SECURITIES ARBITRATION ALERT 2020-42 (11/12/20)

George H. Friedman, Editor-in-Chief

FEATURE ARTICLE:

- ***Contracts of Adhesion and Securities Arbitration: How FINRA Attempts to Mitigate Harm to Investors,*** **by Christian Mercado**

SQUIBS:

- **SCOTUS Review Sought of Split Ninth Circuit Decision Holding that FAA Section 1 Carveout *Does Not Require* that Worker Have Moved Goods Across State Lines**
- **Nebraska Supreme Court: If Motion to Vacate is Denied, Trial Court Under State's Arbitration Act has "No Option" But to Confirm Award**

SHORT BRIEFS:

- **Eleventh Circuit: Upon Further Review, Intervening SCOTUS Ruling Dictates We Change Our Minds**
- **SDNY: Broad PDAA and Delegation Provision in Older Contract Covered Arbitrability Issue Involving Newer Forum Selection Clause Calling for Litigation**
- **Attorney Sanctions Upheld for Frivolous Attempt to Lift Stay of Litigation**
- **Now *That's* Expedited Investor Dispute Resolution!**
- **ICC's Young Arbitrators Forum Announces Several Online Programs**

QUICK TAKES:

- ***Swain v. LaserAway Medical Group, Inc.*, No. B294975 (Calif. Ct. App. 2 Nov. 3, 2020)**
- ***Dan Ryan Builders, Inc. v. Williams*, No. 18-0579 (W. Va. Nov. 6, 2020) (memo)**
- ***Brin v. Voya Financial Advisors Inc.*, FINRA No. 20-00465 (Orlando, FL, Oct. 13, 2020)**

ARTICLES OF INTEREST:

- **Claxton, James M., *Faithful Friend and Flattering Foe: How Investment Treaties Both Facilitate and Discourage Investor-State Mediation*, Rikkyo University (September 13, 2020)**
- ***Class Arbitration - Two Cautionary Tales for Employers*, JD Supra (Nov. 4, 2020)**
- **Arbitrators Clean *Record of Jones Broker Fired for Licensing Slip*, AdvisorHub (Nov. 4, 2020)**
- ***Could the Gig Economy Send Another FAA Disagreement to the Supreme Court?* Law.com (Nov. 5, 2020)**
- ***Signing the Arbitral Award in Wet Ink: Resistance to Technological Change or A Reasonable Precaution?* Kluwer Arbitration Blog (Nov. 6, 2020)**

DID YOU KNOW?

- **ARBCHEK Offers Advanced Arbitrator Research and Analysis**

→ → → Click on "Download the Alert" for the full issue

A NEW FEATURE ARTICLE: HOW FINRA'S ARBITRATION FORUM MITIGATES RISKS OF INVESTOR HARM. *Although the official election results may be in flux for a while, of this we are certain: consumer and employment arbitration will again be a focus of the next Congress, and securities arbitration will be part of the discussion. With that in mind, this edition of the* Arb Alert *leads with a new feature article,* Contracts of Adhesion and Securities Arbitration: How FINRA Attempts to

Mitigate Harm to Investors, *by Christian Mercado. In it, he reviews the development of FINRA's arbitration forum and the several steps it has taken to mitigate risks mandatory arbitration presents to investors, and concludes there is still work to do.*

FEATURE ARTICLE

Contracts of Adhesion and Securities Arbitration: How FINRA Attempts to Mitigate Harm to Investors¸ *by Christian Mercado.* The securities industry is an example of one attempting to mitigate equity concerns surrounding arbitration agreements contained in contracts of adhesion. In the United States, disputes arising from a customer-broker contract or agreement mandating arbitration are almost invariably heard by one specific and centralized ADR provider. In this case, that central entity is the Financial Industry Regulatory Authority, Inc. ("FINRA"), which is directly regulated by the Securities and Exchange Commission. This article analyzes how arbitration clauses born from contracts of adhesion are treated within the securities industry. It further examines how FINRA's policies have fared in mitigating the potential harm of contracts of adhesion for unsophisticated investors.
(ed: Christian Mercado is currently a third-year law student at Fordham University School of Law who has worked within the school's Securities Litigation & Arbitration Clinic for two semesters. While with the clinic, he participated in the process of successful negotiations with a large broker-dealer as well as being a part of a litigation team that will argue a case before FINRA this winter. He thanks Fordham Law Prof. George Friedman for his guidance in preparing this article. The author may be reached at cmercado13@fordham.edu.) ***Read more****….*
return to top

