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SECURITIES ARBITRATION
COMMENTATOR

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IN THIS ISSUE

The Top 100 BDs

Surveying Firms' Presence in Securities Arbitration

Take a look at our "Top 100 BDs" Chart that begins on page 3 of this issue and see what changes you can identify in the line-up. The Chart lists in descending order those brokerage firms that were named respondents in the highest number of Awards for calendar years 1995-1996. The accompanying figures in the Chart list Award totals for those two years and also reflect each firm's presence in securities arbitration going forward into 1997 and looking back to an earlier 5.5-year period, May 1989 through 1994. The Awards covered in this survey of SAC's Award Database relate to customer-initiated disputes only.

SAC has periodically published Public Award Surveys (e.g., 3 SAC 3&4, 4 SAC 5, 5 SAC 12, & 8 SAC 2), analyzing arbitration results for brokerage firms with the highest number of Awards. The "line-up" among the firms has always been fairly consistent from one Survey to the next. At least through the end of 1994, the top 5 firms were the biggest wirehouses. The order in the last Survey (see Chart at 8 SAC 2(10-11)) was Smith Barney, Prudential, Merrill Lynch, Dean Witter and PaineWebber. That line-up made some sense. Furthermore, the broker-dealers that followed in the number 6 to 20 slots (a) were those you might expect, in terms of their relative retail presence; and, (b) fell well below the "top five" in number of Awards during the survey period.

The line-up has been changing, though. One notable shift towards the top of the pile has been Bear Stearns and PaineWebber switching places in 1997, as PaineWebber moved down to seventh most active from fifth and Bear Stearns did the reverse. The shift occurred mostly because PaineWebber's presence has lessened in recent years. During our base period of 1989-1994, Bear Stearns experienced an average of approximately 29 Awards per year (both winners and losers), while PaineWebber's average was almost three times that (78). The level of Bear Stearns' presence (in terms of number of Awards per year) has remained relatively stable in the three intervening years (28, 31, and 31), while PaineWebber's general path has been downward (37, 48, and 29).

Indeed, the other four firms in the top-5 bracket have all experienced steep declines in the number of customer-initiated disputes that went to Award in 1997 versus the base period average. In percentage terms, those declines have been as steep as 60% and no less steep than 36%. Indeed, it was that trend which sparked this survey. Back in October, 1997, we noted (9 SAC 3(6)) that, while NASD filing statistics were continuing to rise (see SRO Filing Chart, this issue), the number of Awards attributable to the "top five" firms was declining. We do not have access to a breakdown by firm of <u>claims</u> filed with the SRO arbitration forums — just the Awards — but it seems quite probable that higher settlement rates at the big wirehouses are accounting for at least part of the downward shift. More preventive compliance, early review programs, and openness to alternative negotiation techniques are all part of this potential explanation.

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TOP 100 BDs *cont'd from page 1*

If this were true everywhere, of course, arbitration statistics would have been dropping significantly over the last few years. Instead, the top five firms have been accounting for a smaller and smaller percentage of all SRO Awards — from an average 41% during the base period to 22% in 1997 (and only 18% of our 1998 Awards). Apparently, whatever factors are contributing to a decline in Awards at the largest firms do not seem operative in the remaining firms as a whole. In fact, a comparison of the Award figures in the '89-'94 base period to those in the 1997 column (see Chart at page 3) demonstrates that most of the brokerage firms that occupy the number 6 to 20 slots were involved in more Awards during 1997 than during the base period.

Eleven of the 15 firms (##6-20) reflect increases in the number of Awards rendered in comparison to the base period. Seven of those firms were not even among the top 20 when we did our Public Awards Survey in 1996. This fact leads to another observation that needs to be made when identifying the brokerage firms most heavily involved in arbitration. The composition of the group is in flux. This is certainly a valid observation as to the top 100 and grows increasingly valid as to the top 20.

