doesn't resolve the fundamental issue, which, according to Singer, is whether or not arbitration offers investors a fair alternative to court. (Singer readily conceded, however, that "If they stop posturing, many customers' attorneys would have to admit that arbitration is a quicker, cheaper alternative.")

"If the process is as troubled as the GAO says it is," Singer wondered aloud, "then, perhaps, arbitration cannot be under the sole province of the industry."

He added, "If you want to assure the public that arbitration is a fair process, you can't force public investors to have their cases heard under the auspices of the NYSE and the NASD." Singer proposed, therefore, that the industry's SROs consider "demutualizing" the arbitration process.

As for the issue of unpaid arbitration awards, Singer said, "I don't believe you can necessarily criticize raw statistics." In other words, the numbers are what they are, but they don't reflect that, in Singer's estimation, 80%-85% of arbitration cases are settled without going to a hearing and that when awards are only partially paid, that occasionally means customers are not getting portions of inflated damage awards. Moreover, Singer pointed out, no comparative study of court- and jury-imposed awards has been done.

Martin Kaplan, a New York securities attorney with Gusrae Kaplan & Bruno, said of the GAO report, "These statistics are meaningless." Kaplan explained that arbitration participants have all the remedies that a court of law affords litigants. Therefore, he added, if an award goes unpaid, a claimant could get the award confirmed and the judgment executed by a court. The award could be paid, at least in part, by garnishing a respondent's salary, by executing against property or by seizure of assets. In the real world, however, awards occasionally do not get paid, whether issued by a jury or an arbitration panel, Kaplan noted.

Seth Lipner, a founding partner of Deutsch & Lipner, in Garden City, N.Y., as well as a member of PIABA and professor of law at Baruch College's Zicklin School of Business, said, "I think the GAO did very good research in demonstrating that there are a lot of unpaid arbitration awards. To lay blame at the feet of the NASD, however, is not correct."

There are three factors that contribute to the continuing problem of unpaid arbitration awards, according to Lipner: the net capital rule, a need for more regulators, and the fact that clearing firms have "a legal right," à la the A.R. Baron/Bear Stearns affair, to look the other way when an introducing firm commits fraud. "If you take the profit out of fraud," Lipner argued, "it'll be cut out."

As for the GAO report's ability to affect change, Lipner said a lot depends on the outcome of this fall's congressional elections. If the Democrats prevail, Lipner predicted, then the report could lead to important changes. Otherwise, he concluded, "the GAO report will collect dust."

David E. Robbins, a New York securities attorney, past director of arbitration at the Amex, writer and editor of numerous books on securities arbitration and an arbitrator, disagreed with his colleague, Bill Singer. Robbins contended the arbitration process is not the problem, but what happens once the decision is made that's the problem.

Whether you're in court or before an arbitration panel, Robbins explained, if you've won a case against a boiler room operation that is now out of business, you're facing the same problem. With arbitration, however, the process is cheaper and quicker, he pointed out. Moreover, he argued, in arbitration your case generally will be heard by a more intelligent group of people than an average jury.

As for solutions to the problem of unpaid awards, Robbins pointed to a case he fought before a NYSE arbitration panel a couple of years ago. In that case, against the now defunct firm, D.H. Blair, Robbins, at the outset of the arbitration hearing, persuaded a court to order the firm, before it went out of business, to put $500,000 in an escrow account. Therefore, funds were available when the time came to pay the claimants their damage awards.

"To their credit," Robbins added, "the NASD really will try to get your money if the firm still is a NASD member or if the broker is part of a member firm and the NASD will pursue suspensions."

Jenice Malecki, an arbitrator with the NASD and a New York securities attorney who runs her own practice representing claimants and defendants, said she was not surprised by the GAO's findings and she cited administrative and procedural delays as a major factor in unpaid arbitration awards. For example, Malecki noted, she filed a case in October on behalf of a claimant and the respondent wasn't required to file a response until mid-January. Such delays, many argue, give fraudulent firms the time to dissipate assets and close up shop to avoid paying damages. After all, Malecki pointed out, the defense attorney's mantra is "delay, delay, delay."

Malecki also suggested that the SROs and other organizations sponsoring arbitration hearings must improve training and monitoring of arbitrators and increase support staff.

For example, she said, arbitrators should be required to submit reasoned decisions, explaining why or how they came to the conclusions in a case. Reasoned decisions would give the sponsoring authority a way to evaluate the performance of arbitrators, she maintained, and would enable claimants' and respondents' attorneys to make more informed choices when it comes to the arbitrator selection process.—*RJ*

PRU SPECIAL ACCOUNTS GROUP LANDS BIG PRODUCER

The Special Accounts division at Prudential Securities, led by group heads John Wilson and Dick Fiducia, sales manager Michael Stern, and COO Barry Ackerman, recently hired Frank Cordovano, a significant producer from First Union