{Id.}

\textsuperscript{183} Uniform Code of Arbitration § 19, \textit{infra} Appendix A.

\textsuperscript{184} \textit{See} \textit{Fifth Report, supra} note 27, at 35.

\textsuperscript{185} \textit{Id.}

\textsuperscript{186} \textit{Id.; see also} Uniform Code of Arbitration §§ 20(f), 20(g), \textit{infra} Appendix A.

\textsuperscript{187} This forced the demanding party into the unenviable choice of proceeding with the hearing without having an adequate opportunity to examine the produced documents, or of seeking a delay from arbitrators who had planned to start the hearings on that day. \textit{See also} \textit{David E. Robbins, Securities Arbitration Procedure Man-}
Under their broad powers, arbitrators have always had the authority to resolve discovery disputes in advance of the hearing.\textsuperscript{188} Indeed, even before \textit{McMahon}, some SROs forwarded discovery disputes to arbitrators prior to hearings on the merits, giving the panel chairman the authority to resolve discovery disputes in advance of the first hearing.\textsuperscript{189} Some arbitrators, particularly those who were not attorneys, were reluctant to exercise such powers without specific authorization in the Uniform Code.

It became apparent after \textit{McMahon} that the time had arrived to codify the informal practice of some SROs to get the arbitrators involved in discovery disputes before the first hearing. Accordingly, in addition to merging the old Sections 20 and 21 into the present Section 20, SICA added specific provisions relating to pre-hearing conferences, and procedures for pre-hearing document and information production.\textsuperscript{190}

Under the new Section 20, a request for documents or information may be served as soon as twenty business days after service of the Statement of Claim.\textsuperscript{191} If a party objects or fails to honor a request, a prehearing conference may be requested to resolve the impasse;\textsuperscript{192} and, in order to eliminate protracted and unnecessary bickering over the production of documents considered customary and ordinary, it has recently been suggested that basic lists be created of documents that must be produced.\textsuperscript{193}

Section 20 authorizes a sole arbitrator to act on behalf of the panel to issue subpoenas and set deadlines for compliance with discovery orders.\textsuperscript{194} Prior to the initial hearing date, the present Section 20 also requires the parties to exchange the names and business affiliations of witnesses and the documents that they intend to use in their direct case at least 20 days before the first scheduled hearing date; and, the production of, or a list of such documents and witnesses shall also be served on the Director of

\textsuperscript{188} See Katsoris II, supra note 16, at 372.

\textsuperscript{189} Id.

\textsuperscript{190} See \textit{Sixth Report}, supra note 20, at 2. See also SICA Adopts Discovery Rules, Sec. Arb. Commentator, June 1988, at 1.

\textsuperscript{191} See Uniform Code of Arbitration § 20(b)(1), infra Appendix A.

\textsuperscript{192} Id. § 20(b)(4).

\textsuperscript{193} See \textit{NYSE Symposium}, supra note 5, at 1551-61; Ruder Report, infra note 307 and accompanying text.

\textsuperscript{194} See Uniform Code of Arbitration § 20(e), infra Appendix A.
Arbitration. Finally, all parties to a dispute must now receive copies of any subpoenas issued.

In practice, some of the pre-hearing proceedings are conducted by conference call. Although this method is cheaper and more convenient, it is not always productive. In that case, the arbitrator overseeing the discovery should order a formal face-to-face hearing. The best hope for preventing these procedures from dragging out and increasing the cost of the proceedings, as often happens in court litigation, is to have experienced and knowledgeable arbitrators who do not let matters get out of hand. Indeed, in appropriate cases, sanctions should be considered.

Section 20 permits a sole arbitrator selected for these pre-hearing issues to refer any issue to the full panel; and, in the appropriate case, should not hesitate to do so, for many of the issues may again be revisited later by the entire panel during the hearing.

The Uniform Code omits any reference to pre-hearing depositions; however, the circumstances under which such depositions may be ordered by the arbitrators are discussed in the SICA Arbitrator’s Manual.

On the whole, these new pre-hearing procedures enhance the arbitration process. Admittedly, the new procedures under Section 20, which are also addressed in the Arbitrator’s Manual, may involve some additional cost and time, but this is more than counterbalanced by the equitable consideration of preventing undue surprise and possible prejudice to either party once the hearing on the merits begins. In fact, the resolution of such disputes before the first hearing ultimately saves time and expense, and sets the tone for an orderly hearing.

Section 21 — Evidence

Section 21 provides that the arbitrators determine the materiality and admissibility of evidence; and, as a result, shall not be bound by the Federal Rules of Evidence, or state evidentiary

195. Id. § 20(c).
196. Id. § 20(f).
197. See NYSE SYMPOSIUM, supra note 5, at 1566. See also ROBBINS; supra note 187, at 9-22.
Section 22 — Interpretation of and Enforcement of Arbitrator Rulings

Section 22 provides that arbitrators have the final authority to interpret the provisions of the Code. It remains unchanged except that after McMahon, its section number was changed from 23 and it was amended to specifically empower the arbitrators to take appropriate action to obtain compliance with any ruling by the arbitrators.201

Section 23 — Determinations of Arbitrators

Section 23 provides that the rulings and determinations of the panel shall be made by a majority of the panel.202 Aside from its section number, which was 24 prior to McMahon, this section remains unchanged from its original version.203

Section 24 — Record of Proceedings

Before McMahon, Section 24 (then numbered 25) did not require that a record of the arbitration proceeding be kept.204 It is noteworthy that the AAA rules also do not require a record be kept.205 After McMahon, this section was amended to require that a verbatim record, by stenographic reporter or tape recording, of all proceedings be kept.206 This flexibility as to the method of recording takes into account the significant cost differential between a stenographic record and a tape recording. Nevertheless, in a multi-sessioned proceeding spanning over a long period of time, a stenographic record is preferable, because it more easily enables the arbitrators to refresh their recollection of past testimony.

199. Uniform Code of Arbitration § 21, infra Appendix A. But see Gregg Paradise, Note, Arbitration of Patent Infringement Disputes: Encouraging the Use of Arbitration Through Evidence Rules Reform, 64 FORDHAM L. REV. 247 (1995), which suggests that a modified version of the Federal Rules of Evidence should apply in patent arbitration in order to make it more acceptable to patent attorneys.
200. See SIXTH REPORT, supra note 20, at 10.
201. Id.
202. Uniform Code of Arbitration § 23, infra Appendix A.
203. See SIXTH REPORT, supra note 20, at 10.
204. See FIFTH REPORT, supra note 27, at 36.
205. See Katsoris IV, supra note 29, at 1126.
206. See SIXTH REPORT, supra note 20, at 11.
A record of the proceedings is not a luxury.\textsuperscript{207} It serves the needs of an orderly arbitration and the interests of both the parties and the arbitrators.\textsuperscript{208} This is particularly true if the proceedings are extended over a period of time, or punitive damages are involved.\textsuperscript{209}

Section 25 — Oaths of the Arbitrators and Witnesses

Prior to \textit{McMahon}, this section was numbered Section 26.\textsuperscript{210} Otherwise, this section has always provided that the oath or affirmation shall be administered to the arbitrators before the first session and that all testimony shall be under oath or affirmation.\textsuperscript{211}

Section 26 — Amendments

In the original Code, this was known as Section 27 and simply provided that amended pleadings would not be permitted after receipt of a responsive pleading without the consent of the arbitrators.\textsuperscript{212} Before \textit{McMahon}, however, the section was amended by setting up a procedure for amending pleadings after receipt of a responsive pleading, but \textit{before} the appointment of the arbitration panel.\textsuperscript{213} The substance of this section has remained intact after \textit{McMahon}, except that the present section imposes upon the party making the change the obligation to serve the new or different pleading, whereas initially, that burden fell upon the Director of Arbitration.\textsuperscript{214}

Section 27 — Reopenings of Hearings

Other than changing its number from Section 28 to 27,\textsuperscript{215} this section always permitted the reopening of hearings, where permitted by law, by the arbitrators on their own motion, or in the discretion of the arbitrators, upon application of a party at any time before the award is rendered.\textsuperscript{216} Although the Code is silent on the

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{207} See Constantine N. Katsoris, \textit{I Won't Sit Without A Record}, SEC. ARB. COMMENTATOR, Sept. 1990, at 1 [hereinafter Katsoris VIII].
\item\textsuperscript{208} Id.
\item\textsuperscript{209} See NYSE SYMPOSIUM, supra note 5, at 1662.
\item\textsuperscript{210} See \textit{Fifth Report}, supra note 27, at 36.
\item\textsuperscript{211} See \textit{Sixth Report}, supra note 20, at 11.
\item\textsuperscript{212} See \textit{Second Report}, supra note 36, at A-10.
\item\textsuperscript{213} See \textit{Fourth Report}, supra note 32, at C-8.
\item\textsuperscript{214} See \textit{Sixth Report}, supra note 20, at 11. \textit{See also supra} notes 124-27 and accompanying text.
\item\textsuperscript{215} See \textit{Sixth Report}, supra note 20, at 11.
\item\textsuperscript{216} See \textit{Second Report}, supra note 36, at A-10.
\end{enumerate}
\end{footnotesize}
grounds for such re-opening, they should include such circumstances as perjured or coerced testimony.

Section 28 — Awards

Prior to *McMahon*, this section was numbered 29 and basically provided: (1) all awards had to be in writing and signed by a majority of the arbitrators; (2) all awards were deemed final and not subject to review or appeal except as provided by law; (3) arbitrators should endeavor to render the award within thirty business days from the date the record was closed; and (4) the means by which the Director of Arbitration was to serve the award on the parties.

After *McMahon*, Section 29 was renumbered Section 28, and was amended to require that the award be made publicly available and include summary data, such as a description of the issues in controversy and the amounts claimed and awarded. This data is available to the public by various vendors and in accordance with the policies of the sponsoring SRO.

Even with these additional requirements, however, the section still does not require the arbitrators to issue written opinions, *although they are free to do so*. At first blush, this may seem to be a weakness of the Code, and perhaps to some, a weakness of arbitration in general. The argument is that written opinions should be required because they would give insight to the parties as to the rationale for the award. In addition, it would help the parties in formulating opinions about arbitrators with a view to exercising their peremptory challenges in the future.

On the other hand, *requiring* written opinions would certainly slow down the rendering of awards, since they are often arrived at on the basis of consensus. For example, if three arbitrators, A, B and C: (i) initially estimate damages of $10,000, $20,000 and $30,000, respectively; (ii) ultimately agree on a $20,000 award; and, (iii) when they write the opinion, arbitrator A bases his award on unsuitability, arbitrator B on churning, and arbitrator C on unau-

---

217. See *Fifth Report*, *supra* note 27, at 36-37. In September, 1995, SICA amended subdivision (c) of section 28 to enable the award to also be served by facimile transmission or other electronic means.

218. See *Sixth Report*, *supra* note 20, at 11.

219. Id. See *Award Report, Sec. Arb. Commentator*, June 1989, at 6-7; see also *Award Report, Sec. Arb. Commentator*, Oct. 1989, at 2-7. Indeed, some awards are being analyzed and commented upon. Id. at 8-10.


221. Id.
authorized trading. Can arbitrators A, B and C realistically issue a reasoned award for $20,000, even though they totally disagree on the reasons? Moreover, would they?

Nor would opinions necessarily enhance the cause of fairness. Indeed, requiring such opinions might even result in fewer awards in favor of claimants on general equity grounds. It would also put additional pressure on the already strained SRO staffs while drafts of written opinions are circulated and recirculated among the various arbitrators for corrections, redrafts, and finalization.

In addition, it is submitted that instead of being a window into the rationale of arbitrators, a written opinion will be used as a platform and blueprint for many more appeals, because it identifies or magnifies targets, meaningful or otherwise, for the losing party to attack. Such appeals are both costly and time consuming and ultimately result in undue delay in the payment of any award.

222. Id. at 383.
223. Id.
224. Id.
225. The scope of judicial review of an arbitration award is very limited. Arthur Goldberg, A Supreme Court Justice Looks at Arbitration, 20 ARB. J. 63, § 6.03 (1965). “If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact.” Burchell v. Marsh, 58 U.S. 344, 349 (1854). In fact, the typical grounds for vacating an arbitration award are surprisingly uniform throughout the United States; namely:

1. There was an undisclosed relationship between an arbitrator and a party or his counsel affecting the arbitrator’s impartiality or appearance of impartiality.
2. An arbitrator was corrupt.
3. The arbitrators did not schedule or conduct the hearing in a fair and judicious manner.
4. The arbitrators granted relief that they were not authorized to grant under the contract pursuant to which the arbitration was held.