This rising turnover is a function of changes in the securities industry. Some of the new firms in the top 20 for 1997 were local firms during the base period and have grown in size; others have experienced growth from new styles of trading or serving customers. With market share has come increased litigation. Then there are the brokerage firms, where disciplinary matters suggest arbitration volume (e.g., Stratton Oakmont was expelled from the securities industry in 1996; Greenway Capital (nka Cortlandt Capital) was recently suspended by NASD for failure to pay arbitration awards, as was Investors Associates, Inc. (NTM, 6/98, p. 341); NASD ordered A.S. Goldmen & Co. to pay a $200,000 fine and $1 million in restitution to customers for manipulation and overcharging customers (NTM, 3/98, p. 212). Some firms that used to be in the top 20 have been merged out of existence (Bateman Eichler), gone bankrupt (Thomson McKinnon) or just moved below our screen (Wedbush Morgan).

As we indicated at the beginning of this article, we selected the "top 100" from a survey of the Awards rendered in 1995-1996. The Chart, though, is presented with reference to Awards rendered in 1997, as to which those firms were involved. For this reason, on the low end of the Chart, there appear firms that were involved in no Awards for 1997. We used a two-year period to identify the "top 100" in order to give a higher degree of reliability to our selections, but one can see that many firms fluctuate widely in the extent of arbitration activity they experience in a given

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Top 100 Broker-Dealer Survey

CustomerMember & SmallClaims Awards

Sorted by 1997 Awards **Broker-Dealer Name**	**1997** # Awards	**1996** # Awards	**1995** # Awards	**1989 thru 1994** Total # Awards	 Average* # Awards
Smith Barney, Inc.	100	150	121	1387	252.14
Merrill Lynch Pierce Fenner & Smith	81	121	124	745	135.45
Prudential Securities	64	127	152	820	149.09
Dean Witter Reynolds	59	63	90	512	93.09
Bear Stearns Secs	31	31	28	160	29.09
Investors Assoc Inc	31	13	9	2	0.36
PaineWebber Inc	29	48	37	430	78.18
Charles Schwab	28	20	25	138	25.09
Josephthal Lyon & Ross	28	27	10	46	8.36
Olde Discount Corp	26	69	50	77	14.00
AG Edwards & Sons	22	35	43	147	26.73
AS Goldmen & Co	21	20	9	8	1.45
Gruntal & Co	21	29	23	99	18.00
Greenway Captl	17	9	3	0	0.00
Oppenheimer & Co	16	21	12	118	21.45
Stratton Oakmont	16	34	23	26	4.73
Kidder Peabody & Co	15	24	14	100	18.18
Janney Montgomery	14	5	1	29	5.27
Raymond James & Associates	13	19	4	31	5.64
E*Trade Secs	11	5	4	1	0.18
Everen Secs	11	20	16	34	6.18
Piper Jaffray Hopwood	11	13	9	32	5.82
Chatfield Dean	10	14	9	18	3.27
JB Oxford & Co	10	11	6	39	7.09
Lew Lieberbaum & Co	10	8	10	5	0.91
Titan/Value Eqs Gp	10	9	9	14	2.55
Advest Inc	9	7	5	59	10.73
Quick & Reilly Inc	9	8	2	59	10.73
Dickinson & Co	8	16	0	29	5.27
Fidelity Bkrge Svcs	8	19	15	66	12.00
Joseph Roberts & Co	8	4	2	0	0.00
LaJolla Captl Corp	8	6	5	1	0.18

