

Mini-Survey: Top BDs of 2016 – Part II

Last week, we identified and began surveying the 2016 Award records of the five broker-dealers (BDs) with the largest number of Awards that year, with special attention on Customer-Member Awards, and compared the results to those of the similar survey we did for 2015 with respect to the same BDs' Awards. This week, we finish our survey, focusing on the five top BDs' use of inside and outside counsel.

As we noted last week, these five BDs, in order of Award frequency, are: Morgan Stanley (106), Wells Fargo Advisors (101), UBS Financial (67), Merrill Lynch (57) and Ameriprise Financial (37). They were also the five BDs with the most Awards in 2015 (*ed: a sixth BD that we covered in 2015, TD Ameritrade, did not have enough Awards to qualify*).

Inside/Outside Counsel

Whenever a BD must arbitrate, it has the choice of using its own corporate counsel (inside counsel or ISC) or retaining a private law firm (outside counsel or OSC) to appear on its behalf. We were unable to identify the counsel in only one Award of the 368 surveyed (an intra-industry case in which Merrill Lynch was a respondent, but did not enter an appearance). The chart below shows the number of times each BD in our survey used "ISC" and "OSC" counsel and the context in which they served (the named BD as respondent in Customer-Member, Small Claims and Intra-Industry cases and the named BD as claimant).

LARGE BROKER-DEALER'S USE OF INSIDE COUNSEL (ISC) AND OUTSIDE COUNSEL (OSC)						
2016 AWARDS		Broker-Dealer (BD) as Respondent			BD as Claimant	Total
Broker-Dealer	Type of Counsel	Customer-Member	Small-Claims	Intra-Industry		
Ameriprise Financial	ISC	9	5	2	2	18
	OSC	7	0	2	10	19
Merrill Lynch	ISC	0	0	2	0	2
	OSC	30	2	9	13	54
Morgan Stanley	ISC	25	7	5	1	38
	OSC	22	0	9	41	72
UBS	ISC	0	0	4	0	4
	OSC	32	2	18	11	63
Wells Fargo Advisors	ISC	39	7	6	11	63
	OSC	4	0	9	25	38

KEY TO CHART: The numbers in the Chart represent the number of times that a broker-dealer employed either inside counsel (ISC) or outside counsel (OSC) in FINRA Awards issued in 2016. The column headings describe in which capacity (claimant or respondent) the broker-dealer appears as a party and, where it is a respondent, the type of dispute in which it is named. *(ed: For the reason that the total number of Morgan Stanley Awards as shown on the Chart is greater than its actual number of Awards, see the comments below.)*

The Chart above shows a variety of patterns in counsel assignments. Merrill Lynch and UBS relied heavily on OSC, regardless of context; that was also the case in 2015. Morgan Stanley leaned heavily on OSC in defending industry-initiated cases and exclusively on ISC in Small Claims cases, but used both in Customer-Member cases and as a claimant (though with a strong preference for OSC in the latter set of cases); the same pattern applied in 2015. Wells Fargo mainly used ISC in customer-initiated cases, but displayed a less lopsided preference for OSC in intra-industry cases; the same could be said in 2015. Finally, Ameriprise relied on ISC in Small Claims, used OSC more often than ISC when it was a claimant and tended to split the labor more evenly when it was defending either a Customer-Member or an intra-industry case. The only difference in 2015 was that the BD displayed only a slight preference for OSC when it was a claimant.

*(ed: *Morgan Stanley was unique among the five BDs in that inside and outside counsel entered joint appearances in four cases resulting in 2016 Awards, three Customer-Member and one Member-Employee. No other BD in our survey used both in any Award, either jointly or by replacing one set with another. **Wells Fargo brought the only two Member-*

Customer cases in the survey; one, prosecuted by ISC and the other by OSC, are both included in Wells Fargo's "BD as Cs" category.)

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