SQUIBS: IN-DEPTH ANALYSIS

SCOTUS REVIEW SOUGHT OF SPLIT NINTH CIRCUIT DECISION HOLDING THAT FAA SECTION 1 CARVEOUT *DOES NOT REQUIRE* THAT WORKER HAVE MOVED GOODS ACROSS STATE LINES. ***As we've suggested every time we report on this issue, the Supreme Court is being asked to review whether FAA section 1 exempts from coverage only workers actually moving goods or people in interstate commerce.*** We covered in SAA 2020-32 (Aug. 26) *Rittmann v. Amazon.com, Inc*., No. 19-35381 (9th Cir. Aug. 19, 2020), where a divided Ninth Circuit held that Federal Arbitration Act ("FAA") section 1 exempted from coverage Amazon "last mile" drivers, who delivered goods that had moved in interstate commerce, even though the drivers did not cross state lines. The majority sided with those Circuits finding it sufficient that the goods have been part of the "stream" of interstate commerce. Dissenting Judge **Daniel J. Bress** drew a distinction between the definition of interstate commerce in FAA sections 1 and 2, noting that the former is very narrow. We later reported in SAA 2020-34 (Sep. 9) that Amazon on **September 2** filed a Petition for Panel Rehearing and Petition for Rehearing *En Banc*. The three arguments (*ed: set forth* verbatim) were: 1) The Majority's stream-of-commerce standard conflicts with decisions of other circuit courts; 2) The Majority's stream-of-commerce standard conflicts with the FAA's language and purposes and Supreme Court precedent; and 3) The Majority's invalidation of the parties' arbitration agreement also warrants review. As reported in

SAA 2020-37 (Oct. 7, 2020), the Court on **September 25** denied both Petitions in a one-page Order.

A Primer on the Section 1 Carveout
To review, it is hornbook law that the FAA enforces predispute arbitration agreements involving a hint of interstate commerce. Section 1, however, has a carveout providing: "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." SCOTUS has addressed the section 1 carveout more than once. The Court held in *Circuit City Stores v. Adams*, 532 U.S. 105 (2001), that the exemption covers only workers actually engaged in interstate commerce. More recently in *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019), SCOTUS held that the carveout was not limited to employees, and in fact covered independent contractors.

Circuit Courts are Split
There is a clear Circuit Court split on whether the section 1 exemption embraces only workers actually moving goods or people in interstate commerce (Fifth, Seventh, and Eleventh Circuits) or is to be construed more broadly to cover those who are part of the "flow" or "stream" of interstate commerce (First and Ninth Circuits). See, for example, *Waithaka v. Amazon.com, Inc.*, No. 19-1848 (1st Cir. Jul. 17, 2020), covered in SAA 2020-27 (Jul. 22): "… the exemption encompasses the contracts of transportation workers who transport goods or people within the flow of interstate commerce, not simply those who physically cross state lines in the course of their work." Compare to then-Judge Coney Barrett's Opinion in *Wallace v. Grubhub Holdings, Inc.*, Nos. 19-1564 & 19-2156 (7th Cir. Aug. 4, 2020), covered in SAA 2020-31 (Aug. 19): "But to fall within the exemption, the workers must be connected not simply to the goods, but to the act of moving those goods across state or national borders."

***Certiorari* Petition Filed**
We've suggested several times that SCOTUS sooner or later would be asked to review the clear split on this issue, and that moment has arrived. Amazon on **November 9** filed a Petition for *Certiorari.* The issue presented: "whether the Federal Arbitration Act's exemption for classes of workers engaged in foreign or interstate commerce prevents the Act's application to local transportation workers who, as a class, are not engaged to transport goods or passengers across state or national boundaries."
*(ed: *The case is* Amazon.com, Inc. v. Rittmann*, No. 20-622. **We're betting SCOTUS will take on this significant split in the Circuits. In fact, there's a split within a Circuit. As reported in #37, a different Ninth Circuit Panel* in Grice v. United States District Court for the Central District of California*, No. 20-70780 (9th Cir. Sep. 4, 2020), sided with the more stringent "cross state lines" standard, in a case involving Uber drivers who regularly picked up arriving passengers at Huntsville International Airport and Birmingham-Shuttlesworth International Airport. Although the passengers clearly had crossed state lines, the Uber drivers did not.)*
return to top

