
SICA Announces 1998 SRO Filing Statistics

SAC's SRO Case Chart lists case filings, case closings, and certain Award results broken down by self-regulatory organization. Those SROs listed are participating members of the Securities Industry Conference on Arbitration, through whose good graces SAC obtains and publishes this information. The Chart on the facing page covers 1996-1998 and has been updated annually since the first Chart appeared in 1 SAC 4(9).

At a glance, one sees that two of the SRO forums, the National Association of Securities Dealers and the New York Stock Exchange, account for all but a hundred of the nearly 6,000 new cases filed in 1998. Look more closely and one sees further evidence of consolidation. The MSRB abandoned its separate program for municipal securities disputes at the start of 1998, revising its rules to filter such disputes to the NASD. Next year, there will be no separate figures for at least two other SROs. NASD has taken over the arbitration programs of the American Stock Exchange, as part of the NASD-AMEX merger, and of the Philadelphia Stock Exchange, even though that merger plan otherwise fell through.

Moving to the right side of the Chart, we see the results of customer-related cases decided during the year. Between NASD and NYSE, the former stands out as having a much higher "win" rate for customers (compare "Awards in Favor of Public" to "Public Customer Cases Decided"). The NASD rate is 60% and the NYSE rate is 45%. This seems like a large disparity. There is some validity to the explanation that NASD respondent firms cover the full spectrum – from small to large, good to bad – of broker-dealer entities, whereas NYSE member firms represent the largest, established firms. We do not think that factor weighs prominently in explaining the difference, though.

One contributing factor in the SICA figures lies in the way that the customer-related Award statistics are tallied. For reasons that are more historical than logical, the figures in the last two columns include Awards in which broker-dealers made claims against former customers, usually for account deficits. All of those decisions are counted in the "Public Customer Cases Decided" column, but only those in which the customer wins on a counterclaim are counted in the "Awards in Favor of Public" column. At NYSE for 1998, that meant only one out of 14 Member-Customer Awards counted on the customer "win" side.

The downward-skewing effect of including Member-Customer Awards in the statistics has a much greater impact on NYSE's "win" rate than on NASD's, because Member-Customer Awards at NASD accounted for less than 5% of the customer-related Awards in 1998. Another factor that dampens the NYSE "win" rate disproportionately is the relatively high percentage of "pro se" or unrepresented Claimants who appear in the NYSE Award figures. We found that almost 40% of the customers in the 1998 NYSE Awards appeared "pro se," whereas the percentage among the NASD Awards was 30%.

SAC's past surveys have shown that pro se's do not win as often and neither do customers with smaller claims – and NYSE has a greater share of both than NASD. If one looks solely at the NYSE's "win" rate for larger-dollar claims, where representation is commonplace, the gap narrows considerably. There, the NYSE rate rises to 54%; the NASD rate remains about 60%. We did not try to parse these numbers further, in order to analyze for geographic or other differences, but, for attorneys handling larger claims, we think choosing between NASD and NYSE primarily on the basis of "win" rates is ill-advised.

Besides the growing case concentration in 1998, a significant drop-off in new case filings is evidenced in the Chart figures. The decline was especially sharp at NASD, where volume dropped almost 20% from 1999. NYSE stayed about the same, bottoming out after a long, gradual decline during the mid-90's. As we reported in the last issue of SAC ("SRO Forum Statistics," 10 SAC 7(9)), both forums experienced a turnaround in the first quarter of 1999.

The NASD jump was so concentrated in March that we guessed knowledgeable Claimant's attorneys might have been trying to beat a 50% fee hike that went into effect during that month. This appears to have been a hasty conclusion, however, as the April 1999 statistics from NASD demonstrate that the 1999 resurgence continued into last month. For the first four months of this year, NASD new case filings have rebounded 24% (1,960 vs. 1,582) from the same period in 1998. NYSE filing figures through April 1999 also reflect an uptick, a 6% rise from the flat levels of the past two years. There does not as yet seem to be much evidence of change in forum preferences, but the contraction of 1998 is clearly over.

SRO ARBITRATION FIGURES

Case Chart 1996-1998

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						
1996	81	142	49	49	8	3
1997	43	116	18	38	8	5
1998	20	37	2	14	7	5
*The Boston Stock Exchange has had no new filings in the most recent three-year period.						
CHICAGO BOARD OPTIONS EXCHANGE						
1996	19	10	6	4	1	0
1997	12	18	2	4	5	2
1998	20	18	3	3	5	3
*The Chicago Stock Exchange (formerly Midwest Stock Exchange) reported 1 filing in '96, none in '97, and one in '98. The Cincinnati Stock Exchange had no new filings during the three-year period.						
MUNICIPAL SECURITIES RULEMAKING BOARD						
1996	10	6	1	1	5	1
1997	6	15	2	1	9	4
1998	MSRB arbitrations are now administered by the NASD (see 9 SAC 5(16))					
NATIONAL ASSOCIATION OF SECURITIES DEALERS						
1996	5,631	6,331	849	1,155	1,815	977
1997	5,997	5,880	778	750	1,497	875
1998	4,938	5,484	540	628	1,573	937
NEW YORK STOCK EXCHANGE						
1996	648	783	21	42	146	49
1997	546	695	26	34	111	46
1998	544	528	26	24	105	47
PACIFIC STOCK EXCHANGE						
1996	106	100	10	16	36	17
1997	34	121	13	12	21	9
1998	33	31	7	9	11	5
PHILADELPHIA STOCK EXCHANGE						
1996	14	31	2	5	3	1
1997	27	24	3	1	2	0
1998	19	12	5	6	3	2
1995	6,510	7,405	938	1,272	2,014	1,048
1996	6,665	6,869	842	840	1,653	941
1997	5,575	6,111	583	684	1,704	999