The greatest advantage of arbitration is that awards are almost irreversible. This is perhaps its greatest peril as well... An award which has a legal or factual basis which may be rationally inferred from the evidence will be upheld. Arbitration awards will not be set aside for a mistake of law unless the arbitrators have acted in ‘manifest disregard’ of the law.

Id. at 200 (footnote omitted) (emphasis added). For an award to be vacated on this ground, “[t]he error must have been... readily and instantly perceived by the average person qualified to serve as an arbitrator.” Merrill Lynch, Pierce Fenner & Smith v. Bobker, 808 F.2d 930, 933 (2d Cir. 1986); see also Michael P. O’Mullan, Seeking Consistency in Judicial Review of Securities Arbitration; An Analysis of the Manifest Disregard of the Law Standard, 64 FORDHAM L. REV. 121 (1995).
The one area, however, where such an appeal may be advisable is in the case of punitive damages, because of its unusual nature. In this regard, it would appear that specific findings explaining the basis of the award of punitive damages is desirable, so that the offending party and an appellate court can better understand the rationale behind the unusual punishment being meted out.

Moreover, undue delay in the payment of an award is particularly injurious to the small investor, who may have an immediate need for the money. Indeed, SICA was concerned that some brokers unduly delayed payment of awards issued against them. Accordingly, after the Sixth Report, Section 28 was further amended to specifically provide for the accrual of interest and that all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

At one point, SICA also considered the inclusion of a bond or escrow requirement in the Uniform Code to insure such prompt payment, but abandoned the idea because it was unduly burdensome; instead, SICA merely relied on the aforementioned thirty day rule. This payment requirement is a distinct advantage over court-litigated awards or those issued at the AAA, which lacks disciplinary authority over the broker/dealer.

Finally, in 1992, a new subdivision (h) was added to the Uniform Code which provided that arbitrators may grant any remedy or relief that the arbitrators deem just and equitable and that would have been available in a court with jurisdiction over the matter. This amendment was intended to strengthen the hand of arbitra-

---


227. Id.

228. See Uniform Code of Arbitration § 28(g), (h), infra Appendix A; see also 2 SEC. ARB. COMMENTATOR, June 1989, at 12.

229. A stricter 20 day rule with an escrow provision was, however, approved by the Municipal Securities Rulemaking Board. See § 31 MSRB Rules of Arbitration, reprinted in ARBITRATION INFORMATION & RULES, MUNICIPAL SECURITIES RULEMAKING BOOK 30 (1989), at 30.

230. Id.

231. The NASD, however, adopted an amendment to include the AAA in its resolution authorizing discipline for non-payment of an award. See NASD 19-b-4 Proposed Rule Change, File No. SR-NASD-89-47, Amendment No. 1 at 12. The NYSE adopted a similar amendment to its Rule 637 on September 13, 1995.

tors in awarding punitive damages in response to the U.S. Court of Appeals for the Second Circuit's opinion in *Fahnstock v. Waldman*,233 which noted that the NYSE Arbitration Rules did not contain such specific authority, whereas such language is contained in the AAA rules.234 Unfortunately, no SRO board has approved this change, no doubt due to the strong lobbying by the SIA.235

Section 29 — Agreement to Arbitrate

This section (previously numbered 30 and captioned “Miscellaneous”)236 was renumbered 29 after *McMahon*, but has remained virtually unchanged since its inception.237 It simply incorporates the Code by reference into every duly executed Submission Agreement, which shall be binding on all parties.238 After the Sixth Report, however, SICA amended Section 29, changing the title from “Miscellaneous” to “Agreement to Arbitrate,” and also extending the automatic incorporation of the Code to *agreements to arbitrate*.239 Thus, the present section ensures that a party who does not sign a Submission Agreement is nevertheless still bound by the provisions of the Uniform Code.240

Section 30 — Schedule of Fees

Section 30 (previously numbered 31)241 set forth the schedule of fees for arbitration. These fees have varied and increased since the original Code. After *McMahon*, the section was amended to specifically define a hearing session.242 In addition, the section now allows the arbitrators to award additional costs beyond hearing session costs in their decisions.243 After the Sixth Report, SICA further amended Section 30 by modifying the fee schedule and incorporating a non-refundable filing fee as well as providing for hearing session deposits.244

---

233. 935 F.2d 512 (2d Cir. 1991).
234. Id. at 519; see also Katsoris IX, supra note 226, at 584.
235. See Katsoris X, supra note 232.
236. See SECOND REPORT, supra note 36, at A-11.
237. See SIXTH REPORT, supra note 20, at 11.
238. See FIFTH REPORT, supra note 27, at 36-37.
239. See SIXTH REPORT, supra note 20, at 11; see also Uniform Code of Arbitration § 29, infra Appendix A.
240. Id.
241. See FIFTH REPORT, supra note 27, at 37-38.
242. See SIXTH REPORT, supra note 20, at 11-12.
243. Id.
244. Uniform Code of Arbitration § 30(e), infra Appendix A.
Section 31 — Requirements When Using Pre-Dispute Arbitration Agreements With Customers

This section is a direct response to the McMahon decision, and was intended to insure that customers are aware and understand the effect of signing an agreement containing a pre-dispute arbitration clause. It provides that pre-dispute arbitration agreements with customers must be highlighted and immediately preceded by certain disclosure language that describes arbitration and its effect. The impetus behind this addition was legislative pressure seeking to render unenforceable pre-dispute arbitration clauses.

The SICA rule also provides that immediately preceding the signature line there shall be a statement, which shall be highlighted and separately initialed by the customer, that the agreement contains a pre-dispute arbitration clause. Despite its approval by SICA, no SRO has incorporated this separate initialing requirement into their arbitration rules. This is regrettable, because from the point of view of both the customer and the broker, separate initialing would more clearly call the arbitration clause to the customer's attention. Moreover, an initialing requirement would likely reduce the need for litigation based upon the customer's alleged lack of awareness of the clause.

Furthermore, in order to prevent the insertion of restrictive clauses in customers' agreements which would conflict with the provisions of the Code, Section 31 also specifically prohibits conditions that limit or contradict the rules of the SROs, or limit the ability of a party to file any claim in arbitration or limit the ability of the arbitrators to make any award.

Since Section 31 was inserted after McMahon, it includes a grandfather clause, which provides that the requirements of the section will apply only to new agreements signed, by an existing or

245. See Sixth Report, supra note 20, at 12.
246. See Uniform Code of Arbitration § 31(a), infra Appendix A.
247. See supra notes 21-22 and accompanying text; see also Hoblin, supra note 1, at 52-57 (Supp. 1988). California had proposed a statute that would restrict arbitration (McCorguodale Committee), and that Committee agreed that if SICA adopted disclosure rules comparable to theirs, they would withdraw the proposal. Id. Since SICA did adopt the disclosure rules, the proposal was presumably withdrawn. Id. See also Carroll E. Nessermann & Maren E. Nelson, The Law of Securities Arbitration, in 1 Securities Arbitration 1995, at 135, 164-66 (PLI Corp. Law & Prac. Course Handbook Series No. B-899, 1995).
248. See Sixth Report, supra note 20, at 12.
249. For a comparison of different SRO rules, see Katsoris V, supra note 87, at 452-54. See also infra Appendix B.
250. See Sixth Report, supra note 20, at 12.
new customer, after one year has elapsed from the date of SEC approval to the rule (September, 1989).\textsuperscript{251} Thus, a broker-dealer who thereafter attempts to contractually limit an arbitrator’s authority to award punitive damages, or a customer’s right to select any of the available SROs, may be subject to disciplinary action by any SRO that has adopted Section 31, of which it is a member.\textsuperscript{252}

Recently, both the NASD and the New York Stock Exchange issued joint notices [Information Memo/Notice to Members 95-16] to their members that they may not include or seek to enforce provisions in customer agreements which can be construed as restricting or limiting the ability of customers to arbitrate or arbitrators’ powers to issue awards.\textsuperscript{253} The language of Section 31(d) is clear. If the industry somehow sidesteps the rule and continues to load agreements with provisions that strip investors of their rights in arbitration, the courts must revisit the argument that they are contracts of adhesion, unconscionable and unenforceable.\textsuperscript{254}

III. The SRO Codes

A. Tracing the Uniform Code

The Uniform Code of Arbitration represents a major step in the development of securities arbitration as a fair, economical and expeditious dispute resolution process. It also represents a significant effort to make the securities arbitration rules of the various SROs uniform throughout the country.

A chart which generally tracks the Uniform Code provisions into the separate Rule or Code sections of the various SROs is attached to this Article as Appendix C.\textsuperscript{255} It should be noted, however, that once SICA adopts a new rule, each SRO generally goes back to their respective organization for Board approval; and, if successful, such rule is usually then submitted to the SEC for approval in a

\textsuperscript{251} Id.; see also Uniform Code of Arbitration § 31(5), infra Appendix A.

\textsuperscript{252} For an example of such disciplinary authority, see NASD Code of Procedures, Art. IV, § 1, in NASD MANUAL, (CCH) ¶ 3049, at 3151 (1995).

\textsuperscript{253} See Katsoris X, supra note 231; see also NTM95-16 Update, 7 SEC ARB. COMMENTATOR, July 1995, at 10; NTM 95-85: NASD and NYSE Issue Joint Memo, SEC. ARB. COMMENTATOR, Dec. 1995, at 9-10, 15. NTM 95-85 seeks to clarify in a uniform way the views of the two SROs on questions raised as a result of the issuance of NTM 95-16. Id.


\textsuperscript{255} See infra Appendix C.
Rule 19(b) filing. Accordingly, there is often a time lag between SICA’s approval and SRO action, with the result that the SRO codes do not always mirror the SICA Code.

Unfortunately, not all sections of the Code have been adopted by the SROs. For example, no SRO code has adopted the SICA requirement that the predispute arbitration clause be separately initialed. Similarly, no SRO has yet adopted SICA’s rule, adopted over four years ago, that arbitrators may grant “any relief they deem just and equitable.”

These examples of inaction are unfortunate, because they undermine the efforts of SICA in achieving a level playing field. Even worse, however, is when SROs affirmatively by-pass SICA, and pursue significant rule changes on their own. This is particularly unfortunate since through its public members, together with the SEC’s oversight role of the SROs, SICA appears to be the mechanism with which most of the public seems comfortable. There are areas, however, where variations among the SRO codes and practices are understandable. Moreover, the SROs should be allowed the flexibility to offer optional programs that fit the needs of their members, for example, regarding: (i) large and complex cases; and (ii) mediation.

B. Large and Complex Cases

Although the Uniform Code does not specifically deal with large and complex cases, SICA revised its Procedures Booklet to describe some additional services that are available at various SROs to deal with such cases, including: requests for findings of facts and conclusions of law, expedited hearings, the appointment of arbitrators with special qualifications, and block-scheduling of hearing

---

256. See Katsoris II, supra note 16, at 364. Under § 19(b) of the 1934 Act, each self-regulatory organization shall file with the SEC any proposed rule or change in the rules of such self-regulatory organization. 15 U.S.C. § 78s(b)(1) (1988 & Supp. IV 1992). Moreover, no such “proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection. Id.

257. Id.

258. Uniform Code of Arbitration § 31, infra Appendix A; see SEVENTH REPORT, supra note 41, at 23. See also supra notes 248-49 and accompanying text.

259. Uniform Code of Arbitration § 28(h), infra Appendix A; see NYSE SYMPOSIUM, supra note 5, at 1573. See also supra notes 232-35 and accompanying text.