APPLYING STATE LAW, TWO TARHEEL STATE APPELLATE COURTS FIND NO INTENT TO TRANSFER ORIGINAL CREDITORS' ARBITRATION RIGHTS TO DEBT COLLECTOR. ***Applying South Dakota and Utah law, two North Carolina Court of Appeals panels decline to permit a debt collector to enforce predispute arbitration agreements ("PDAA") in credit card agreements between debtors and the creditor from which it bought the accounts.*** The facts and holding in *Pounds v. Portfolio Recovery Associates, LLC*, No. COA19-925 (NC Ct. App. Nov. 3, 2020), are illustrative. Portfolio Recovery Associates ("PRA") entered into agreements purchasing delinquent consumer credit card debt from GE Bank and Citibank. Among other things, the Bills of Sale conveyed to PRA broad rights to collect the debts, but did not expressly include the right to enforce the PDAAs in the original credit card agreements between the creditors and the debtor consumers. The Trial Court, applying South Dakota law (Citibank agreements) and Utah Law (GE agreements) refused to allow PRA to enforce the PDAAs, and an appeal followed.

State Law Requires Express Assignment of PDAA
In a decision authored by Judge **Hampson**, a unanimous Court of Appeals affirms, applying the choice of law provision in the original credit card agreements: "Utah and South Dakota law both require express intent to assign identified rights or subject matter" (citations omitted).... Here, PRA purchased Plaintiffs' debts pursuant to the Bills of Sale, which specifically and solely identify the assignment of Plaintiffs' Accounts and Receivables…. Consequently, we conclude, as did the trial court, without any showing of the additional intent by the original creditors to assign to PRA, at the very least, 'all of the rights and obligations' of the original agreements, the right to arbitrate was not assigned in the sale and assignment of the Plaintiffs' Accounts and Receivables as set forth in the Bills of Sale. The trial court correctly concluded PRA has not met its burden of showing a valid arbitration agreement between each Plaintiff and PRA and did not err when it denied PRA's Motion to Compel Arbitration."

Same Opinion Author, Different "Wing" Judges, Same Outcome
A somewhat different unanimous panel, with Judge **Hampson** again writing the Opinion, comes to the same conclusion in *Spector v. Portfolio Recovery Associates, LLC*, No. COA20-13 (NC Ct. App. Nov. 3, 2020) (unpublished): "Consequently, we conclude based on this Court's reasoning in *Pounds,* without any showing of additional intent by the original creditor to assign to PRA, at the very least, 'all of the rights and obligations' under Plaintiff's original agreement, the trial court properly determined the right to arbitrate was not assigned in the sale and assignment of Plaintiff's Receivables as set forth in the Bill of Sale."
*(ed: *Pounds is published while* Spector *is not. Wonder why? **Neither Opinion references equitable estoppel. ***At a very high level, these cases remind us of* Kindred Nursing Centers v. Clark*, 137 S.Ct. 1421 (2017), where SCOTUS held that the FAA preempted a Kentucky rule of law requiring that a broad power of attorney specifically authorize agreements to arbitrate. Seems similar, no?)*
return to top

ELEVENTH CIRCUIT: UPON FURTHER REVIEW, INTERVENING SCOTUS RULING DICTATES WE CHANGE OUR MINDS. We reported in SAA 2020-21 (Jun. 3) that the Supreme Court on **June 1** held unanimously in *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA LLC,* 140 S. Ct. 1637 (Jun. 1, 2020), that the equitable estoppel doctrine can be used by a non-signatory to compel a signatory to arbitrate under the *UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the Federal Arbitration Act. The SCOTUS ruling reversed an Eleventh Circuit decision in *Outokumpu Stainless USA, LLC v. Converteam SAS*, 902 F.3d 1316 (11th Cir. 2018). So, what is the fate of a District Court decision issued before the SCOTUS ruling, that "relied entirely" on the Circuit Court's later-reversed decision? "Vacated and remanded," says a unanimous Court in *McCullough v. AIG Insurance Hong Kong Limited*, No. 19-12100 (11th Cir. Oct. 28, 2020) (*per curiam*) (unpublished). Says the Court: "… the district court relied entirely on our decision in *Outokumpu* in declining to grant AIG's motion to compel arbitration. Thus, the district court did not address AIG's argument that applicable equitable doctrines permitted enforcement of the arbitration agreement against the non-signatory McCulloughs…. Contrary to the Eleventh Circuit decision, the Supreme Court [in *GE Energy Power*] held that nothing in the New York Convention conflicts with the application of relevant equitable doctrines. Accordingly, the Court reversed the judgment of the Eleventh Circuit and remanded for further proceedings with respect to such doctrines. Consistent with that Supreme Court ruling, we also vacate the judgment of the district court and remand for further proceedings not inconsistent with this opinion or the opinion of the Supreme Court in *Outokumpu*" (footnote omitted).
(ed: Makes sense.)
return to top

