

**DISAPPEARING NPA** *cont'd from page 3*

throughout the four-year period, while customer-related Awards have declined from almost 2,000 Awards in 2005 to just 420 in 2008. This dramatic shift on the customer side verifies, we think, that the significant decline in cases filings during this period was attributable almost entirely to a drop in customer-related claims.

To the extent the number of claims exceeding \$100,000 increases with the recent surge in customer claims, more cases will be eligible to satisfy the Pilot

Program requirements and more cases will remain that will involve the Non-Public Arbitrator. Still, we believe, the All-Public Panel will play a predominant role in FINRA arbitration over the next few years. Will that prospect dissolve opposition to the Industry Arbitrator or, indeed, to mandatory arbitration? Probably not.

One salutary consequence of the All-Public cases will certainly be that more data will be available to test the impact of the Industry Arbitrator on

Award outcomes. We examined the Industry Arbitrator's role in a 2005 edition of SAC ("Industry Arbitrator Award Survey," 2005 SAC, No. 4(1), available at "View Award Surveys," [www.sacarbitration.com](http://www.sacarbitration.com)). In that survey, we only had for comparison to Mixed Panel Awards those matters decided by single Public Arbitrators and those involving dissenting arbitrators. There were problems with each. The new data should be plentiful and more directly comparable. Will it settle the debate? Probably not. 

## Award Survey Refinements/Revisions

### *Top BDs in Arbitration (2003-2007)*

Subscribers continue to comment upon the Award Survey we published in 2008 SAC 1. As a result of a couple of those comments, we return in this article to make one change and a couple of improvements to the Charts we presented in that Survey. The Survey, readers may remember, named the "Top Broker-Dealers in Arbitration" for a five-year period from 2003 to 2007 and presented Award results for each of the 18 selected brokerage firms. The Award results were analyzed to reflect customer and employee win rates and recovery rates with regard to each firm.

We explained in the text accompanying the Charts that, in surveying the five-year period, we had adjusted for name changes and mergers along the way. In one case, Ameriprise, we stated that we had also searched for Awards involving Securities America and American Express Financial Advisors. Perhaps we did, but a subscriber inquiry led us to find that we failed to include those search results from AEFA and Securities America when presenting the Ameriprise results in Chart II of our article. The revised Chart II, which appears on page 5, cures that omission.

Another subscriber reminded us that, in at least one past SAC Survey, we had utilized the size of the broker sales force as a comparison indicator to

place in perspective the differing Award results from one broker-dealer to the next. During our survey period, almost \$800 million was awarded to winning customers in arbitration. That sizeable sum, when spread over approximately 4,500 "winning" Awards during the survey period, yields an impressive six-figure average. When spread over the entire broker population, however, that \$800 million reduces to about \$1,200 per registered representative (RR). The costs of misfeasance and malfeasance are considerable, but the fault lies with a relatively small minority.

By comparing the sales force size of each broker-dealer in our Award Survey, we adjust for the differences in size among the firms and see more clearly how different firms actually fare in arbitration. In a new Chart on page 6 of this issue, we list the 17 broker-dealers from our original survey (Prudential does not appear in this Chart), the amounts awarded to customers during 2003-2007, the number of retail RRs the firm employed at the close of the survey period, and the average annual cost per broker of paying arbitration Awards to customers.

The ranges are wide, both among houses that pursue the same kind of business and among those that pursue differing business models. One stark

distinction we saw in pursuing this dollars-per-broker analysis appears in terms of the different business models. The online shops that rely heavily on self-directed trading have arbitration costs per broker each year that are small in contrast with the wirehouse business model. Fidelity, a mutual fund distributor, takes the prize for the lowest cost per broker. The so-called "indies" reflect a variety of experiences, but generally do better than the national and regional houses.

UBS turned in the best performance among the national wirehouses and that, despite a blockbuster Award in 2005. Bear Stearns had a relatively small sales force that catered to a high-end clientele and that is reflected in the relatively large amounts at stake in arbitrations involving that firm. We adjusted for one Award that totaled more than \$16 million, because Bear Stearns only had to pay \$200,000 of that amount, but the firm still came in at the top of the listing with an average payout per broker of almost \$8,000!

We hope this additional perspective regarding the Top BDs analysis proves helpful to our readers. SAC thanks to the helpful subscriber who made the suggestion to go this route. We welcome similar suggestions for future SAC Award Surveys. 

