

SICA Announces Year 2000 SRO Filing Statistics

SAC's SRO Case Chart lists case filings, case closings, and certain Award results broken down by self-regulatory organization (SRO). Those SROs listed are participating members of the Securities Industry Conference on Arbitration (SICA), through whose good graces SAC obtains and publishes this information. The Chart on the facing page covers 1998-2000 and has been updated periodically since the first Chart appeared in 1 SAC 4(9).

This Chart differs dramatically from those in past years, however, as many of the original ten SRO forums participating in SICA have become inactive. The Cincinnati Stock Exchange was not even listed on the SICA statistics published this year. The Chicago and Boston Stock Exchanges have not reported any customer-related arbitration activity during the last three years. The MSRB, AMEX and PHLX have all boarded up their arbitration forums and shipped the cases to the NASD for handling by its subsidiary, NASD Dispute Resolution, Inc. As a result, during 2000, fewer than 1% of the filings were submitted to SROs other than the NASD and the NYSE.

In terms of the way these figures are presented, "Total Cases Received" in the first column represents the new filings during the year, whether of an industry-related or customer-related character. Similarly, "Total Cases Concluded Including Settlements" reflects the SRO's output and includes withdrawals, administrative terminations, matters stayed by court action, settlements, and cases actually heard and decided. There is no real correlation between the figures in Columns 1 and 2, as the incoming matters in a particular year are not necessarily the outgoing matters. What one can identify in these figures, by comparing the two columns, is whether the number of *pending* matters is rising or falling. Lower closings can signal a bulge in pending matters

that can lead to higher turnaround times and a less efficient forum.

The middle columns show figures for the Small Claims Programs. In this category, the NASD case figures for 1999 and 2000 were affected by that SRO's action to raise the threshold amount for Small Claims matters to \$25,000 from \$10,000. As a result, the percentage of the caseload at NASD-DR that is comprised of Small Claims matters has increased considerably. From 1998 to 2000, the number of Small Claims filings has increased from 540 to 828, or 53%, and as a percentage of all cases filed, Small Claims have moved from 11% to 15% of the total. NYSE has maintained the \$10,000 threshold. Consequently, the Small Claims cases at that forum represent a lower percentage of the whole; in the year past, that percentage was 5%.

There is no indication from the Chart's figures how frequently customers prevail in Small Claims cases or how frequently those matters are actually decided by Award, but the final two columns in the Chart allow a tally for all customer-related Awards. The "Concluded" figures in Columns 2 and 4 of the Chart include all cases closed, whether by Award or not. Column 5, "Public Customer Cases Decided," represents a component of concluded cases, but just those in which customers were involved and an Award issued. The final column, labeled "Awards In Favor of Public," relates to the same component of customer-related Awards, but the numbers reflect only those in which the customer won.

In the case of the NASD, the percentage of Awards involving Public Customers in which the Public Customer receives a favorable Award, i.e., some monetary relief on his/her claims, is 937/1,573 in 1998 (60%), 697/1,148 in 1999 (61%), and 734/1,396 in 2000 (53%). The corresponding NYSE per-

centages for the three years are 45%, 44%, and 47%, respectively. Thus, in 2000, the disparity in "win" rates that has appeared between the two forums in the latter half of the 90's narrowed, as the "win" rate at the NYSE moved up from 44% to 47% and the "win" rate at NASD fell from 61% to 53%.

Comparisons among the forums have been a regular exercise for SAC in past years, but the number of truly active forums has diminished while the differences among the forums have heightened significantly. NASD has member surcharges and hearing process fees that do not have a counterpart at the NYSE. NASD fees are overall higher for customers as well. Threshold amounts are different for the Small Claims programs between these two major forums, the number of Arbitrators that may be used in a case is no longer uniform. Mediation programs exist at both forums, but are quite different in their approach. The way in which Arbitrators are selected for the cases differs radically, as does the staff approach to discovery issues, their presence at hearing and availability to parties, and their views on the Award product.

The rules of play are increasingly different, too. The Uniform Code of Arbitration has been amended many times by NASD, while NYSE tends either to follow SICA's recommendations or put its own twist on things. All of this makes it more difficult to compare the forums on any uniform standard or footing or to draw precise conclusions when statistical findings differ from one forum to the other. On the other hand, these differences may be the best situation for securities arbitration, if there must be only two or three realistic choices for participating parties.

SRO ARBITRATION FIGURES

Case Chart 1998-2000

Y E A R	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						
1998	20	37	2	14	7	5
*The American Stock Exchange merged with the NASD and stopped accepting cases in 1999.						
CHICAGO BOARD OPTIONS EXCHANGE						
1998	20	18	3	3	5	3
1999	22	22	8	7	6	2
2000	14	17	4	4	1	0
*The Chicago Stock Exchange (formerly Midwest Stock Exchange) reported 1 filing in '98, one in '99, and two in '00. CSX closed one case in '98 and two in '00, none of which was customer-related.						
MUNICIPAL SECURITIES RULEMAKING BOARD						
MSRB arbitrations have been administered by the NASD since 1998 (see 9 SAC 5(16))						
NASD DISPUTE RESOLUTION, INC.						
1998	4,938	5,484	540	628	1,573	937
1999	5,608	4,767	983	594	1,148	697
2000	5,558	5,473	828	1,009	1,396	734
NEW YORK STOCK EXCHANGE						
1998	544	528	26	24	105	47
1999	602	507	28	35	102	45
2000	553	604	29	37	116	55
PACIFIC STOCK EXCHANGE						
1998	33	31	7	9	11	5
1999	41	28	8	6	8	6
2000	29	41	5	4	18	11
PHILADELPHIA STOCK EXCHANGE						
1998	19	12	5	6	3	2
PHLX arbitrations have been administered by the NASD since 1999						
1998	5,575	6,111	583	684	1,704	999
1999	6,274	5,324	1,027	642	1,264	750
2000	6,156	6,137	866	1,054	1,531	800