260. See supra notes 75-82 and accompanying text.

261. See variations in the manner of the verbatim recording of the arbitration proceedings, supra notes 204-209 and accompanying text.
Parties seeking such special or additional services should advise the sponsoring SRO at the earliest time possible.262

C. Mediation

Mediation provides parties with a voluntary, non-adversarial, and informal process that can often result in a resolution of a dispute with a minimal expenditure of time and money.263 It is a voluntary process in which parties present their position to a neutral third party, a mediator, in an attempt to reach a mutually acceptable resolution of their dispute.264 Mediation is voluntary, and thus the parties are free to withdraw from mediation at any time.265

Mediation differs from arbitration in several ways. Unlike arbitration, mediation usually is non-binding.266 Furthermore, a mediator cannot force parties to settle their dispute.267 If the parties cannot reach a resolution of their dispute through mediation, they may proceed either in arbitration or in court.268 Mediation is also usually less formal and less expensive than arbitration and attempts to assist the parties in reaching an acceptable resolution of their dispute.269

A mediator can help parties focus on their dispute and better define the issues that need to be resolved. When parties attempt to settle disputes on their own, they often lose sight of the real issues in dispute as personal feelings, hostile attitudes, and misunderstandings get in the way.270 A mediator can also help the parties by giving an unbiased view of the case, and by discussing with each party the merits, or lack thereof, of his or her position. Finally, a

262. See NASD Code § 46, which provides for proceedings for large and complex cases. See also NASD Proposal for Large Arbitrations Would Let Parties Decide Panel’s Pay, 25 SEC. REG. & L. REP (BNA) 1662 (Dec. 10, 1993); Masucci & Clemente, supra note 1, at 331-35.


264. Id.

265. Id.

266. Id.

267. Id.


mediator can be a source of creative resolutions to the problem that the parties may never had thought of on their own.\textsuperscript{271}

The NASD has already begun a mediation program in securities arbitrations.\textsuperscript{272} Once the parties agree to mediate their securities dispute, they will sign a Submission Agreement in which they agree to abide by the NASD’s mediation rules.\textsuperscript{273} At that point, the NASD will endeavor to find a mediator acceptable to both parties, and will also work with the parties to schedule mediation hearings at a time and place acceptable to all parties and the mediator.\textsuperscript{274}

An important and effective technique used by mediators in the NASD program is the private “caucus” procedure whereby the mediator talks with each party separately about the dispute.\textsuperscript{275} Everything that is said between a party and the mediator in a caucus is completely confidential in order to encourage each party to be very candid and forthright about his or her case.\textsuperscript{276} Nothing that is said to the mediator in a private caucus will be revealed, unless the party disclosing the information gives the mediator permission to disclose it.\textsuperscript{277}

Although most of its members philosophically favor mediation, SICA does not specifically provide for mediation in its Uniform Code because it is a voluntary procedure which precedes arbitration. The AAA also offers mediation as an alternative to arbitration and has recently launched a program to provide it as an alternative in arbitration cases at the PHLX.\textsuperscript{278}

\textsuperscript{271} Id. See also Model Standards of Conduct for Mediators Endorsed by AAA, ABA and SPIDR, \textit{6 World Arbitration and Mediation Report} No. 10 at 215 (Oct. 1995).


\textsuperscript{274} See Page, \textit{et. al.}, \textit{supra} note 263, at 62.

\textsuperscript{275} Id. at 63.

\textsuperscript{276} Id.

\textsuperscript{277} According to the NASD’s mediation rules, and by legislation in several states, any information disclosed to the mediator in confidence is not admissible in any related court or arbitration proceeding. See also Margaret A. Jacobs, \textit{Case to Test Confidentiality of Mediations: Wall Street May Get a Green Light to Abuse Investors}, \textit{Wall St. J.}, Mar. 3, 1995, at B16.

\textsuperscript{278} See \textit{Advanced Arbitrator Training Offered}, \textit{Legal Intelligencer}, Oct. 27, 1992, at 2.
IV. The Role of the AAA.

In the aftermath of the *McMahon* decision, most unsettled disputes between a public customer and his broker are resolved in arbitration. In 1993, over 6,500 of such arbitration cases were filed with the participating SROs, and over 600 were also filed with the AAA. In 1994 the AAA filings dropped to 274, and rebounded in 1995 to 332.

The AAA is a not-for-profit organization offering a broad range of dispute resolution services throughout the United States. Unlike the SRO forums, however, the AAA is not under the SEC's regulatory authority. Partly because of this independence from regulatory supervision, most arbitration clauses in customers' agreements provided only for arbitration before one or more SRO forums. Adding the AAA as a forum in arbitration agreements was one of the SEC's recommendations in its September 10, 1987 letter to SICA. Moreover, at the behest of the SEC and SICA, the SIA asked member broker-dealers to consider including the AAA as an alternative forum in customers' agreements, and, the SIA also included the AAA in its model customers' agreement.

From the SEC's point of view, the AAA option provides constructive competition for the SROs; and, the AAA acts as a "safety valve" in the event of any backlogging at the SRO forums. For the SIA, the AAA alternative deflects the contention that the public is being forced into an industry sponsored SRO forum, and thus enhances the image of fairness of the arbitration process. From the perspective of public investors, the AAA option is an alternative which should exist as a matter of right.

283. *Id.*
286. *Id.*
287. *Id.*
288. *Id.*
290. See Katsoris V, *supra* note 87, at 470.
291. "'If you can't give customers a choice of litigation or arbitration, at least give them the choice of a neutral forum,' grumbled Robert Dyer, an attorney in Orlando,
In spite of the considerable interest in the AAA as an alternative forum, the securities industry continues to resist its use.\textsuperscript{292} Even when the parties have not inserted the AAA into an arbitration clause, however, securities cases may find their way into AAA arbitration through the so-called "AmEx window."\textsuperscript{293}

The name "AmEx window" describes the process through which the American Stock Exchange (ASE) provides a potential "window" for investors to arbitrate before the AAA.\textsuperscript{294} The ASE Constitution provides that a customer may arbitrate with a member organization before the AAA in the City of New York, "unless the customer has expressly agreed, in writing, to submit only to the arbitration procedures of the Exchange" (waiver provision).\textsuperscript{295} Thus, unless the waiver provision applied, claimants wishing to utilize the AAA could seek to do so despite having signed an arbitration agreement that does not provide for AAA as a forum of choice.\textsuperscript{296}

The unfortunate use of the term "Exchange" in the waiver provision, however, has led to confusion as to how open the AmEx window is.\textsuperscript{297} If the customer is deemed to have waived his right to AAA arbitration only if he agreed to be bound solely by ASE arbitration procedures, then the "window" is wide open, because few agreements are so restrictive; thus, the customer would have the option to pursue arbitration before the AAA. On the other hand, if the term "Exchange," as used in the waiver provision, includes other exchanges or SROs (as is usually the case), the opposite result is likely to occur. In that case, the "window" is barely open, and only in a few instances will the arbitration end up before the AAA. Which interpretation would prevail was far from certain, because lower court decisions were split on the subject.\textsuperscript{298}

\textsuperscript{292} See Ryder, supra note 289, at 43. As noted above, few broker-dealer firms presently include the AAA in their pre-dispute agreements. \textit{Id. See also Draft Bill to Restrict Use of Pre-Dispute Agreements}, SEC. ARB. COMMENTATOR, June 1988, at 4.

\textsuperscript{293} See Ryder, supra note 289, at 42.

\textsuperscript{294} \textit{Id.}; see also ASE Rule Mandates AAA Arbitration, SEC. ARB. COMMENTATOR, May, 1988, at 3.

\textsuperscript{295} \textit{See ASE Constitution} Art. VIII, \S 2 (emphasis added).

\textsuperscript{296} See Ryder, supra note 289, at 43.

\textsuperscript{297} \textit{Id.} "The AmEx Window cases are the . . . most numerous representatives of a new litigation genre . . . ." \textit{Id.}

The ASE attempted to clarify the issue by amending its Constitution by replacing the word “Exchange” with the words securities industry self-regulatory organizations. Such a change would have the effect of closing the AmEx window because it would expand the application of the waiver provision. This amendment, however, was recently withdrawn by the ASE.

In the end, only time will tell whether the AAA will garner a larger share of securities arbitration. The fate of securities arbitration before the AAA depends on many factors. The fact that the AAA does not have a Six Year Rule seems to have further curbed any industry appetite for the AAA option. Moreover, it appears that AAA costs are generally higher than those at SRO arbitrations. Furthermore, just as some of the public is suspicious of SRO arbitration, some in the securities industry are equally leery about AAA arbitration. In time, however, the determining factor may ultimately be the perceptions of public investors.

V. Contemporary Issues: the NYSE Symposium and the Ruder Report

As SRO arbitration filings exploded and the issues became more complex, the rules of combat necessarily became more litigious and complaints surfaced that securities arbitration had lost its way and was becoming less economical and speedy and more like the courthouse it was designed to avoid.

299. See When Naivete Meets Wall Street, supra note 296; Amex Moves To Close Arbitration 'Window', INVESTOR'S DAILY, Dec. 19, 1989, at 1; see also Wall Street's Arbitration System; Friend or Foe?, N.Y. TIMES, Dec. 24, 1989, § 3, at 12 (letters to editor by Kenneth R. Leibler & Theodore G. Eppenstein).


302. See supra notes 68-69 and accompanying text. See also Friedman & Peterson, supra note 87, at 570.

303. See Morris, supra note 284, at 113-14. Moreover, unlike SRO arbitration the parties in AAA arbitrations pay the arbitrator's fees and other expenses incurred by the arbitrators or the AAA's representatives, thus making AAA arbitration even costlier than SRO proceedings. See Friedman & Peterson, supra note 86, at 562-63. See also Tactical Tip — AAA Arbitrator Compensation, SEC. ARB. COMMENTATOR, June 1995, at 6.
In 1994, both the NYSE and the NASD announced plans to address the troublesome issues facing SRO arbitrations. The NYSE held a two-day symposium where these issues were openly debated by a wide spectrum of leading experts in the field and, based upon such discussions, issued recommendations last year in the form of a Report.\textsuperscript{304}

The NASD sought to calm the troubled waters in a different way. In the Fall of 1994, the NASD announced the formation of an Arbitration Task Force to explore and propose broad reforms to the NASD arbitration process. The Task Force was headed by Professor David S. Ruder, former Chairman of the SEC, and included practitioners and academics with strong backgrounds in arbitration, business and public interest law.\textsuperscript{305} The Task Force's mission was to study the factors impacting the arbitration process with a view to improving its efficiency and trimming its costs. Numerous closed sessions were held at which various witnesses appeared; including the Public Members of SICA.\textsuperscript{306} Basically, the same subjects were delved into by the Task Force as were discussed at the NYSE Symposium and in the NYSE Report that followed.

In January of this year, the NASD Task Force issued the Ruder Report,\textsuperscript{307} which was over 150 pages in length and contained scores of recommendations. An article such as this, however, can only address the highlights of the Report's suggestions, namely:

a) Placing a cap on punitive damages of two times compensation damages, up to a maximum of $750,000;\textsuperscript{308}

b) Changing the method of selecting arbitrators from the present method, where the forum selects the panel, to one in which the parties themselves choose the arbitrators from supplied lists.\textsuperscript{309}

\textsuperscript{304} See NYSE Report, supra note 5.
\textsuperscript{305} See Michael Siconolfi, Revised Rules Are Mapped For Securities Arbitration, \textit{WALL ST. J.}, Nov. 14, 1995, at C1. "Members of the task force represent a cross-section of arbitration specialists, including Steve Hammerman, Vice Chairman at Merrill Lynch & Co.; J. Boyd Page of Page & Bacek, an Atlanta law firm representing investors; Frank Spalding, former Chairman of the NASD's National Arbitration Committee, and John Bachmann, managing principal at Edward D. Jones & Co." Id. In addition, Linda D. Feinberg, Stephen J. Friedman, & Professor Richard E. Speidel were also members of the Task Force.

\textsuperscript{306} James Beckley, Peter Cella, Justin Klein and the author, the then Public Members of SICA, appeared before the Ruder Task Force on January 16, 1995.


\textsuperscript{308} Id. at 35-45.

\textsuperscript{309} Id. at 93-97.
c) Establishing mandatory lists of discoverable items;\textsuperscript{310}

d) Eliminating of the present so-called "Six Year Rule" which automatically bars consideration of a claim if more than six years have elapsed;\textsuperscript{311} and,
e) Increasing forum resources and exploring the possibility that all SRO arbitrations be collapsed into one forum under the umbrella of the NASD.\textsuperscript{312}

\section*{a.) Cap on Punitive Damages}

The Ruder Report suggests that punitive damages should be limited to two times compensatory damages or $750,000, \textit{whichever is less}.\textsuperscript{313} Interestingly, the recent reform bill enacted in Congress regarding product liability suits seeks to impose a punitive damage cap of $250,000 or two times compensatory damages, \textit{whichever is greater}.\textsuperscript{314}

As for the overall cap of $750,000, it should be rejected out of hand, because it is totally inadequate in situations involving large compensatory awards. It condones unconscionable conduct in large cases by placing an arbitrary ceiling which is not commensurate with the wrong committed (i.e., $10 million compensatory award) and sends the wrong message to the offending party. Interestingly, on page 43 of the Report, the Task Force justifies its two-tiered cap on the ground that it "will protect broker-dealers from 'runaway' awards that have no relationship to compensatory damages." Indeed, what relationship does a $750,000 punitive damage limit have to a $10 million compensatory award?