## CHART II

### 2nd TIER/TOP BDs IN ARBITRATION 2003-2007

5-Year Period '03-'07	Customer as Claimant No. Awards		Customer-Initiated Median/Average Recovery Rate (%)	Employee as Claimant No. Awards (#)	Employee-Initiated Median/Average Recovery Rate (%)
	C-M/Wins	S-C/Wins			
<b>Prudential Securities</b>					
Totals	281/130 (46%)	19/12 (63%)	Med 24% Avg 19%	45/13 (29%)	Med 13% Avg 9%
<b>Oppenheimer &amp; Co.</b>					
Totals	132/63 (48%)	11/3 (27%)	Med 28% Avg 52%	12/6 (50%)	Med 28% Avg 24%
<b>Raymond James</b>					
Totals	102/55 (54%)	7/5 (71%)	Med 31% Avg 24%	8/4 (50%)	Med NR% Avg 4%
<b>Edward Jones</b>					
Totals	158/76 (48%)	44/13 (30%)	Med 38% Avg 69%	0/0 (N/R)	----
<b>RBC-Dain Rauscher</b>					
Totals	50/24 (48%)	8/3 (38%)	Med 19% Avg 10%	8/5 (63%)	Med 14% Avg 9%
<b>Charles Schwab</b>					
Totals	72/26 (36%)	33/13 (39%)	Med 30% Avg 15%	9/2 (22%)	N/R
<b>Bear Stearns</b>					
Totals	79/39 (49%)	1/1 (N/R)	Med 16% Avg 43%	12/6 (50%)	Med 41% Avg 23%
<b>Wells Fargo Investments</b>					
Totals	43/14 (32%)	9/5 (56%)	Med 41% Avg 31%	5/2 (40%)	N/R
<b>H&amp;R Block</b>					
Totals	38/11 (29%)	8/2 (25%)	Med 30% Avg 30%	6/3 (50%)	N/R
<b>TD Ameritrade</b>					
Totals	24/11 (46%)	30/11 (37%)	Med 55% Avg 75%	0/0 (N/R)	----
<b>Ameriprise</b>					
Totals	77/43 (56%)	5/2 (40%)	Med 10% Avg 31%	10/4 (N/R)	Med NR% Avg 10%
<b>Fidelity Brokerage Services</b>					
Totals	7/43 (16%)	11/24 (46%)	Med 64% Avg 26%	1/1 (N/R)	N/R
<b>ALL BDs 5 Years</b>	2656/5846 (45%) 635/1756 (36%)		Med 33% Avg 32%	419/928 (45%)	Med 24% Avg 14%

## TOP BDs IN ARBITRATION BY SALES FORCE SIZE

Broker-Dealer Name	# Retail RegReps (Ranking)	\$ Awarded to Customer Claimants (2003-2007)	\$ Awarded Broker/Year (Ranking)
Merrill Lynch	15,880 (1)	\$103,270,500	\$1,301 (6)
CGM/Smith Barney	11,266 (2)	\$54,246,900	\$963 (7)
Edward Jones	10,532 (3)	\$21,259,000	\$404 (12)
Wachovia Securities	10,137 (4)	\$35,127,200	\$693 (10)
Morgan Stanley/DW*	8,030 (5)	\$60,803,000	\$1,514 (5)
UBS PaineWebber	7,880 (6)	\$23,286,200	\$591 (11)
A.G. Edwards & Sons	6,541 (7)	\$24,812,600	\$759 (9)
Fidelity Brokerage Services	6,523 (8)	\$731,000	\$22 (17)
Charles Schwab*	6,268 (9)	\$3,165,000	\$101 (15)
Ameriprise Financial	3,178 (10)	\$48,305,000	\$3,040 (3)
TD Ameritrade	2,421 (11)	\$830,000	\$69 (16)
RBC-Dain Rauscher	1,810 (13)	\$8,320,000	\$919 (8)
Oppenheimer & Co.	1,395 (15)	\$30,885,000	\$4,428 (2)
Raymond James Finl.	1,218 (16)	\$10,583,000	\$1,738 (4)
Wells Fargo Investments	1,180 (17)	\$1,232,000	\$209 (14)
H&R Block	919 (20)	\$1,022,000	\$222 (13)
Bear Stearns	540 (26)	\$21,390,000	\$7,922 (1)

### NOTES

\* Our source for the Retail RR figures is the SIFMA 2007-2008 Yearbook (p. 28). Morgan Stanley and Charles Schwab did not appear in the SIFMA Retail RR Chart, so their numbers include institutional brokers.

1. Some large BDs were not included in this Chart. While they had enough RRs to rank among the top 26 retail firms, they were not listed among the Top BDs in Arbitration in our original Award Survey. They are: Fifth Third (#12), E\*Trade (#14), Morgan Keegan (#18), National Bank Finl. (#19), Janney Montgomery (#21), Deutsche Bank Secs. (#22), T. Rowe Price Inv. (#23), Robt. W. Baird (#24) and Stifel Nicolaus (#25).

2. The Column 3 figures may include some very large-dollar Awards. Other Respondents in a particular case may have shared in the liability. We checked Awards in excess of \$10 million and adjusted as necessary to avoid any anomaly.