STUDY: LITTLE JUSTICE FOR INVESTORS? WINS AND RECOVERY PERCENTAGES DOWN FOR INDIVIDUALS FORCED TO USE SECURITIES ARBITRATION

Investors Recovered Just 22 Cents on Dollar in 2004, Down From 38 Cents in 1998; Wins Dropped From 59 Percent in 1999 to 44 Percent in 2004, Lowest at Big Brokerages.

NEW YORK CITY///June 13, 2007///Individual investors who are compelled to rely on industry-run securities arbitration to resolve their claims against stockbrokers are winning fewer cases and recovering less money in the process, according to a major study of 14,000 NASD and New York Stock Exchange (NYSE) securities arbitration cases from 1995-2004. The study shows that individual investors fare particularly poorly if they have major claims and/or are customers of large brokerage firms.

Entitled *"Mandatory Arbitration of Securities Disputes: A Statistical Analysis of How Claimants Fare*," the new report from Edward S. O'Neal, Ph.D., and Daniel R. Solin reaches these major conclusions:

- The raw win rate for investors in arbitration has dropped from a high of 59 percent in 1999 to 44 percent in 2004. This overall figure includes a lower win rate (39 percent) at the three largest brokerage firms that do business with the largest numbers of investors.

- Award percentages reached a high in 1998 of 68 percent and have steadily declined to stabilize at approximately 50 percent in the 2002-2004 time period.

- Investors in arbitration were awarded 22 cents on the dollar in 2004 (as a percentage the amount claimed) versus 38 cents on the dollar in 1998.

- The larger the award and the brokerage firm involved, the smaller the recovery. Claimants in arbitrations against top 20 brokerage firms face an expected recovery percentage that is approximately 28 percent in claims under $10,000. The expected recovery percentage plunges to approximately 12 percent in claims over $250,000.

- Award requests increased significantly over the entire period while average awards remained nearly constant. In 1998, the average award was $56,000 while in 2004 it was $59,000. This 6 percent increase in real awards is dwarfed by the difference in award requests, which rose over 300 percent from $168,000 in 1998 to $540,000 in 2004.

Edward S. O'Neal, Ph.D, was a faculty member with the Babcock Graduate School of Management, Wake Forest University when the study was compiled and now is a principal with Securities Litigation and Consulting Group, Inc. (SLCG). Daniel R. Solin is both a securities arbitration attorney and Registered Investment Advisor (RIA). Solin is senior vice president of Index Funds Advisors, Inc., and the author of *The Smartest Investment Book You'll Ever Read* (Perigee Books, 2006).

Solin said: **"This study paints an alarming picture of a steadily worsening situation for investors who have no alternative to securities arbitration administered by the very industry that they are suing. This process clearly does not have the perception of fairness. There may be innocent explanations for the fact that the chances of an investor recovering significant damages from a major brokerage firm are statistically small in mandatory arbitration. However, our data clearly indicates a decline in both the overall 'win' rate and the expected recovery percentage against major brokerage firms, at a time when the misconduct of these firms reached its apex with the analyst fraud scandal."**

O'Neal said**: "We believe that this study may provide the best window yet to see what actually happens in arbitration. Crude win rates and the percent of amount claimed that was awarded are an inaccurate and misleading basis for assessing the impact of the**

mandatory arbitration system. Win rates alone do not give an accurate picture of how investors or brokers fare in the arbitration process. In a $100,000 claim, a win with an award of $5,000 (or even less) is far different than a win with an award of $100,000. However, both are counted as wins when win rates are analyzed on a crude basis. Our analysis considers the amount awarded and the size of both the claim made and the firm against whom the claim is made. As a result, our study presents a far more accurate basis with which to assess the mandatory arbitration process."

In the study, the authors raise serious doubts about any argument that settlements explain away the worsening numbers for investors: "Critics of studies that look at arbitration outcomes point to the fact that many, if not the majority, of claims brought against securities firms are settled rather than taken all the way through arbitration … Such criticism is clearly anecdotal. Because settlement agreements are confidential, there is no way to analyze the typical or average settlement outcome. However, even settlement terms would be influenced by the perception of an unfair arbitration process."

To read the full study on the Web, go to http://www.smartestinvestmentbook.com or http://www.slcg.com.

METHODOLOGY

O'Neal and Solin collected data on NASD and NYSE arbitrations that occurred between January 1995 and December 2004. They attempted to collect every arbitration decision that was handed down in either forum, even though the NASD would not provide copies of its awards. As the authors note: "We were able to obtain these awards from the LEXIS database and, in the context of litigation with the NASD, obtained its permission to use these awards for non-commercial purposes only. The NYSE would not provide us with copies of its arbitration awards and required us to go to its library and physically copy every award." Of the total, 90 percent of the cases were in the NASD's arbitration forum and the remaining 10 percent were NYSE cases. Each year of the study sample has at least 700 cases with a high of just over 2000 cases in 2004.

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CAN'T PARTICIPATE?: A streaming audio recording of the news event will be available on the Web as of 7 p.m. EDT on June 13, 2007 at http://www.smartestinvestmentbook.com and http://www.slcg.com.