As for a cap based upon a multiple of compensatory damages, there is no such limitation generally imposed in court. Presently, the principal limitation to punitive awards issued in court is that they don't offend constitutional sensibilities.\textsuperscript{315} In this regard, a punitive damage award that was 526 times compensatory damages was not considered offensive in \textit{TXO Production Corp. v. Alliance}

\begin{thebibliography}{99}
\bibitem{310} \textit{Id.} at 77-87.
\bibitem{311} \textit{Id.} at 22-33.
\bibitem{312} \textit{Ruder Report, supra} note 307, at 138-56.
\bibitem{313} \textit{Id.} at 42.
\bibitem{314} \textit{See Neil A. Lewis, Democrat is Disputing President on Lawsuits, N.Y. Times, Mar. 20, 1996, at D23; see also Richard B. Schmitt, As Clinton Vows to Veto Products-Liability Bill, Some Ask if He's Too Beholden to Trial Lawyers, Wall St. J., Mar. 22, 1996, at A14.}
\bibitem{315} \textit{See Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 18 (1991) (O'Connor, J., dissenting).}
\end{thebibliography}
Resources Corp.\textsuperscript{316} Accordingly, claimants will generally oppose a punitive damage limit of two times compensatory damages.

Yet, similar overall treble damage provisions already exist under the Clayton Act, RICO claims, or under the Futures Trading Practices Act.\textsuperscript{317} Whether treble damages or some higher multiple is preferable is, in my judgment, negotiable. Such a multiple cap, however, is a step in the right direction if it is part of an overall tradeoff which categorically prohibits the waiver of such damages in pre-dispute arbitration agreements through the insertion of restrictive clauses.\textsuperscript{318}

Moreover, the Ruder Report suggests that arbitrators be prohibited from awarding both RICO damages and punitive damages for the same claim. I encouraged such a trade-off several years ago as part of an overall settlement of this issue.\textsuperscript{319} Interestingly, the Task Force does not suggest an overall $750,000 cap should a RICO award be granted.

The NASD is to be commended for attempting to broker a compromise in this difficult area; however, for the reasons previously expressed the overall $750,000 ceiling is simply not acceptable to the public.\textsuperscript{320} To impose an arbitrary cap on punitive damages in arbitration which bears no relationship to the injury inflicted and which is not similarly imposed in court would relegate arbitration to the status of a second class forum, a result never intended by McMahon. Indeed, the "way arbitration was sold to both the Supreme Court and the SEC was that essentially you have the same rights in arbitration as you would have in court."\textsuperscript{321} Moreover, limitations "on what arbitrators can do that are not parallel to what judges can do would be hostile to arbitration as a full alternative dispute resolution system."\textsuperscript{322}

If a compromise cannot be reached, however, then perhaps punitive damage claims of over $750,000, or for that matter all punitive claims, should be removed from arbitration and returned to the

\textsuperscript{316} 509 U.S. 443 (1993).
\textsuperscript{317} See Katsoris IX, supra note 226, at 582.
\textsuperscript{318} See Constantine N. Katsoris, Ruder Report is a Delicate Compromise, 14 ALTERNATIVES 29, (Mar. 1996) [hereinafter Katsoris XI].
\textsuperscript{319} See Katsoris IX, supra note 226, at 597-602.
\textsuperscript{321} See NYSE SYMPOSIUM, supra note 5, at 1523.
\textsuperscript{322} Id. at 1532.
courts where the procedural safeguard of an appeal is more readily available.

b.) Selection of Arbitrators

At present, the SROs select the arbitrators, giving each side one peremptory challenge, and an unlimited number of challenges for cause.\textsuperscript{323} The suggested change in the Ruder Report basically adopts the AAA system whereby that forum supplies the parties with lists from which the parties select a panel by striking out those unacceptable to them.\textsuperscript{324}

Although the suggested change does not necessarily result in the appointment of a better qualified panel, it seems attractive to let the parties pick their own panel. Accordingly, this author does not oppose the suggested change; however, to see how it works, perhaps the new system might first be considered on a pilot basis, for example in certain types of cases (i.e., employment related cases), or in all cases, but on a regional basis. It might be that this system is not suitable in a geographical area where not too many qualified arbitrators reside and most are struck from the list by one or both parties. This might result in shifting the arbitration to another locale which might not be as convenient for the claimant.

c.) Mandatory Lists of Discoverable Items

Discovery controversies are beginning to sap the vitality of the SRO arbitration process. Often those controversies are unnecessary and represent posturing on the part of either or both parties. Such mandatory lists have been discussed before and are worth exploring because they will eliminate, in most instances, unnecessary delay and expense.\textsuperscript{325} On the other hand, they should only be presumptively required, for we should never strip the arbitrators of the ultimate authority to determine what is discoverable, depending on the circumstances of the case.

d.) Elimination of Six-Year Rule

As previously discussed, this rule of administrative convenience has been turned on its head.\textsuperscript{326} Some courts have misinterpreted SICA's rule and held that if the six-year period has elapsed, and

\textsuperscript{323} See \textit{supra} notes 107-110 and accompanying text.
\textsuperscript{324} See \textit{supra} note 98 and accompanying text.
\textsuperscript{325} See \textit{NYSE Symposium}, \textit{supra} note 5, at 1551-61.
\textsuperscript{326} See \textit{supra} notes 59-68 and accompanying text.
thus the claim is ineligible for arbitration, it is extinguished.\footnote{327 Id.} Other courts have ruled that the issue of eligibility should first be decided by the courts and not the arbitrators themselves.\footnote{328 Id.} Thus, this simple Six Year Rule has wreaked havoc on claimants by subjecting them to unnecessary delay, expense, and prejudice. This author has called for its elimination by SICA for several years now and applauds the Ruder Report’s basic conclusion that it be eliminated.\footnote{329 See NYSE SYMPOSIUM, supra note 5, at 1539-40.}

Unfortunately, the recommended elimination of this troublesome rule seems dependent upon approval of a potpourri of conditions that could, in the aggregate, be more burdensome than the six year rule itself, namely: (i) a demand that arbitrators be \textit{required} to apply the law of statutes of limitation; (ii) that arbitrators write reasoned discussions on statute of limitation issues; (iii) the imposition of an elaborate early deposition motion practice on statute of limitation issues which could be used to harass investors; and (iv) encouraging that these motions be decided on the papers.\footnote{330 See RUDER REPORT, supra note 307, at App. 4, at 8-9.} If such a trade-off is insisted upon, then perhaps it would be advisable to leave the six year rule intact and revisit subdivisions (b) and (c) of Section 4 of the Uniform Code with a view toward defining more sharply when a claim is ineligible for SRO arbitration; and, if it is not so eligible, that the claimant is entitled to pursue his remedy elsewhere as if there were no agreement to arbitrate.\footnote{331 See supra notes 58-66 and accompanying text.}

e.) \textbf{Increased Resources and a Single Forum}

The Ruder Report suggests that: (a) the NASD Arbitration Department receive whatever resources are necessary to manage caseload growth and to implement the Report’s recommendations, (b) such increased expenditures should be borne primarily by the NASD and its member firms, and (c) that the arbitration function be administered as independently as is practicable.\footnote{332 See RUDER REPORT, supra note 307, at 143-45.} All of these suggestions are commendable and applicable to all the SROs, not just the NASD. Indeed, for years, the Public Members of SICA have pressed for those goals at SICA, with the SEC, and more recently, when they appeared before the Task Force. Even the fairest
rules will not guarantee fairness if funding for implementation is inadequate.

The Task Force also recommended that consideration be given to the establishment of a single forum within an existing SRO, and this topic will be covered in the next section.333

The Ruder Report represents a welcome insight into the problems facing securities arbitration and, together with the conclusions proposed by the NYSE Report issued last year, represent constructive analyses and suggestions regarding many of the current problems. These Reports, however, are merely a starting point, and cannot implement or monitor the ongoing problems that will surely surface in the future. In this regard, an independent SICA should continue to assess the conclusions of these Reports with a view toward implementation and monitoring, much the same way that it focused and acted upon the numerous suggestions proffered by the SEC and others after McMahon.336

Moreover, the suggestions recommended by those Reports are numerous, quite extensive, and often unrelated. Accordingly, they should be examined on an issue-by-issue basis. Some have suggested, however, that the Ruder Report is a delicate balance born out of compromise and, therefore, should be accepted on an “all or nothing” basis. That would be unfortunate, and it is hardly justifiable to suggest to someone who has filed a timely claim in arbitration regarding a devastating loss suffered by the outrageous, unethical and fraudulent conduct of an unscrupulous broker that their claim for punitive damages will be artificially capped because it was bargained away as part of a trade-off to eliminate the six-year eligibility rule.

VI. Continuing Role of SICA

At one point, SICA considered the creation of a single independent forum to administer, with SEC oversight, all securities arbitra-

333. Id. at 151.
334. See infra notes 336-346 and accompanying text.
335. See NYSE REPORT, supra note 5. The Report offers suggestions or reaches conclusions regarding: (i) restrictive clauses in arbitration agreements; (ii) greater participation of the parties in the arbitrator selection process; (iii) reasoned opinions in employment cases, or where punitive damages are awarded; (iv) formulating lists of presumptively discoverable documents to be produced; and (v) development of a pilot mediation program. Id. at 1-2.
336. See supra notes 38-40 and accompanying text. See also Katsoris XI, supra note 318.
tions involving the public. While SICA ultimately decided it would not pursue that course because it was not evident that material economies of scale would result from a single forum, it concluded that it would continue to explore alternative methods of improving the governance and image of SRO arbitration. Uniformity, consistency, and fairness, however, are and remain vital to the success of the Uniform Code. Inconsistencies among SRO rules unfortunately lead to confusion and forum shopping, and often constitute a trap for the unwary.

From time to time, it has been suggested that, because the Uniform Code has been extensively updated since McMahon, SICA's role has diminished, implying that like old soldiers, it should fade away. The scenario then suggests, in the interest of uniformity and economy, that all the SROs collapse their public arbitration programs into one, leaving the public securities arbitration function solely to the NASD. This suggestion is ludicrous because SROs, by their very makeup, presently lack the structural independence necessary to insure public confidence. Indeed, as the arbitrable issues expand (i.e., employment issues), and as the stakes grow (i.e., larger compensatory awards and punitive damages issues), the public will increasingly demand that the rules of battle be set by a truly independent group.


“A single independent forum entails exactly what it indicates—a forum independent from actual, inferential, subtle, practical or any other kind of imaginable pressure. The forum should be independent of the industry, independent of the plaintiff's bar, and other than the SEC's general oversight role, independent of that regulatory body.”

Id.

338. Hoblin, supra note 337, at 3, 5.

339. Id.

340. Id.

341. See Letter from William J. Fitzpatrick General Counsel of the SIA (Dec. 22, 1993). See also Katsoris IV, supra note 29, at 1152; Feedback, Sec. Arb. Commentator, Feb. 1993, at 2, 6. This possibility was also raised by the Ruder Report, supra note 307 and accompanying text.

342. See Katsoris IV, supra note 29, at 1152.

343. Id.; see also NYSE Symposium, supra note 5, at 1592:

... SROs are dominated by industry. I don't mean their staffs. I think the New York Stock Exchange has a board half public, half not public. The NASD's board, however, is more largely dominated, so any rules they adopt may reflect or appear to reflect, their affiliation with industry, which is usually in the defense position. I think this is not where I would start a laboratory for tort reform. I don't think it would be perceived as balanced.
In the past, the SEC has opposed the idea of a single forum, preferring the competitive choices offered by the various SROs. Perhaps a truly independent single forum is a Utopian dream; but until such a forum can be created, the SEC's theory of competitive forces is preferable—particularly in an atmosphere where arbitration is basically mandatory. Why should public customers be forced to arbitrate before an NASD forum when the disputes are with brokers who are members of other SROs, and involve transactions executed solely at the other SROs?