SDNY: BROAD PDAA AND DELEGATION PROVISION IN OLDER CONTRACT COVERED ARBITRABILITY ISSUE INVOLVING NEWER FORUM SELECTION CLAUSE CALLING FOR LITIGATION. The Court in *CleanSpark, Inc. v. Discover Growth Fund, LLC*, No. 20 Civ. 6164 (JSR) (S.D.N.Y. Sep. 9, 2020), confronted dueling Stock Purchase Agreements ("SPA"). While the more recent SPA provided for disputes to be resolved by litigation, the older one contained a broad predispute arbitration agreement. In deciding an arbitrability dispute between the publicly traded CleanSpark and "early investor" Discover, District Judge **Jed S. Rakoff** holds: "Ordinarily, questions of arbitrability – i.e., questions regarding whether a claim is subject to arbitration – are to be determined by courts, rather than arbitrators. But where a party presents 'clear and unmistakable' evidence of an agreement to arbitrate arbitrability, a court is bound to respect that agreement. The Court finds such clear and unmistakable evidence here. While arbitration agreements 'rarely ... directly state whether the arbitrator or the court will decide the issue of arbitrability,' this is such a case. Indeed, the arbitration provisions in the Older SPAs expressly provide that any dispute of any kind 'including any issues of arbitrability ... will be resolved solely by final and binding arbitration.' As a result, it is up to an arbitrator – not this Court – to

decide the extent to which the arbitration clauses in the Older SPAs have been superseded by the forum selection clause in the 2020 SPA" (citations omitted; ellipse in original). *(ed: The case came to the Court as a fight over jurisdiction.)*
return to top

ATTORNEY SANCTIONS UPHELD FOR FRIVOLOUS ATTEMPT TO LIFT STAY OF LITIGATION. *McCluskey v. Henry*, No. A158851 (Calif. Ct. App. 1 Nov. 2, 2020), has a very complicated fact pattern that we'll try to distill. Stay with us. Airbnb terminated McCluskey's account, prompting her to sue. Airbnb successfully stayed the suit and compelled arbitration at AAA pursuant to the arbitration clause in the parties' contract. In a now-familiar pattern, Airbnb did not pay required fees, and the AAA administratively closed the case. McCluskey then returned to court to lift the stay and resume her lawsuit. So far, so good, but here's where things went off the rails a bit. The AAA had set an April 5 due date for payment of fees. McCluskey paid hers but Airbnb apparently did not. After AAA later closed the case administratively due to Airbnb's nonpayment of fees, the latter eventually submitted proof that it had paid its fees via an April 5 wire transfer (the AAA had misapplied the fees to another case). AAA informed the parties of the error and asked whether they wanted the case reopened; Airbnb said "yes," but McCluskey's attorney Mogan did not respond, so the case seemingly remained closed (*ed: we really can't tell what happened to the arbitration*). Defendants then sought and obtained $22,000 in sanctions against Mogan for filing a frivolous motion to lift the litigation stay. On appeal, a unanimous Court of Appeal affirms: "In clear contradiction of the order compelling arbitration, Mogan, on behalf of McCluskey, filed a motion to lift the stay, in effect seeking to 'stay the arbitration and remit the parties to judicial remedies.' Mogan pursued this relief even though 10 days before the filing of the initial motion to stay, on May 1, AAA had expressly informed counsel that AAA would arbitrate the claim as soon as counsel confirmed McCluskey wanted to proceed to arbitration. 'Clearly the [trial] court had jurisdiction to address this situation: it retained jurisdiction over the original suit,' despite the stay of the action, as well as 'jurisdiction' to ensure the parties adhered to the previous order compelling arbitration, and as a necessary corollary, it had the authority to impose section 128.7 sanctions for the filing of a frivolous amended motion to lift the stay" (citation omitted).
(ed: Right outcome we think, but we're puzzled why the AAA insisted the parties had to agree to reopen the arbitration. We suggest the Association could have admitted the clerical error, and restored the case to the active docket, nunc pro tunc. *Of this Latin phrase LegalDictionary says: "The most common use of* nunc pro tunc *is to correct past clerical errors, or omissions made by the court, that may hinder the efficient operation of the legal system." We think this would have saved everyone much time.)*
return to top

