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NFA Arbitration Filings Rise About 15% in CY 1995

On a fiscal year basis, the National Futures Association reported a 30% increase year-to-year in arbitration filings, when FY 1995 ended this past June 30. The number of demands for arbitration totalled 232. Interestingly, the CFTC reparations program experienced a corresponding decrease in new filings, so the shift was primarily one of "market share."

For CY 1994, NFA listed 189 new demands received and, as CY 1995

draws to a close, NFA is projecting a 15-18% increase for the full year. Total case filings, as of November 1995, were 202 cases.

NFA has noted that its caseload is growing in complexity as well. For instance, the average claim has risen from \$63,000 in 1991 to almost \$192,000 in 1994. This average is skewed somewhat by several very large claims, because about 60% of NFA's docket continues to run under \$15,000

and about 82% of the docket involves \$100,000 or less in claims.

NFA began compensating its arbitrators in 1992, but just recently proposed an additional honorarium for its chairperson of \$50 per day (7 SAC 8(13)), in response to the new complexity of cases. This change will make NFA's compensation schedule commensurate with the current securities SRO schedule.

AAA Securities Case Volume Rises About 25% in CY 1995

The American Arbitration Association, despite the diminishing prospects for the AmEx Window and the American Stock Exchange's recent withdrawal of its proposed amendments (7 SAC 7(7)), has bounced back from the 57% drop in case filings experienced in 1994 vs. 1993 results. The sharp decline at that time was marked by the end of a NYSE pilot program to encourage *ad hoc* agreements to use AAA and the failure of large wirehouses to incorporate AAA into their agreements, after the Association's securi-

ties rules revisions in May 1993. As of November 1995, AAA reports 312 cases filed vs. 274 cases filed for CY 1994. On an annualized basis, AAA should report a 24% increase for 1995. Thus, AAA clearly remains the third largest securities arbitration program, second only to NYSE and NASD.

On the other hand, claims in dollar terms are likely to be down markedly. In 1993, total claims among new filings aggregated \$330.3 million. In 1994, the total was \$170.6 million and through November, the 1995 total was \$94 mil-

lion. Dollar volume has also shifted greatly among the regional offices. San Francisco stands on top by this measurement, with 15 claims totalling \$22.8 million. Detroit follows with 18 claims totalling \$15.1 million.

Viewed by number of new filings, Miami was clearly first with 80 claims totalling \$7.7 million. Los Angeles had a strong year, finishing second, with 30 claims totalling \$3.8 million. Statistics from last year indicate that about 70% of the filed cases will be settled or withdrawn.

NASD Arbitration Filings for 1995 Projected to Rise Strongly

The National Association of Securities Dealers dominates the securities arbitration scene, with more than 85% of the cases filed with the securities SROs. Even if one adds in the figures from the NFA and AAA, during 1994, NASD accounted for about 80% of all securities/commodities arbitration case volume. This year signals no substantial change in that picture. Through September 1995, NASD reported 4,564 new cases filed and projected about 6,100 cases for CY 1995. Thus, another yearly increase, probably between 8-10%, is certain. Commensurate with its responsibilities as the predominant forum, NASD makes more breakdown statistics available than any other arbitration forum. We review some of those figures below, with thanks to William N. Bonilla, Assistant Director, NASD Arbitration, for his help.

NASD close-outs will also be up, year-to-year, based upon September 1995 projections, to almost 5,500 cases. Close-outs include cases heard, withdrawn, settled or otherwise terminated. An 18-20% increase in close-outs is expected. New filings pulled ahead of close-outs by more than 1,000 cases per year in 1993 and 1994, but part of the reason for the narrowing of the docket gap this year relates to the larger role that settlements have played in removing filed cases from the arbitration docket.

In 1992, for instance, some 31.5% of the cases closed went through hearing to Award. In 1994, the year's figure was 23.3% and, through September 1995, the figure was 19.8%. Not all of the remaining cases actually report settlements. Some (10.9% thru 9/95) are withdrawn. Another 11.8% resulted in stipulated Awards or small claims

matters decided on the pleadings and documentary evidence. Finally, 9.3%, "All Others," were administratively or otherwise terminated. Still, cases decided by hearing require the greatest attention and staff time, so close-out rates can be expected to increase as hearing Award percentages decrease.

Damages awarded by Panels in customer-claimant cases have likewise shrunk in aggregate with the decreasing number of cases heard and the corresponding increase in settlements. In 1992, some \$67 million was granted to customers, whereas in 1994, the figure decreased to \$39 million. Through September 1995, the total amount awarded was \$29 million (annualized, that figure would be about the same as for 1994). Obviously, settlement amounts paid are not available for tabulation from public records. They could

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SRO ARBITRATION FIGURES

Three-Year Chart 1992-1994

† NYSE figures for 1992 revised from 1993 Chart at 6 SAC 9(15)