As for continuing the role of SICA, it is noteworthy that in the majority opinion in *McMahon*, Justice O'Connor reflected upon the previous mistrust of arbitration as follows: "[T]he mistrust of arbitration that formed the basis for the *Wilko* opinion in 1953 is difficult to square with the assessment of arbitration that has prevailed since that time. This is expressly so in light of the intervening changes in the regulatory structure of the securities laws." It is respectfully suggested that the single most important event bridging the Supreme Court's mistrust expressed in *Wilko* and its confidence evidenced in *McMahon* was the creation of SICA in 1977.

Similarly, in a dissenting opinion in *McMahon*, Justice Blackmun observed that:

> It is true that arbitration procedures in the securities industry have improved since Wilko's day. Of particular importance has been the development of a code of arbitration by the Commission with the assistance of representatives of the securities industry and the public. . . . This code has been used to harmonize the arbitration procedure among the SROs. Constantine N. Katsoris, *The Arbitration of a Public Securities Dispute*, 53 Fordham L. Rev. 279, 283-384 (1984) (Katsoris). As the Commission explained: [T]his code marks a substantial improvement over the various arbitration procedures currently being utilized by the securities industry and represents an important step towards establishing a uniform system for resolving investor complaints through arbitration. SEC Exchange Act Rel. No. 16390 (Nov. 30, 1979). 44 Fed. Reg. 70616, 70617.

The present system of checks and balances, in place for 20 years, has worked relatively well. It has resulted in steady and meaning-

---

344. NYSE Symposium, *supra* note 5, at 1649.
346. *Id.* at 258 (emphasis added).
ful change from the Balkanized procedures of the past. It also has prevented some ill-conceived ideas from finding their way into securities arbitration.  

Under the present system, SICA, an independent body, proposes rule changes. The SRO boards approve and file them with the SEC. The SEC then decides what the rule will be. By that time, all participants have had at least two bites at the apple: the public at the SICA level, and at the 19(b) filing; the various SROs at the SICA level, and at their board’s level; the industry at the SICA level, at the SRO level (where it lobbies intensely), and again at the 19(b) filing; and, the SEC at the SICA level (where SEC representatives and others are invited guests), and as the final word at the 19(b) filing. The pattern for rule changes in securities arbitration should be preserved.

VII. Conclusion

Because the courts are furnished and subsidized by the government itself, many claimants consider them to be more neutral forums than arbitrations conducted before SROs, which are perceived to be controlled by the securities industry. Yet, after studying nearly two thousand arbitration cases brought by consumers against brokers in 1989-90, the General Accounting Office (“GAO”), which conducts investigations for Congress, found “no indication of a pro industry bias” in decisions at industry sponsored forums. Indeed, the GAO also found that investors won about sixty percent of their arbitration cases, with awards also averaging about sixty percent of the amounts claimed. Thus, it would appear that the McMahon court’s confidence in arbitration has thus far been justified.

On the other hand, the public will not accept being forced into an arbitration system where its rights are unilaterally “bargained” away by form agreements. Whatever relief is available in court should generally also be available in arbitration. The alternative

347. See Offer of Award Rule, supra notes 75-82; see also Attachment Rule, supra notes 134-44 and accompanying text.
348. See Katsoris V, supra note 87, at 452-53.
351. See supra notes 13-20 and accompanying text.
352. See Katsoris X, supra note 231, at 145.
353. Id.
of throwing thousands of cases back to congested court calendars is certainly not the answer. In such a scenario, the securities industry would be plagued by excessive litigation costs, which either directly or indirectly would be ultimately borne by the public as the industry's cost of doing business. In addition, the public would often be denied justice because of the excessive costs and delays associated with courtroom litigation. Yet, the present mandatory process will work only so long as the playing field is perceived to be, and in fact remains, level for all.

Our securities markets today are not only national, but global in scope. Resolving industry disputes with customers and employees should not depend upon legalistic gerrymandering. Reasonable rules of arbitration should, to every extent possible, be uniform throughout the United States, so that a customer on the East Coast has the same basic rights as a customer on the West Coast.

Moreover:

"To insure . . . public investment we must retain the public's confidence—confidence in the markets themselves and confidence that should a dispute arise, it will be fairly resolved. This confidence, however, can only be earned by maintaining a de facto as well as a de jure image of fairness. In other words, the procedural rules must be fair and the administration of the forum must be objective and independent. . ."  

In this regard, SICA's stabilizing influence, together with the SEC's oversight role, continues to generate investor confidence in the SRO arbitration system. Just as the investing public is well served by an independent Financial Accounting Standard Board ("FASB") in the formulation of financial reporting rules (with SEC oversight), so too is it well served by an independent SICA in establishing and maintaining a level playing field (with similar SEC participation) should a controversy arise. Indeed, SICA's very

---


355. See Katsoris X, supra note 231, at 145.


357. See Katsoris IV, supra note 29, at 1152; see also SEC's Chief Accountant Stresses Importance of an Independent FASB, 32 BNA, Feb. 16, 1996, at G1; Lee Berton, SEC Chairman Will Resist Any Move to Boost Business Influence on FASB, Wall St. J., Feb. 9, 1996, at B6; Itzah Sharav, No Accounting for this Plan, N.Y. Times, Mar. 24, 1996, § 3, p13:
presence during these past twenty years, like the cop on the beat, has been reassuring to the regulators, the courts and the public.\textsuperscript{358}

In the final analysis, however, we can never become complacent and feel as though we have achieved the perfect dispute resolution system, for in a less-than-perfect world, "[l]aws and institutions are constantly tending to gravitate. Like clocks, they must be occasionally cleansed, and wound up, and set to true time."\textsuperscript{359}

As the end of my tenure as a Public Member of SICA approaches, I would like to thank SICA for the privilege and opportunity to have served since its creation,\textsuperscript{360} and wish its role in the next twenty years be as independent and constructive as the first twenty have been.

The business executives, financial analysts, accountants and lawyers who agreed on an independent F.A.S.B. did so out of enlightened self-interest, knowing it was the only alternative to government takeover... Especially troublesome is the institute's proposal that a "third party organization should control and oversee F.A.S.B. agenda." With its independence thus in jeopardy, the board's stature and ability to improve financial disclosure would diminish.

\textit{Id.} (emphasis added).

\textsuperscript{358} See supra notes 266-68 and accompanying text. Such reassurance is even more important with the influx of employment cases since Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991). See NYSE Symposium, supra note 5, at 1613-24.

\textsuperscript{359} HE\textsc{N}ERY \textsc{W}ARD \textsc{B}EECHER, \textsc{L}IFE \textsc{T}Houghts 129 (1858).

\textsuperscript{360} I would also like to thank Louis A. Korahais, Esq. and Robert A. Driscoll for involving me in this area of securities dispute resolution long before my appointment to SICA. Lou, as the then NASD Director of Arbitration, first appointed me as a Public Arbitrator (1968); and Bob, as Chairman of the NASD National Arbitration Committee, appointed me a Public Member of that committee (1975). I learned much from these experiences at a time when securities arbitration was basically voluntary on the public's part, and in its relative infancy.
Appendix A
Uniform Code of Arbitration

Table of Contents

<table>
<thead>
<tr>
<th>Sec. #</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Arbitration</td>
<td>540</td>
</tr>
<tr>
<td>2</td>
<td>Simplified Arbitration</td>
<td>541</td>
</tr>
<tr>
<td>3</td>
<td>Hearing Requirements — Waiver of Hearing</td>
<td>544</td>
</tr>
<tr>
<td>4</td>
<td>Eligibility</td>
<td>544</td>
</tr>
<tr>
<td>5</td>
<td>Dismissal of Proceedings</td>
<td>545</td>
</tr>
<tr>
<td>6</td>
<td>Settlements</td>
<td>545</td>
</tr>
<tr>
<td>7</td>
<td>Tolling of Time Limitation(s) for the Institution of Legal Proceedings</td>
<td>545</td>
</tr>
<tr>
<td>8</td>
<td>Designation of the Number of Arbitrators</td>
<td>546</td>
</tr>
<tr>
<td>9</td>
<td>Notice of Selection of Arbitrators</td>
<td>546</td>
</tr>
<tr>
<td>10</td>
<td>Challenges</td>
<td>547</td>
</tr>
<tr>
<td>11</td>
<td>Disclosures Required by Arbitrators</td>
<td>547</td>
</tr>
<tr>
<td>12</td>
<td>Disqualification or Other Disability of Arbitrators</td>
<td>548</td>
</tr>
<tr>
<td>13</td>
<td>Initiation of Proceedings</td>
<td>549</td>
</tr>
<tr>
<td>14</td>
<td>Designation of Time and Place of Hearings</td>
<td>551</td>
</tr>
<tr>
<td>15</td>
<td>Representation by an Attorney</td>
<td>551</td>
</tr>
<tr>
<td>16</td>
<td>Attendance at Hearings</td>
<td>552</td>
</tr>
<tr>
<td>17</td>
<td>Failure to Appear</td>
<td>552</td>
</tr>
<tr>
<td>18</td>
<td>Adjournments</td>
<td>552</td>
</tr>
<tr>
<td>19</td>
<td>Acknowledgment of Pleadings</td>
<td>553</td>
</tr>
<tr>
<td>20</td>
<td>General Provisions Governing a Pre-Hearing Proceeding</td>
<td>553</td>
</tr>
<tr>
<td>21</td>
<td>Evidence</td>
<td>555</td>
</tr>
<tr>
<td>22</td>
<td>Interpretation of and Enforcement of Arbitrator Rulings</td>
<td>555</td>
</tr>
<tr>
<td>23</td>
<td>Determinations of Arbitrators</td>
<td>555</td>
</tr>
<tr>
<td>24</td>
<td>Record of Proceedings</td>
<td>556</td>
</tr>
<tr>
<td>25</td>
<td>Oaths of the Arbitrators and Witnesses</td>
<td>556</td>
</tr>
<tr>
<td>26</td>
<td>Amendments</td>
<td>556</td>
</tr>
<tr>
<td>27</td>
<td>Reopenings of Hearings</td>
<td>556</td>
</tr>
<tr>
<td>28</td>
<td>Awards</td>
<td>557</td>
</tr>
<tr>
<td>29</td>
<td>Agreement to Arbitrate</td>
<td>558</td>
</tr>
<tr>
<td>30</td>
<td>Schedule of Fees</td>
<td>558</td>
</tr>
<tr>
<td>31</td>
<td>Requirements When Using Pre-Dispute Arbitration Agreements with Customers</td>
<td>561</td>
</tr>
</tbody>
</table>
Section 1

Arbitration

(a) Any dispute, claim, or controversy between a (customer or non-member) and a (member, allied member, member organization, and/or associated person) arising in connection with the business of such (member, allied member, member organization, and/or associated person) in connection with his activities as an associated person shall be arbitrated under the Constitution and Rules of the (name of self-regulatory organization) as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non-member.

(b) Under this Code, the (name of self-regulatory organization) shall have the right to decline the use of its arbitration facilities in any dispute, claim, or controversy where — having due regard for the purposes of the (name of self-regulatory organization) and the intent of this Code — such dispute, claim, or controversy is not a proper subject matter for arbitration.

(c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the Claimant, be referred to the arbitration forum for that market by the (name of self-regulatory organization).

(d) Class Action Claims

(1) A claim submitted as a class action will not be eligible for arbitration under this Code at the (name of self-regulatory organization).

(2) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the (name of self-regulatory organization) if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to a non self-regulatory organization arbitration forum for classwide arbitration. However, such claims shall be eligible for arbitration in accordance with Rule (SRO Rule [allowing investors to submit any claim to arbitration]) or pursuant to the parties’ contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrator(s) in accordance with
Section 2 or Section 8 of the Code, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrator(s).

(3) No member or associated person shall seek to enforce any agreement to arbitrate against a customer, other member or person associated with a member who has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: (A) the class certification is denied; (B) the class is decertified; (C) the customer, other member or person associated with a member is excluded from the class by the court; or (D) the customer, other member or person associated with a member elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(4) No member, allied member, member organization and/or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph.

Section 2

Simplified Arbitration

(a) Any dispute, claim, or controversy, arising between a public customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding $10,000 exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the Claim. Sufficient copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought, and whether a hearing is demanded.
(c) The Claimant shall pay a filing fee and remit a hearing deposit as specified in Section 30 of this Code upon filing of the Submission Agreement. The final disposition of the sum shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third-Party Claim, the Respondent(s) shall serve the Third-Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third-Party Claim, and a copy of the original Claim filed by the Claimant. The Third-Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding $10,000, the arbitrator may refer the Claim, Counterclaim, and/or Third-Party Claim, if any, to a panel of three (3) or more arbitrators in accordance with Section 8 of this Code, or he may dismiss the Counterclaim and/or Third-Party Claim, without prejudice to the Counterclaimant(s) and/or Third-Party Claimant(s) pursuing the Counterclaim and/or Third-Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Section 30 of this Code.