NOW *THAT'S* EXPEDITED INVESTOR DISPUTE RESOLUTION! In a move that would make their American counterparts envious, the Securities and Exchange Board of India ("SEBI") on **November 6** announced its expectation that investor complaints be disposed of within 15 days of receipt of the complaint. The three-page notice, *Investor Grievance Redressal Mechanism*, was addressed to the Managing Director or Executive

Director of the nation's stock exchanges. Among other outcomes is referral of investor disputes to an exchange's arbitration rules.
(ed: SEBI is analogous to the SEC.)
return to top

ICC'S YOUNG ARBITRATORS FORUM ANNOUNCES SEVERAL ONLINE PROGRAMS. The International Chamber of Commerce ("ICC") Young Arbitrators Forum ("YAF") recently posted news of several online programs taking place this month. We present them below essentially *verbatim* in ascending date order: *Hearing Preparation of Factual Witnesses***:** Join us for our last event on working with experts and witnesses. Get ready to learn from counsel but also directly from witnesses and experts on best practices to prepare factual witnesses for hearings (November 11); *Who Wants to be an Arbitrator?* Don't miss our regional ICC YAF event on the occasion of the first-ever digital *18th ICC Miami Conference on International Arbitration!* Get to know Yves Derains from a new perspective. Now's your chance to ask questions as "anything goes" (November 12); *Surviving and Succeeding as a Junior Arbitration Lawyer*: ICC YAF and London VYAP (Very Young Arbitration Practitioners) are delighted to invite you to an exciting discussion dedicated to (very) young arbitration lawyers. Speakers will share their personal experiences and advice on how to excel at the key stages of arbitration proceedings (November 18); *Young Practitioners and Covid-19: the Virtual World of Arbitration*: Register to this regional ICC YAF event taking place during the Dubai Arbitration Week and listen to how Covid-19 has transformed the arbitration experience and the role of young practitioners in international arbitration (November 18); and *Online Arbitration: A Prevailing Need. Are We Prepared?* Join this conference on the most recent discussions regarding the use of online arbitration and the opportunities and challenges that this practice represents (November 24).
(ed: Full program info and registration information is available online.)
return to top

QUICK TAKES: CASES AND AWARDS WORTH READING

***Swain v. LaserAway Medical Group, Inc*., No. B294975 (Calif. Ct. App. 2 Nov. 3, 2020)**: The unanimous Court finds a PDAA both procedurally and substantively unconscionable: "Miranda Swain filed a complaint against LaserAway Medical Group, Inc., alleging she suffered skin injuries as a result of laser hair removal treatment she received from LaserAway. LaserAway filed a petition to compel arbitration, which the trial court denied, ruling the arbitration agreement between Swain and LaserAway was unenforceable because it was unconscionable. LaserAway appeals, and we affirm."

***Dan Ryan Builders, Inc. v. Williams*, No. 18-0579 (W. Va. Nov. 6, 2020) (memo)**: A divided (4-2) West Virginia Supreme Court lets stand the Trial Court's refusal to compel arbitration: "[f]ollowing the entry of the February 6, 2012 order, and for the six years that ensued, all of petitioners' conduct has been focused on litigating this case – not seeking appellate review of the circuit court's 2012 order. As the appendix record shows, petitioners conducted depositions, traded discovery with the parties, and filed pleadings and motions in circuit court. Succinctly stated, petitioners have spent countless hours

litigating an action that they profess should be arbitrated, which conduct demonstrates a knowing, express waiver of their contractual right to arbitration. Further, we find petitioners waived their right to seek appellate review of the circuit court's February 6, 2012 order denying their motion to compel arbitration. Despite the circuit court providing petitioners an opportunity to certify questions to this Court as indicated by the 2012 Agreed Order, petitioners failed to pursue that opportunity. Petitioners likewise could have filed a petition for writ of prohibition in this Court but failed to do so."