Year	Total Cases Received	Total Cases Concluded Including Settlements	Small Claims Received	Small Claims Concluded	Public Customer Cases Decided	Awards In Favor Of Public
AMERICAN STOCK EXCHANGE						
1992	45	55	12	15	23	8
1993	48	55	11	12	15	8
1994	68	46	13	9	10	3
*The Boston Stock Exchange received no new filings in 1994. There were no filings in 1993 and one in 1992.						
CHICAGO BOARD OPTIONS EXCHANGE						
1992	28	28	7	5	11	5
1993	15	18	3	4	6	2
1994	23	24	1	3	4	1
*The Chicago Stock Exchange (formerly the Midwest Stock Exchange) reported one filing in 1994, 1 in 1993 and 1 in 1992. The Cincinnati Stock Exchange reported no filings during the three-year period.						
MUNICIPAL SECURITIES RULEMAKING BOARD						
1992	45	68	12	19	31	14
1993	30	47	15	18	34	6
1994	12	23	3	8	11	5
NATIONAL ASSOCIATION OF SECURITIES DEALERS						
1992	4,379	4,375	793	717	1,552	821
1993	5,419	4,327	852	801	1,329	730
1994	5,570	4,561	992	725	1,111	532
NEW YORK STOCK EXCHANGE						
1992†	873	1,166	83	119	317	137
1993	809	837	42	62	205	93
1994	711	795	47	74	185	79
PACIFIC STOCK EXCHANGE						
1992	58	65	16	13	27	16
1993	199	54	130	22	23	12
1994	102	93	37	57	38	18
PHILADELPHIA STOCK EXCHANGE						
1992	21	18	2	3	4	1
1993	40	24	5	3	5	3
1994	44	37	8	6	7	4
1992†	5,451	5,779	925	891	1,965	1,002
1993	6,561	5,363	1,058	922	1,617	854
1994	6,531	5,580	1,101	882	1,366	642

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easily account for what seem to be proportionate declines.

Where is the NASD case volume coming from? After all, the markets have been on a spectacular incline since 1988. We think it relates to the affordability and visibility that arbitra-

tion has achieved, but there are certainly other explanations. The limited partnership debacle surely contributed to a higher incidence of filings, but, in saying that, one should note that, since 1993, the number of cases naming limited partnerships as a focus product

involved in the dispute has fallen from 1,633 to 1,207 in 1994 and will be between 800-900 in 1995. Mutual funds and common stocks have risen in recent years as the focus product, but options and corporate bonds have continued a steady decline during the 90's.

New Slate of Officers and 3 Directors Take Office at PIABA Carlsbad Conference

The Public Investors Arbitration Bar Association held its Fourth Annual Conference in Carlsbad, CA in late October. The Conference offered a well-organized, sophisticated three-day program on a bevy of topics affecting securities arbitration and mediation. At the Conference, three Officers elected by the Board of Directors for 1995-1996 were announced: L. Jerome

Stanley, President; Seth E. Lipner, Secretary; J. Boyd Page, Treasurer. Mr. Stanley, a Baton Rouge, LA attorney, succeeds outgoing President Seth E. Lipner.

PIABA members also adopted three nominees to join the Association's Board of Directors: Seth E. Lipner, Cary S. Lapidus and Joseph C. Long. Messrs. Long and Lapidus join PIABA's Board for the first time. Finally, PIABA

announced the establishment of a full-time staff position, the first to which this young organization has committed. Brooke M. Geiger, formerly an administrator with the Atlanta law firm of Page & Bacek, has accepted the role. PIABA's new home office is located at 3490 Piedmont Road, N.E., Suite 900, Atlanta, GA 30305. Tel: 404/365-0150. FAX: 404/365-9427.

SEC Approves MSRB Rule Regarding Arbitrators' Authority to Enforce Rulings

The Municipal Securities Rulemaking Board filed with the SEC a proposed amendment to Section 25 of its Arbitration Code (MSRB Rule G-35) on November 9, 1995, which will "clarify and codify the arbitrators' existing authority to enforce their rulings in the event of non-compliance by a party." The proposed changes would conform MSRB's Code to the provi-

sions of Section 22 of the Uniform Code of Arbitration, established by the Securities Industry Conference of Arbitration.

In its Release announcing the new filing (SEC Rel. 34-36486, 11/16/95), the Commission indicates that enforcement measures available to the arbitrators could include "the assessment of fees or costs, preclusion of documents or witnesses, or initiation of a disciplin-

ary referral." These powers, designed primarily to assist arbitrators in dealing with parties who ignore discovery requests and orders, are made explicit in the new rules to assure arbitrators of the ability to sanction non-compliance with their orders.

Since other SROs have previously adopted these amendments, the Commission approved them immediately.

SEC Approves CBOE Rules Regarding Member Controversies

The Chicago Board Options Exchange has received accelerated approval from the SEC of changes to its Arbitration Code (Ch. 18), as it related to Member Controversies. The primary purposes served by the amendments to Rules 18.2 and 18.34, filed on October 31, 1995 and published by the

Commission in SEC Rel. 34-36475 (1995 WL 677479, 11/9/95), are: (1) to make the Director of Arbitration the person authorized to appoint arbitration panels in member disputes (rather than the Chairman of the Arbitration Committee); (2) to empower the Direc-

tor to deny the right to an unlimited number of preemptory challenges, when the number taken becomes unreasonable and to set a five business-day time limit on the exercise of preemptory challenges. The Commission grants immediate approval, as the rule changes are "noncontroversial."

NYSE Rule Changes Approved Re Forum Fees, Awards, Discovery and Class Actions

The New York Stock Exchange filed rule changes with the SEC in June 1995 (Rel. 34-36001, 7/20/95), amending its arbitration rules to more closely align with the provisions of the Uniform Code of Arbitration. In September, SEC announced its approval of the new rules, indicating that no comment letters were received on the proposals (Rel. 34-36222, 9/13/95).

The approved amendments revise NYSE Rule 600(d)(iii) to clarify that the rules excluding class actions from arbitration and prohibiting enforcement of arbitration agreements against putative class members apply not only to customers, but to "claims involving members, allied members, member organizations, and associated persons...." The Commission opined that "access to

the courts for class action litigation should be preserved for [such] claims" and the new rules should "prevent wasteful litigation" over the obligation to arbitrate. Rule 629(e), another industry-related provision, was changed to establish a non-refundable \$500 fee for all claims by industry parties.

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