(e) All parties shall serve promptly by mail or otherwise on all other parties and the Director of Arbitration, with sufficient copies for the arbitrators, a copy of the Answer, Counterclaim, Third-Party Claim, or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either (i) serve on each party a reply to any Counterclaim or, (ii) if the amount of the Counterclaim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the
Claimant withdraws the Claim, the proceedings shall be discontinued without prejudice to the rights of the parties.

(f) The dispute, claim, or controversy shall be submitted to a single arbitrator knowledgeable in the securities industry selected by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the dispute, claim, or controversy solely upon the pleadings and evidence filed by the parties. If a hearing is necessary, such hearing shall be heard as soon as practicable at a locale selected by the Director of Arbitration.

(g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.

(h)(1) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

(2) If a hearing is demanded or consented to, in accordance with Section 2(f), the General Provision Governing a Pre-Hearing Proceeding under Section 20 shall apply.

(3) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its requests for document production on all parties. Any response or objection to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the requests for production. The selected arbitrator shall resolve all requests under this section on the papers submitted.

(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) arbitrators to the panel that shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.

(k) In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.
(l) Except as otherwise provided herein, the general arbitration rules of the (name of self-regulatory organization) shall be applicable to proceedings instituted under this Code.

Section 3

Hearing Requirements — Waiver of Hearing

(a) Any dispute, claim, or controversy, except as provided in Section 2 (Simplified Arbitration) shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

(b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.

Section 4

Eligibility

(a) No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code if six (6) years have elapsed from the occurrence or event giving rise to the act or the dispute, claim, or controversy. This section shall not extend applicable statutes of limitation.

(b) Where eligibility is disputed by a responding party after service of the Statement of Claim, the Director of Arbitration shall promptly make a final determination as to whether a claim is eligible for arbitration. Any such determination regarding eligibility shall set forth the occurrence or event which was the basis for the determination of eligibility of the dispute, claim or controversy. The identification of the occurrence or event which formed the basis for a determination that a claim is eligible shall not limit any parties’ right to offer evidence to the arbitrators which relates to their substantive claims or defenses.

(c) A determination by the Director of Arbitration pursuant to subparagraph (b) that a claim is ineligible shall not constitute a bar to asserting the underlying claim in a judicial forum. The parties will have available to them the rights and remedies provided by applicable law, notwithstanding, any (i) existing pre-dispute arbitration agreement or (ii) decision on eligibility. No party shall seek
to enforce any agreement to arbitrate where the claim has been determined to be ineligible under this section.

Section 5

Dismissal of Proceedings

(a) At any time during the course of 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 to any other dispute resolution forum agreed to by the parties without prejudice to any claims or defenses available to any party, or other remedies provided by law.

(b) The arbitrators may dismiss a claim, defense or proceeding with prejudice as a sanction for willful and intentional failure to comply with an order of the arbitrator(s) if lesser sanctions have proven effective.

(c) The arbitrators shall, upon the joint request of the parties, dismiss the proceedings.

Section 6

Settlements

All settlements submitted shall be at the election of the parties.

Section 7

Tolling of Time Limitation(s) for The Institution of Legal Proceedings

(a) Where permitted by law, the time limitation(s) that would otherwise run or accrue for the institution of legal proceedings shall be tolled when a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the (name of self-regulatory organization) shall retain jurisdiction upon the matter submitted.

(b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim, or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction over the matter submitted.
Section 8

Designation of the Number of Arbitrators

(a)(1) In all arbitration matters involving public customers and nonmembers where the matter in controversy exceeds $10,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel that shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer or non-member requests a panel consisting of at least a majority from the securities industry.

(2) An arbitrator will be deemed as being from the securities industry if he or she:

(i) Is a person associated with a member, or broker-dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser, or
(ii) Has been associated with any of the above within the past three (3) years, or
(iii) Is retired from any of the above, or
(iv) Is an attorney, accountant, or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two years.
(v) Is an individual who is registered under the Commodity Exchange Act or is a member of a registered futures association or any commodities exchange or is associated with any such person(s).

(3) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or investment adviser.

(b) Composition of Panels

The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the chairman of each panel.

Section 9

Notice of Selection of Arbitrators

The Director of Arbitration shall inform the parties of the arbitrators’ names, employment histories for the past ten (10) years, as well as information disclosed pursuant to Section 11, at least fifteen (15) business days prior to the date fixed for the first hearing ses-
sion. A party may make further inquiry of the Director of Arbitration concerning an arbitrator’s background. In the event that prior to the first hearing session, any arbitrator should become disqualified, resign, die, refuse, or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a replacement arbitrator to fill the vacancy on the panel. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past ten (10) years, as well as information disclosed pursuant to Section 11. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrators background and, within the time remaining prior to the first hearing session or the ten (10) day period provided under Section 10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Section 10.

Section 10

Challenges
In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple Claimants, Respondents, and/or Third-Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge, and the Third-Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within ten (10) business days of notification of the identity of the persons named under Section 20(d), (e) or Section 9, whichever comes first. There shall be unlimited challenges for cause.

Section 11

Disclosures Required by Arbitrators
(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances that might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration.
(2) Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or that might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships that they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families, or their current employers, or their current employers' partners or business associates.

(b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph (a) above.

(c) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in subsection (a) hereof is a continuing duty that requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or that are recalled or discovered.

(d) Prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section if the arbitrator who disclosed the information is not removed.

Section 12
Disqualification or Other Disability of Arbitrators

In the event that any arbitrator, after the commencement of the first hearing session but prior to the rendition of the award, should become disqualified, resign, die, refuse, or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy unless such continuation is objected to by any party within five (5) days of notification of the vacancy on the panel. Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history for the past ten (10) years of the replacement arbitrator, as well as information disclosed pursuant to Section 11. A party may further ask the Di-
rector of Arbitration about the replacement arbitrators background and, within the time remaining prior to the next scheduled hearing session or the ten (10) day period provided under Section 10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Section 10.

Section 13

Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) Statement of Claim

The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim, together with documents in support of the claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and for each arbitrator. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) Service and Filing with the Director of Arbitration

For purposes of the Code of Arbitration Procedure, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage prepaid or by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.

(c) Answers — Defenses, Counterclaims, and/or Cross-Claims

(1) Within twenty (20) business days from receipt of the Statement of Claim, the Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent(s) Answer. An executed Submission Agreement and Answer of the Respondent(s) shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. The Answer shall specify all available defenses and relevant facts that will be relied upon at the hearing. It also may set forth any related Counterclaim the Respondent(s) may have against the Claimant, and Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or per-
son based upon any existing dispute, claim, or controversy subject to arbitration under this Code.

(2)(i) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial as an answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any fact or defenses at the time of the hearing.

(ii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to specify all available defenses and relevant facts in such party’s answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party’s answer at the hearing.

(iii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an answer within twenty (20) business days from receipt of service of a claim, unless the time to answer has been extended pursuant to paragraph (c)(5), may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing.

(3) Respondent(s) shall serve each party with a copy of any Third-Party Claim. The Third-Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. Third-Party Respondent(s) shall answer in the manner provided for response to the Claim, as provided in (1) and (2) above.

(4) The Claimant shall serve each party with a reply to a Counterclaim within ten (10) business days of receipt of an Answer containing a Counterclaim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).

(5) The Director of Arbitration may extend any period in this section (whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party pleading).

(d) Joining and Consolidation — Multiple Parties

(1) Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these parties will arise in the action. All persons may be joined in one action as respondents if
there is asserted against them jointly, severally, or in the alternate, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all respondents will arise in the action. A claimant or respondent need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

(2) In arbitrations where there are multiple claimants, respondents and/or third party respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determinations will be considered subsequent to the filing of all responsive pleadings.

(3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

(4) All final determinations with respect to joining, consolidation, and multiple parties under this subsection shall be made by the arbitration panel.

Section 14
Designation of Time and Place of Hearings

The time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least fifteen (15) business days prior to the date fixed for the hearing by personal service, registered, or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

Section 15
Representation by an Attorney

All parties shall have the right to be represented by an attorney at any stage of the proceedings. Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law 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.

Section 16

Attendance at Hearings

The attendance or presence of all persons at hearings, including witnesses, shall be determined by the arbitrators. However, all parties to the arbitration and their attorney(s) shall be entitled to attend all hearings.

Section 17

Failure to Appear

If any of the parties, after due notice, fail to appear at a hearing or at any continuation of a hearing session, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party had entered an appearance in the matter submitted.

Section 18

Adjournments

(a) The arbitrators may, in their discretion, adjourn any hearing(s) either on their own initiative or on the request of any party to the arbitration.

(b) Unless waived by the Director of Arbitration, a party requesting an adjournment after arbitrators have been appointed shall deposit a fee, equal to the initial deposit of forum fees for the first adjournment and twice the initial deposit of forum fees, not to exceed $1,000, for a second or subsequent adjournment requested by that party. If the adjournment is not granted the deposit shall be refunded. If the adjournment is granted, the arbitrators may direct the return of the adjournment fee.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.
Section 19

Acknowledgment of Pleadings

The arbitrators shall acknowledge to all parties present that they have read the pleadings filed by the parties.

Section 20

General Provisions Governing A Pre-Hearing Proceeding

(a) Requests for Documents and Information
The parties shall cooperate to the fullest extent practicable in the voluntary exchange of information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

(b) Document Production and Information Exchange
(1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.

(3) Any response to objections to information requests shall be served on all parties and filed with the Director of Arbitration and within ten (10) calendar days of receipt of the objection.

(4) Upon the written request of a party who does not receive the sought information the matter will be referred by the Director of Arbitration to either a pre-hearing conference under paragraph (d) of this section or to a selected arbitrator under paragraph (e) of this section.

(c) Pre-Hearing Exchange
At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of docu-
ments in their possession and shall identify witnesses they intend to present at the hearing. The parties may provide a list of those documents that have already been produced pursuant to the other provisions of this Section 20 instead of the actual documents. A list of such documents served under this paragraph shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties. In addition, at least twenty (20) calendar days prior to the first scheduled hearing date, the parties also shall serve on each other a list identifying witnesses they intend to present at the hearing by name, address and business affiliation. A copy of the list of witnesses shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties. The arbitrators may exclude from the arbitration any documents not exchanged or identified or witnesses not identified in accordance with the requirements of this paragraph. This does not require service of copies of documents or of a list identifying witnesses that parties may use for cross examination or rebuttal.

(d) Pre-Hearing Conference

(1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issues that relate to the pre-hearing process or to the hearing including, but not limited to, the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of facts, identification and briefing of contested issues, and any other matters that will expedite the arbitration proceedings.

(2) Any issues raised at the pre-hearing conference that are not resolved may be referred by the Director of Arbitration to a single member of the Arbitration Panel for decision.

(e) Decisions by Selected Arbitrator

The Director of Arbitration may appoint a single member of the Arbitration Panel to decide all unresolved issues referred to under this section. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances and production of documents, and set deadlines. Decisions under this paragraph shall be based on the papers submitted by the parties, unless the arbitra-
tor calls a hearing. The arbitrator may elect to refer any issue under this paragraph to the full panel.

(f) Subpoenas
The arbitrator(s) and any attorney(s) of record to the proceeding shall have the power of subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. The parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

(g) Power to Direct Appearance and Production of Documents
The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any person employed by or associated with any member or member organization of the self-regulatory organization and/or the production of any records in the possession or control of such persons or members. Unless the arbitrator(s) directs otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

Section 21
Evidence
The arbitrators shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence.

Section 22
Interpretation of and Enforcement of Arbitrator Rulings
The arbitrator(s) shall be empowered to interpret and determine the applicability of all provisions under this Code and to take appropriate action to obtain compliance with any ruling by the arbitrator(s), including but not limited to imposing sanctions pursuant to Section 5. Such interpretations and actions to obtain compliance shall be final and binding upon the parties.

Section 23
Determinations of Arbitrators
All rulings and determinations of the panel shall be by a majority of the arbitrators.
Section 24

Record of Proceedings

A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the party or parties making the request shall bear the cost of such transcription unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided by the arbitrators.

Section 25

Oaths of the Arbitrators and Witnesses

Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrator(s). All testimony shall be under oath or affirmation.