***Total Awards for the period were divided by 5.5 years to arrive at an average yearly figure.

Broker-Dealer Name	1997 # Awards	1996 # Awards	1995 # Awards	1989 thru 1994 Total # Awards	1989 thru 1994 Average # Awards
Lehman Bros	8	7	2	3	0.55
Sutro & Co	8	6	5	29	5.27
Commonwealth Assocs	7	1	1	1	0.18
Corporate Secs Gp	7	7	4	6	1.09
Edward D Jones & Co	6	4	8	36	6.55
GKN Secs	6	5	3	4	0.73
Stifel Nicolaus & Co	6	6	0	16	2.91
Barron Chase Secs	5	4	3	1	0.18
Biltmore Secs	5	11	5	12	2.18
Dain Bosworth	5	3	4	38	6.91
DH Blair & Co	5	4	6	28	5.09
Hanover Sterling & Co	5	11	10	12	2.18
HJ Meyers	5	5	7	19	3.45
Legg Mason Wood Walker	5	6	4	41	7.45
Reich & Co	5	4	3	2	0.36
Alex Brown & Sons	4	11	6	15	2.73
Berkeley Secs	4	5	1	4	0.73
Cohig & Assocs	4	6	5	23	4.18
Donaldson Lufkin & Jenrette Secs	4	5	2	35	6.36
Fahnestock & Co	4	6	10	27	4.91
Invest Finl Corp	4	1	4	17	3.09
LC Wegard & Co	4	10	8	3	0.55
Pacific Bkrge Svcs	4	4	3	28	5.09
Rickel & Assocs	4	6	2	4	0.73
Robert Thomas Secs	4	5	3	9	1.64
South Richmond Secs	4	7	3	5	0.91
Toluca Pacific Secs	4	4	4	7	1.27
D Blech & Co	3	2	2	0	0.00
Finl Network Inv Gp	3	1	4	8	1.45
Gibraltar Secs	3	1	2	6	1.09
Hamilton Inv	3	5	2	7	1.27
JB Hanauer & Co	3	3	3	3	0.55
Rauscher Pierce Refsnes	3	4	5	34	6.18
Smith Barney Harris Upham	3	2	9	224	40.73
Schneider Secs	3	6	2	7	1.27
Wheat First Butcher Singer Inc	3	9	4	27	4.91

Broker-Dealer Name	1997 # Awards	1996 # Awards	1995 # Awards	1989 thru 1994 Total # Awards	1989 thru 1994 Average # Awards
BA Inv Svcs	2	5	4	0	0.00
Beacon Secs	2	7	2	0	0.00
Crowell Weedon	2	3	3	5	0.91
Cruttenden & Co	2	1	2	4	0.73
First Albany Gp	2	4	4	16	2.91
Hibbard Brown & Co	2	11	1	45	8.18
JW Bullard & Co	2	1	7	0	0.00
JC Bradford & Co	2	2	7	12	2.18
Kennedy Cabot & Co	2	4	8	44	8.00
M Rimson & Co	2	28	11	4	0.73
Robert Todd Finl	2	8	4	8	1.45
Tucker Anthony Inc	2	1	3	26	4.73
Waterhouse Secs	2	6	4	21	3.82
AT Brod & Co	1	3	4	2	0.36
Camelot Inv Gp	1	3	3	2	0.36
Cowen & Co	1	5	3	30	5.45
CS First Boston Corp	1	2	0	2	0.36
First Affiliated Secs	1	1	6	24	4.36
Morgan Keegan	1	3	2	11	2.00
Natl Discount Bkrs	1	9	4	0	0.00
New England Secs	1	2	3	4	0.73
Paragon Captl Corp	1	5	1	14	2.55
RAF Finl Corp	1	5	4	11	2.00
Tamaron Inv	1	4	2	0	0.00
The Ohio Co	1	2	5	15	2.73
Citicorp Inv Svcs	1	3	5	6	1.09
Amerinatl Finl Svcs	0	4	3	0	0.00
Barrett Day Secs	0	2	4	13	2.36
Cartwright & Walker Secs	0	7	4	0	0.00
Dunhill Eqs	0	2	3	7	1.27
Emanuel & Co	0	2	3	6	1.09
John Hancock Distrs	0	4	2	12	2.18
Total # of Awards	**957**	**1348**	**1145**	**6346**	**1153.8**

TOP 100 BDs *cont'd from page 2*

year. Displaying year-to-year Award statistics for the "top 100," we think, makes this variability evident; in addition, it illustrates that a high percentage of the Award activity relates to a relatively few houses.

In a 1997 Rule filing, the NASD indicated that, during 1996, 753 broker-dealers were named in cases filed for arbitration, but that a selected group of 88 highly-capitalized firms accounted for more than 50% of the case volume (see 9 SAC 1(15)). We sit on the other end of the "pipeline," where we review final Awards. Our statistics also support the notion of concentrated activity. On the other hand, Award activity has waned considerably at the very top in the last three years, while the annual filings, according to our SRO Filing Chart, have hovered in a range between 6,500-7,300 and the number of customer-initiated Awards in SAC's Award Database has ranged from about 1,500-1,850.

