

AAA ACCESS *cont'd from page 2*

and the Merrill agreement in Georgiadis. Mr. Georgiadis agreed to arbitrate "only before" the named SRO's, whereas Ms. Rutherford agreed to arbitration "in accordance with the rules" of one of the named SRO's. On that point,

the Court says, "we agree with the district court that that language should be construed simply as an agreement to arbitrate before one of the SROs rather than the AAA.... To hold, as Rutherford apparently contends, that the

quoted language incorporates the AMEX Window rather than superseding it, would allow customers to circumvent their agreements with ease."

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AAA vs. SROs: The "Fairness Factor" -- Is There a Difference?

At PLI's "Securities Arbitration 1990" Seminar in New York on July 18, 1990, the American Arbitration Association's Vice-President of Case Administration George H. Friedman, presented statistics garnered from 174 AAA Awards that issued during 1989 on securities cases. Of the Awards, 146 related to cases in which customers were Claimants.

We compared those statistics to 1,136 Awards from the forums administered by the various securities self-regulatory organizations, as reflected on the SAC Award Reporter database. The Awards for all forums surveyed total about \$47.1 million in recoveries for investors! Remember, too, that the SRO sample does not include all of the Awards issued during 1989, since SRO Awards only became public after May 1989.

We keep hearing that there are significant differences in the "fairness

factor" between AAA and the SRO's. We wanted to see if the aggregate Award figures would disclose some important statistical differences between the major independent arbitration facility and the industry-administered facilities. The results are presented below.

We would not tell people that there are no differences between the AAA and the SRO's or, for that matter, among the various SRO facilities. Attorneys deciding where to file or defend claims must consider a number of factors weighing for or against one or another forum choice. If there were wide differences in the overall Award results, the "fairness factor" would weigh heavily in individual forum determinations. Our view of the Award Breakdown figures reflected below, though, is that they are strikingly close in almost every category.

The figures provided derive from a much larger sample in the case of the SRO's and may be, from that standpoint, a bit more reliable as a representative sample. The size of the AAA sample also suggests that one should apply a slightly larger deviation standard in considering differences to be significant. To the extent that one concludes from our analysis that the Award results are roughly comparable between the AAA and the SRO's, it suggests that some customers' counsel may be placing too much emphasis on a disparity in the "fairness factor."

Broker-dealers, as regular users of arbitration, should be even more influenced by aggregate results in developing overall strategy. While we recognize there are other considerations, if a broker-dealer consistently opposes AAA as a forum of choice, based on a belief in a disproportionate "fairness factor," it should take another look at the numbers.

AAA/SROs Award Breakdown

Customer/Claimant Awards Only

Forum	Percentage/Total # of Awards		Breakdown for Winning Awards*				Total # of Awards Surveyed
	% of Awards Denied Completely	% of Awards Some Money to Claimant	10% or Less	50% or More	90% or More	Awarded in Full	
AAA	41.2%	58.9%	4.8%	30%	12.3%	10.3%	146
SROs	43.9%	56.1%	5.3%	32%	18.6%	18%	1,136

* Comparison of amounts won in individual Awards to the total amount claimed in that Award. For example, the "10% or less" category includes those Awards where the amount won was more than \$0, but no more than 10% of the total amount claimed. The total number of Awards in each category is then reflected as a percentage of the total number of Awards surveyed.