Section 26

Amendments

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Section 13(b). The other parties may, within ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Section 13(b).

(b) After a panel has been appointed, no new or different pleadings may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

Section 27

Reopenings of Hearings

Where permitted by law, the hearings may be reopened by the arbitrators on their own motion or in the discretion of the arbitrators upon application of a party at any time before the award is rendered.
Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal.

(c) The Director of Arbitration shall endeavor to serve a copy of the award:

(i) by facsimile transmission or other electronic means; or
(ii) by registered or certified mail upon all parties or their counsel, at the address of record; or (iii) by personally serving the award upon the parties; or (iv) by filing or delivering the award in such a manner as may be authorized by law.

(d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.

(e) The award shall contain the name of the parties, the name(s) of counsel, if any, a summary of the issues, including the type(s) of any security or product, in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, and the signatures of the arbitrators concurring in the award.

(f) Summary information contained in the awards shall be made publicly available in accordance with policies of the sponsoring self-regulatory organization.

(g) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award:

(1) if not paid within thirty (30) days of receipt,
(2) if the award is the subject of a motion to vacate which is denied, or
(3) as specified by the arbitrator(s) in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).
(h) The arbitrator(s) may grant any remedy or relief that the arbitrator(s) deem just and equitable and that would have been available in a court with jurisdiction over the matter.

Section 29

Agreement to Arbitrate

This Code shall be deemed a part of and incorporated by reference in every agreement to arbitrate under the Constitution and Rules of the (name of self-regulatory organization) including a duly executed Submission Agreement.

Section 30

Schedule of Fees

(a) At the time of filing a Claim, Counterclaim, Third-Party Claim, or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit with the (name of self-regulatory organization) in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the initial hearing deposit made by any party under the schedule below.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator.

(c) The arbitrators, in their award, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing in which cases hearing session fees shall be computed as provided in paragraph (d). The arbitrators may determine in the award that a
party shall reimburse to another party any non-refundable filing fee it has paid.

If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above.

Amounts deposited by a party shall be applied against forum fees, if any.

In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Sections 18, 20 and 24 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne.

If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise.

(d) For claims filed separately and subsequently joined or consolidated under Section 13(d) of this Code, the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such forum fees shall be borne.

(e) If the dispute, claim, or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee for a public customer shall be $250 and the nonrefundable filing fee for an industry party shall be $500. The hearing session deposit to be remitted by a party shall be $600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed $1,000.

(f) The (name of self-regulatory organization) shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.
(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Sections 18, 20 and 24 based on hearing sessions held and scheduled within eight business days after the (name of self-regulatory organization) received notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

Schedule of Fees

For purposes of the schedule of fees below the term claim includes claims, counterclaims, crossclaims, 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

<table>
<thead>
<tr>
<th>Amount in Dispute</th>
<th>Filing Fee</th>
<th>Paper</th>
<th>Hearing Session Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0.01-$1,000</td>
<td>$15</td>
<td>$15</td>
<td>$15</td>
</tr>
<tr>
<td>$1,000.01-$2,500</td>
<td>$25</td>
<td>$25</td>
<td>$25</td>
</tr>
<tr>
<td>$2,500.01-$5,000</td>
<td>$50</td>
<td>$75</td>
<td>$100</td>
</tr>
<tr>
<td>$5,000.01-$10,000</td>
<td>$75</td>
<td>$75</td>
<td>$200</td>
</tr>
<tr>
<td>$10,000.01-$30,000</td>
<td>$100</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>$30,000.01-$50,000</td>
<td>$120</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>$50,000.01-$100,000</td>
<td>$150</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>$100,000.01-$500,000</td>
<td>$200</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>$500,000.01-$5,000,000</td>
<td>$250</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>Over $5,000,000</td>
<td>$300</td>
<td>N/A</td>
<td>$300</td>
</tr>
</tbody>
</table>

#### INDUSTRY CLAIMANT

<table>
<thead>
<tr>
<th>Amount in Dispute</th>
<th>Filing Fee</th>
<th>Paper</th>
<th>Hearing Session Deposit</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0.01-$1,000</td>
<td>$500</td>
<td>$75</td>
<td>$300</td>
</tr>
<tr>
<td>$1,000.01-$2,500</td>
<td>$500</td>
<td>$75</td>
<td>$300</td>
</tr>
<tr>
<td>$2,500.01-$5,000</td>
<td>$500</td>
<td>$75</td>
<td>$300</td>
</tr>
<tr>
<td>$5,000.01-$10,000</td>
<td>$500</td>
<td>$75</td>
<td>$300</td>
</tr>
<tr>
<td>$10,000.01-$30,000</td>
<td>$500</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>$30,000.01-$50,000</td>
<td>$500</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>$50,000.01-$100,000</td>
<td>$500</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>$100,000.01-$500,000</td>
<td>$500</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>$500,000.01-$5,000,000</td>
<td>$500</td>
<td>N/A</td>
<td>$300</td>
</tr>
<tr>
<td>Over $5,000,000</td>
<td>$500</td>
<td>N/A</td>
<td>$300</td>
</tr>
</tbody>
</table>

### Section 31

**Requirements When Using Pre-Dispute Arbitration Agreements With Customers**

(a) Any pre-dispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) that shall 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) Immediately preceding the signature line, there shall be a statement that shall be highlighted and separately initialed by the customer that the agreement contains a pre-dispute arbitration clause. This statement shall also indicate at what page and paragraph the arbitration clause is located.

(c) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(d) No agreement shall include any condition that limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any 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.”

(f) The requirements of subsection (5) shall 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.

**********

March, 1996
### Appendix B

#### American Stock Exchange, Inc.

<table>
<thead>
<tr>
<th>Year Received</th>
<th>Total Cases Concluded Including Settlements</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
<th>Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1981</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1985</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1987</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1988</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### National Association of Securities Dealers, Inc.

<table>
<thead>
<tr>
<th>Year Received</th>
<th>Total Cases Concluded Including Settlements</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
<th>Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1981</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1985</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1987</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1988</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Boston Stock Exchange, Inc.

<table>
<thead>
<tr>
<th>Year Received</th>
<th>Total Cases Concluded Including Settlements</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
<th>Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1981</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1985</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1987</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1988</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### New York Stock Exchange, Inc.

<table>
<thead>
<tr>
<th>Year Received</th>
<th>Total Cases Concluded Including Settlements</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
<th>Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1981</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1985</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1987</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1988</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Chicago Board Options Exchange, Inc.

<table>
<thead>
<tr>
<th>Year Received</th>
<th>Total Cases Concluded Including Settlements</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
<th>Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1981</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1985</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1987</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1988</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Pacific Stock Exchange, Inc.

<table>
<thead>
<tr>
<th>Year Received</th>
<th>Total Cases Concluded Including Settlements</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
<th>Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1981</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1985</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1987</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1988</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Chicago (Midwest) Stock Exchange, Inc.

<table>
<thead>
<tr>
<th>Year Received</th>
<th>Total Cases Concluded Including Settlements</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
<th>Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1981</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1985</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1987</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1988</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Philadelphia Stock Exchange, Inc.

<table>
<thead>
<tr>
<th>Year Received</th>
<th>Total Cases Concluded Including Settlements</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
<th>Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1981</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1982</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1984</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1985</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1986</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1987</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1988</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Year</td>
<td>Total Cases Received</td>
<td>Total Cases Concluded</td>
<td>Small Claims Received</td>
<td>Small Claims Concluded</td>
<td>Public Customer Awards in Favor of Public</td>
</tr>
<tr>
<td>------</td>
<td>----------------------</td>
<td>-----------------------</td>
<td>-----------------------</td>
<td>-----------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>1980</td>
<td>21</td>
<td>21</td>
<td>7</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>1981</td>
<td>23</td>
<td>23</td>
<td>5</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>1982</td>
<td>16</td>
<td>16</td>
<td>7</td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td>1983</td>
<td>18</td>
<td>17</td>
<td>9</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td>1984</td>
<td>13</td>
<td>8</td>
<td>5</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>1985</td>
<td>91</td>
<td>111</td>
<td>31</td>
<td>54</td>
<td>31</td>
</tr>
<tr>
<td>1986</td>
<td>82</td>
<td>90</td>
<td>30</td>
<td>30</td>
<td>15</td>
</tr>
<tr>
<td>1987</td>
<td>106</td>
<td>90</td>
<td>38</td>
<td>42</td>
<td>24</td>
</tr>
<tr>
<td>1988</td>
<td>115</td>
<td>126</td>
<td>49</td>
<td>63</td>
<td>37</td>
</tr>
<tr>
<td>1989</td>
<td>108</td>
<td>93</td>
<td>41</td>
<td>50</td>
<td>36</td>
</tr>
<tr>
<td>1990</td>
<td>75</td>
<td>90</td>
<td>41</td>
<td>40</td>
<td>22</td>
</tr>
<tr>
<td>1991</td>
<td>94</td>
<td>82</td>
<td>35</td>
<td>36</td>
<td>18</td>
</tr>
<tr>
<td>1992</td>
<td>45</td>
<td>68</td>
<td>12</td>
<td>19</td>
<td>11</td>
</tr>
<tr>
<td>1993</td>
<td>30</td>
<td>47</td>
<td>15</td>
<td>18</td>
<td>6</td>
</tr>
<tr>
<td>1994</td>
<td>12</td>
<td>23</td>
<td>3</td>
<td>11</td>
<td>5</td>
</tr>
<tr>
<td>1995</td>
<td>9</td>
<td>5</td>
<td>1</td>
<td>3</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Cases Received</th>
<th>Total Cases Concluded</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>830</td>
<td>686</td>
<td>322</td>
<td>269</td>
<td>410</td>
</tr>
<tr>
<td>1981</td>
<td>1,034</td>
<td>976</td>
<td>302</td>
<td>256</td>
<td>526</td>
</tr>
<tr>
<td>1982</td>
<td>1,319</td>
<td>1,033</td>
<td>205</td>
<td>282</td>
<td>544</td>
</tr>
<tr>
<td>1983</td>
<td>1,737</td>
<td>1,259</td>
<td>421</td>
<td>319</td>
<td>620</td>
</tr>
<tr>
<td>1984</td>
<td>2,464</td>
<td>1,774</td>
<td>561</td>
<td>493</td>
<td>724</td>
</tr>
<tr>
<td>1985</td>
<td>2,788</td>
<td>2,198</td>
<td>664</td>
<td>523</td>
<td>964</td>
</tr>
<tr>
<td>1986</td>
<td>2,837</td>
<td>2,463</td>
<td>658</td>
<td>617</td>
<td>1,032</td>
</tr>
<tr>
<td>1987</td>
<td>4,377</td>
<td>2,964</td>
<td>836</td>
<td>649</td>
<td>1,166</td>
</tr>
<tr>
<td>1988</td>
<td>6,007</td>
<td>3,743</td>
<td>1,474</td>
<td>977</td>
<td>1,559</td>
</tr>
<tr>
<td>1989</td>
<td>4,504</td>
<td>5,900</td>
<td>1,730</td>
<td>1,308</td>
<td>3,844</td>
</tr>
<tr>
<td>1990</td>
<td>5,341</td>
<td>5,857</td>
<td>1,631</td>
<td>1,204</td>
<td>2,187</td>
</tr>
<tr>
<td>1991</td>
<td>5,869</td>
<td>5,857</td>
<td>1,063</td>
<td>971</td>
<td>1,994</td>
</tr>
<tr>
<td>1992</td>
<td>5,451</td>
<td>5,779</td>
<td>923</td>
<td>891</td>
<td>1,965</td>
</tr>
<tr>
<td>1993</td>
<td>6,562</td>
<td>5,963</td>
<td>1,088</td>
<td>922</td>
<td>1,617</td>
</tr>
<tr>
<td>1994</td>
<td>6,531</td>
<td>5,980</td>
<td>1,116</td>
<td>882</td>
<td>1,587</td>
</tr>
<tr>
<td>1995</td>
<td>7,271</td>
<td>6,787</td>
<td>1,163</td>
<td>1,382</td>
<td>1,818</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Cases Received</th>
<th>Total Cases Concluded</th>
<th>Small Claims Received</th>
<th>Small Claims Concluded</th>
<th>Public Customer Awards in Favor of Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>830</td>
<td>686</td>
<td>322</td>
<td>269</td>
<td>410</td>
</tr>
<tr>
<td>1981</td>
<td>1,034</td>
<td>976</td>
<td>302</td>
<td>256</td>
<td>526</td>
</tr>
<tr>
<td>1982</td>
<td>1,319</td>
<td>1,033</td>
<td>205</td>
<td>282</td>
<td>544</td>
</tr>
<tr>
<td>1983</td>
<td>1,737</td>
<td>1,259</td>
<td>421</td>
<td>319</td>
<td>620</td>
</tr>
<tr>
<td>1984</td>
<td>2,464</td>
<td>1,774</td>
<td>561</td>
<td>493</td>
<td>724</td>
</tr>
<tr>
<td>1985</td>
<td>2,788</td>
<td>2,198</td>
<td>664</td>
<td>523</td>
<td>964</td>
</tr>
<tr>
<td>1986</td>
<td>2,837</td>
<td>2,463</td>
<td>658</td>
<td>617</td>
<td>1,032</td>
</tr>
<tr>
<td>1987</td>
<td>4,377</td>
<td>2,964</td>
<td>836</td>
<td>649</td>
<td>1,166</td>
</tr>
<tr>
<td>1988</td>
<td>6,007</td>
<td>3,743</td>
<td>1,474</td>
<td>977</td>
<td>1,559</td>
</tr>
<tr>
<td>1989</td>
<td>4,504</td>
<td>5,900</td>
<td>1,730</td>
<td>1,308</td>
<td>3,844</td>
</tr>
<tr>
<td>1990</td>
<td>5,341</td>
<td>5,857</td>
<td>1,631</td>
<td>1,204</td>
<td>2,187</td>
</tr>
<tr>
<td>1991</td>
<td>5,869</td>
<td>5,857</td>
<td>1,063</td>
<td>971</td>
<td>1,994</td>
</tr>
<tr>
<td>1992</td>
<td>5,451</td>
<td>5,779</td>
<td>923</td>
<td>891</td>
<td>1,965</td>
</tr>
<tr>
<td>1993</td>
<td>6,562</td>
<td>5,963</td>
<td>1,088</td>
<td>922</td>
<td>1,617</td>
</tr>
<tr>
<td>1994</td>
<td>6,531</td>
<td>5,980</td>
<td>1,116</td>
<td>882</td>
<td>1,587</td>
</tr>
<tr>
<td>1995</td>
<td>7,271</td>
<td>6,787</td>
<td>1,163</td>
<td>1,382</td>
<td>1,818</td>
</tr>
</tbody>
</table>
Appendix C

