

MEMORANDUM

To: Robert W. Haack
From: Marc A. White
Date: August 26, 1964
Re: Arbitration

In one of our recent conferences with Ralph Saul he mentioned the problems faced by the Securities and Exchange Commission in upholding Association disciplinary action where we find a member guilty of unethical conduct because this member has failed to perform on a contract with another member. Commission decisions in recent years have indicated a reluctance to uphold us on this type of a finding and the language of the Commission decisions makes clear that the Commission will do so only when the breach is unjustifiable and unwarranted under the circumstances.

In the Southern Brokerage decision that firm argues that its refusal to complete a contract involving Jerome Richard stock was based on the advice of counsel and it will be difficult for the Commission to uphold us and find that the respondent wasn't justified in relying on its own attorney.

I have reviewed our arbitration file which indicates that in 1944 we contemplated a Code of Arbitration which the Securities and Exchange Commission staff informally accepted on the condition it not be compulsory and a further condition that before we promulgated the Code we take a reading of our membership for a reaction even though the Commission

agreed that such Code did not have to be voted upon by the membership. The reaction of the membership was apparently negative and as you will remember from a discussion of this subject within the last two years before the Board, there was no clear mandate from the Board to impose any rules of arbitration within the Association.

As you know also, we have an informal procedure which is not compulsory and would not foreclose a civil suit even though a court might give some weight to the conclusions of such an informal arbitration panel.

I was inclined to think when the matter came up a year or so ago at the Board, that the Board would be reluctant to put into effect a compulsory arbitration procedure and I am still inclined to believe this unless there was some strong additional reason for the Board to change its mind. I believe that if the Commission reverses us in the Southern Brokerage case it will further narrow the area where the Commission will uphold us in cases involving failure to perform on a contract and this might be the additional strong reason which would make the Board receptive to compulsory arbitration.

Consequently, I would recommend that we wait for the Commission decision before we submit this matter to the Board and the question for now would be whether we should get a committee working on this problem or wait until such a decision which, incidentally, we have requested be expedited because of the existence of other cases involving the Jerome Richard stock pending in various Districts.

I note from a review of the American Stock Exchange Constitution relating to arbitration and their rules that they amended these rules in June of this year after consultation with the Commission. Thus, should we want to get started on this project we have our 1944 proposal, the recently adopted American Stock Exchange procedures and the existing New York Stock Exchange procedures as a guide. It would not be a great project to work something up for discussion with a small committee of the Board if you agree we should proceed this way.

Finca

Por 324 330