



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

DIVISION OF
MARKET REGULATION

April 28, 1998

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Atlanta, Georgia 30305

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

Dear Ms. Nygaard:

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

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

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

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

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

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

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

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


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

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

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

Very truly yours,



Catherine McGuire
Chief Counsel
Division of Market Regulation

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

Securities Industry Conference on Arbitration