Thus, overall Award and new filing figures have remained fairly stable, while the number of Awards attributable to the traditional top five have been more than halved. Who are the new respondents? That is the question which sparked this Survey. We have found a variety of answers, but none that predominate. First, the participants keep changing. The top 20 or the top 100 varies from year to year, so we are dealing with a moving target. Still, we can state that, while the traditional top five went from 41% of the whole to 22%, those firms in the 6 to 20 slots of SAC's top 100 picked up some of the slack, moving from a 13% share in the base period to a 21% share in 1996 and 1997.

We think that shift represents the greatest influence in identifying the nature of the shift. Anecdotal evidence suggests that more of the cases going to hearing concern firms that (1) have not yet adopted early review programs; (2) are defending disputes that invoke important principles (e.g., limited liability of clearing firms); (3) have "special situation" cases, where settlement is more difficult; or (4) are heading for regulatory or financial ruin in any case. Some of our Award figures verify these theories, when applied to particular broker-dealers identified on our Chart. Readers with extrinsic knowledge about specific firms will no doubt see more in the figures.

On a more general plane, we think the figures reflect a broadening of arbitration's reach to more firms and to a wider spectrum of disputes. The increased presence of the firms in the number 6-20 slots is one sign of that broadening, but more arbitrations against even smaller, less well-known firms have also offset the impact of the top 5's declining presence. For example, the top 20 firms appearing in our 1996 Survey accounted for 58% of all of the Award activity, whereas our "top 20" broker-dealers in the current Survey represented about 50% of the overall Award count in 1996 and only 43% of the count in the 1997 Awards, while the "top 100" represented 73% of the 1996 activity and 64% of the 1997 activity.

This means that more and more of the activity is coming from non-traditional sources. What are the forces leading us in this new direction? Here are some thoughts. It is easy to say that it all results from microcap fraud and, certainly, the extended bull market creates a climate conducive to certain abusive sales practices. Is this all there is to it, though? To the extent that the arbitration activity derives from smaller firms that have not been sued by customers often enough to view it as a non-extraordinary event, settlement will be more difficult financially and philosophically, and one is more likely to see a decision in the dispute by the arbitrators, i.e., an Award.

Then, too, an infrastructure has been built around the persistent arbitration volume of the late 80's and the 90's. It is comprised not only of established rules, procedures, and the appropriate administrative support, but also an established corps of experts, of specialized attorneys on both sides, of funnelling networks, of Websites, media attention, and, even, this newsletter. That infrastructure is geared to lead aggrieved investors towards arbitration as a likely avenue for redress. While this infrastructure has grown around the disputes involving the large wirehouses (just as mediation is now establishing its infrastructure around such disputes), it has become established enough in recent years to service the investor in disputes with smaller firms.

Is all this good for arbitration and for the securities community? Well, to the extent that investors formerly without redress are finding acceptable and affordable avenues for seeking justice, investor confidence will likely be enhanced. Properly embraced, arbitration can serve well the smaller houses and their customers by assuring them of a practical means to resolve any disputes. This is arbitration's key role. If, though, what we are seeing is to any degree a rolling infrastructure driving the new demand, simply to feed its momentum, then, like a waning bull market that broadens out to smaller stocks at its climax, this trend is not good and the phenomenon will not last. Take a look at the Chart and let us know what you think (see this month's question on the self-addressed insert sheet).

Letters to Editor

Both phone calls and notes came in response to the question we posed on last edition's cover sheet, i.e., "How would you rate SAC's execution of its editorial policy: pro-arbitration and party-neutral? Please provide comment with your answer." The phone calls were from colleagues who addressed themselves more to the issue of the editor *qua* attorney — we appreciate the thought and guidance. We received four cover sheet responses: one said pro-industry, one said pro-claimant, and two said party-neutral. The remainder of their comments were generally complimentary about SAC (so self-serving to quote) or otherwise personal. A SAC thanks to those who took the time to write.