Sections of the Securities Industry Conference on Arbitration Uniform Code of Arbitration as they generally appear in codes of participating Self Regulatory Organizations.

<table>
<thead>
<tr>
<th>UNIFORM CODE OF ARBITRATION</th>
<th>ASE CODE</th>
<th>CBOE CODE</th>
<th>MSRB CODE</th>
<th>NASD CODE</th>
<th>NYSE CODE</th>
<th>PSE CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1: Arbitration</td>
<td>Vlll §§ 1, 2(a) &amp; Rule 600</td>
<td>Rule 18.3 &amp; 18.3A</td>
<td>Section 1</td>
<td>Section 12</td>
<td>Rule 600</td>
<td>Rule 12-1</td>
</tr>
<tr>
<td>Section 2: Simplified Arbitration</td>
<td>Rule 621</td>
<td>Rule 18.4</td>
<td>Section 34</td>
<td>Section 13</td>
<td>Rule 601</td>
<td>Rule 12-2</td>
</tr>
<tr>
<td>Section 3: Hearing Requirements — Waiver of Hearing</td>
<td>Rule 604</td>
<td>Rule 18.5</td>
<td>Section 15</td>
<td>Section 14</td>
<td>Rule 602</td>
<td>Rule 12-3</td>
</tr>
<tr>
<td>Section 4: Eligibility of Proceedings</td>
<td>Rule 605(a)</td>
<td>Rule 18.6</td>
<td>Section 6</td>
<td>Section 15</td>
<td>Rule 603</td>
<td>Rule 12-4</td>
</tr>
<tr>
<td>Section 5: Dismissal of Proceedings</td>
<td>Rule 605(b)</td>
<td>Rule 18.7</td>
<td>Section 9</td>
<td>Section 16</td>
<td>Rule 604</td>
<td>Rule 12-5</td>
</tr>
<tr>
<td>Section 6: Settlements</td>
<td>Rule 605(c)</td>
<td>Rule 18.8</td>
<td>Section 10</td>
<td>Section 17</td>
<td>Rule 605</td>
<td>Rule 12-6</td>
</tr>
<tr>
<td>Section 7: Tolling of Time Limitations for the Institution of Legal Proceedings</td>
<td>Rule 605(d)</td>
<td>Rule 18.9</td>
<td>Sections 11 &amp; 6</td>
<td>Section 18</td>
<td>Rule 606</td>
<td>Rule 12-7</td>
</tr>
<tr>
<td>Section 8: Designation of Number of Arbitrators</td>
<td>Rule 602(a) &amp; (c)(1)</td>
<td>Rule 18.10(a)</td>
<td>Section 12</td>
<td>Section 19</td>
<td>Rule 607</td>
<td>Rule 12-8(2)</td>
</tr>
<tr>
<td>Section 8(b): Composition of Panel</td>
<td>Rule 602(d)</td>
<td>Rule 18.10(b)</td>
<td>Section 8</td>
<td>Section 20</td>
<td>Rule 607(b)</td>
<td>Rule 12-8(f)</td>
</tr>
<tr>
<td>Section 9: Notice of Selection of Arbitrators</td>
<td>Rule 602(e)</td>
<td>Rule 18.11</td>
<td>Sections 8 &amp; 14</td>
<td>Section 21</td>
<td>Rule 608</td>
<td>Rule 12-9</td>
</tr>
<tr>
<td>Section 10: Challenges</td>
<td>Rule 602(f)</td>
<td>Rule 18.12</td>
<td>Section 8</td>
<td>Section 22</td>
<td>Rule 609</td>
<td>Rule 12-10</td>
</tr>
<tr>
<td>Section 11: Disclosures Required of Arbitrators</td>
<td>Rule 603</td>
<td>Rule 18.13</td>
<td>Section 13</td>
<td>Section 23</td>
<td>Rule 610</td>
<td>Rule 12-11</td>
</tr>
<tr>
<td>Section 12: Disqualification or other disability of Arbitrators</td>
<td>Rule 602(g)</td>
<td>Rule 18.14</td>
<td>Section 14</td>
<td>Section 24</td>
<td>Rule 611</td>
<td>Rule 12-12</td>
</tr>
<tr>
<td>Section 13: Initiation of Proceedings</td>
<td>Rule 606</td>
<td>Rule 18.15</td>
<td>Section 5</td>
<td>Section 25</td>
<td>Rule 612</td>
<td>Rule 12-13</td>
</tr>
<tr>
<td>Section 14: Designation of Time and Place of Hearings</td>
<td>Rule 608(a)</td>
<td>Rule 18.16</td>
<td>Section 16</td>
<td>Section 26</td>
<td>Rule 613</td>
<td>Rule 12-15</td>
</tr>
<tr>
<td>Section 15: Representation by an Attorney</td>
<td>Rule 608(b)</td>
<td>Rule 18.17</td>
<td>Section 17</td>
<td>Section 27</td>
<td>Rule 614</td>
<td>Rule 12-16</td>
</tr>
<tr>
<td>Section 16: Attendance at Hearings</td>
<td>Rule 608(c)</td>
<td>Rule 18.18</td>
<td>Section 18</td>
<td>Section 28</td>
<td>Rule 615</td>
<td>Rule 12-17(2)</td>
</tr>
<tr>
<td>Section 17: Failure to Appear</td>
<td>Rule 608(d)</td>
<td>Rule 18.19</td>
<td>Section 19</td>
<td>Section 29</td>
<td>Rule 616</td>
<td>Rule 12-17(b)</td>
</tr>
<tr>
<td>Section 18: Adjournments</td>
<td>Rule 608(e)</td>
<td>Rule 18.20</td>
<td>Section 20</td>
<td>Section 30</td>
<td>Rule 617</td>
<td>Rule 12-18</td>
</tr>
<tr>
<td>Section 19: Acknowledgement of Pleadings</td>
<td>Rule 609</td>
<td>Rule 18.21</td>
<td>Section 21</td>
<td>Section 31</td>
<td>Rule 618</td>
<td>Rule 12-19</td>
</tr>
<tr>
<td>Section 20: Pre-Hearing Procedures &amp; 611</td>
<td>Rules 607 &amp; 611</td>
<td>Rule 18.22</td>
<td>Section 22</td>
<td>Section 32</td>
<td>Rule 619</td>
<td>Rule 12-14</td>
</tr>
<tr>
<td>Section 20(f): Subpoenas</td>
<td>Rule 610</td>
<td>Rule 18.22(f)</td>
<td>Section 23</td>
<td>Section 33</td>
<td>Rule 619(f)</td>
<td>Rule 12-20</td>
</tr>
<tr>
<td>Section 21: Evidence</td>
<td>Rule 612(a)</td>
<td>Rule 18.24</td>
<td>Section 24</td>
<td>Section 34</td>
<td>Rule 620</td>
<td>Rule 12-22</td>
</tr>
<tr>
<td>Section 22: Interpretation of the Code</td>
<td>Rule 612(b)</td>
<td>Rule 18.25</td>
<td>Section 25</td>
<td>Section 35</td>
<td>Rule 621</td>
<td>Rule 12-23</td>
</tr>
<tr>
<td>Section 23: Determinations of Arbitrators</td>
<td>Rule 613</td>
<td>Rule 18.26</td>
<td>Section 26</td>
<td>Section 36</td>
<td>Rule 622</td>
<td>Rule 12-24</td>
</tr>
<tr>
<td>UNIFORM CODE OF ARBITRATION</td>
<td>ASE CODE</td>
<td>CBOE CODE</td>
<td>MSRB CODE</td>
<td>NASD CODE</td>
<td>NYSE CODE</td>
<td>PSE CODE</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>----------</td>
<td>-----------</td>
<td>-----------</td>
<td>-----------</td>
<td>-----------</td>
<td>----------</td>
</tr>
<tr>
<td>Section 24: Record of Proceedings</td>
<td>Rule 614</td>
<td>Rule 18.27</td>
<td>Section 27</td>
<td>Section 37</td>
<td>Rule 623</td>
<td>Rule 12-25</td>
</tr>
<tr>
<td>Section 25: Oaths of Arbitrators and Witnesses</td>
<td>Rule 615</td>
<td>Rule 18.28</td>
<td>Section 28</td>
<td>Section 38</td>
<td>Rule 624</td>
<td>Rule 12-26</td>
</tr>
<tr>
<td>Section 26: Amendments</td>
<td>Rule 616</td>
<td>Rule 18.29</td>
<td>Section 29</td>
<td>Section 39</td>
<td>Rule 625</td>
<td>Rule 12-27</td>
</tr>
<tr>
<td>Section 27: Reopening of Hearings</td>
<td>Rule 617</td>
<td>Rule 18.30</td>
<td>Section 30</td>
<td>Section 40</td>
<td>Rule 626</td>
<td>Rule 12-28</td>
</tr>
<tr>
<td>Section 28: Awards</td>
<td>Rule 618</td>
<td>Rule 18.31</td>
<td>Section 31</td>
<td>Section 41</td>
<td>Rule 627</td>
<td>Rule 12-29</td>
</tr>
<tr>
<td>Section 29: Agreement to Arbitrate</td>
<td>Rule 619</td>
<td>Rule 18.32</td>
<td>Section 32</td>
<td>Section 42</td>
<td>Rule 628</td>
<td>Rule 12-30</td>
</tr>
<tr>
<td>Section 30: Schedule of Fees</td>
<td>Rule 620</td>
<td>Rule 18.33</td>
<td>MRSB Rule A-16</td>
<td>Section 43</td>
<td>Rule 629</td>
<td>Rule 12-31</td>
</tr>
<tr>
<td>Section 31: Requirements when Using Pre-Dispute Agreements with Customers</td>
<td>Rule 427</td>
<td>Rule 18.35</td>
<td>Section 36</td>
<td>Fair Prac. Rul. Art. III § 21(f)</td>
<td>Rule 636</td>
<td>Rule 12-34</td>
</tr>
</tbody>
</table>

*For differences between the SICA Uniform Code and various SRO rules, see supra notes 255-61 and accompanying text. Moreover, some SROs have rules for which there are no SICA counterparts, for example: NASD Section 46 provides for special procedures for large and complex cases.*