***Brin v. Voya Financial Advisors Inc*., FINRA No. 20-00465 (Orlando, FL, Oct. 13, 2020):** A broker fails in his attempted partial reform of his Form U5, which stated: "Representative submitted inaccurate information regarding surrender charges in connection with variable annuity replacement transactions for a number of customers, each of whom was over the age of 65." In rejecting the broker's request to expunge the phrase "each of whom was over the age of 65" so as not to create the impression that he was preying on the elderly, the sole Arbitrator explained that the broker could not confirm in his testimony that the phrase was inaccurate and signed a regulatory filing that contained that very phrase. *Submitted by Harry Jacobowitz, Esq. He can be reached at harryjacobowitz@optimum.net.*
return to top

ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Claxton, James M., *Faithful Friend and Flattering Foe: How Investment Treaties Both Facilitate and Discourage Investor-State Mediation*, Rikkyo University (September 13, 2020): "There have been a variety of ambitious legislative, regulatory, and capacity-building initiatives to promote investor-state mediation. The prospects for greater uptake are shaped at the most basic level by the dispute resolution provisions in investment treaties. This article reports on a survey of dispute resolution provisions relevant to mediation in all available investment treaties with East, South, and Southeast Asian state parties that came into force over the past decade. These treaties promote, regulate, and compel mediation to varying degrees in different ways. A comparison of the provisions offers insights on how mediation is emerging in modern investment treaty practice and how dispute resolution provisions in treaties can facilitate or discourage mediation by their terms. Drawing on the study and outside empirical research, the article concludes with ideas about how investor-state mediation can be encouraged in treaties."

***Class Arbitration - Two Cautionary Tales for Employers*, JD Supra (Nov. 4, 2020)**: "The Supreme Court's 2018 decision in *Epic Systems Corporation v. Lewis,* 138 S. Ct. 1612 (2018), validated the use of class action waivers, providing employers with a valuable tool to preserve bilateral employment arbitrations and manage risk. However, employers carefully should weigh the costs and benefits of whether and how to wield this tool. Two recent decisions underscore this point."

***Arbitrators Clean Record of Jones Broker Fired for Licensing Slip*, AdvisorHub (Nov. 4, 2020)**: "A broker fired by Edward Jones after 12 years for giving retirement account advice when the Department of Labor's now-vacated fiduciary rule was in effect has

been vindicated by an arbitration panel. [The broker] was discharged by Jones in 2017 for discussing retirement account types and investment options without maintaining her investment advisory (Series 65 or 66) license, according to her BrokerCheck history."

Could the Gig Economy Send Another FAA Disagreement to the Supreme Court? **Law.com (Nov. 5, 2020)**: "The Federal Arbitration Act ordinarily obligates federal and state courts to enforce arbitration agreements, including in employment contracts. However, a nearly-century-old carveout in Section 1 exempts from the FAA's sweep contracts of employment for seamen, railroad workers or other individuals 'engaged in foreign or interstate commerce.' The 'gig' economy has spawned increased litigation over the carveout's scope -- specifically, whether it applies to certain categories of workers, ranging from Amazon drivers to Grubhub delivery workers. Disagreements are emerging among the federal courts, the law is uncertain in the Eleventh Circuit, and Supreme Court review may soon be called for."

Signing the Arbitral Award in Wet Ink: Resistance to Technological Change or A Reasonable Precaution? **Kluwer Arbitration Blog (Nov. 6, 2020)**: "In most jurisdictions, and in particular pursuant to Article 31(1) of the UNCITRAL Model Law on International Commercial Arbitration, arbitral awards must be rendered in writing and contain the arbitrators' signatures. The enforceability risks of authenticating an arbitral award with an electronic signature will vary according to the applicable law at the place of enforcement (i.e. the *lex fori*) or by the laws of the arbitral seat. Such analysis also includes a judicial review of the national and international laws that regulate e-signatures. In some jurisdictions, arbitral awards may need to be signed in handwriting (wet ink) to be considered as valid. Therefore, despite the current need of moving towards remote process, the traditional practice of signing awards in wet ink may still be, in some cases, a reasonable precaution to reduce non-enforceability concerns in cross-border disputes."
return to top

DID YOU KNOW?

DID YOU KNOW? ARBCHEK OFFERS ADVANCED ARBITRATOR RESEARCH AND ANALYSIS. Most readers know they can access free FINRA awards at the Authority's Arbitration Awards Online portal. But did you know there's an online service available providing comprehensive Award searches and analysis? ARBChek, owned and operated by the Securities Arbitration Commentator, Inc. (SAC, Inc.), is SAC's online resource for effectively and efficiently evaluating your FINRA Arbitrator. ARBchek distills FINRA Awards into easy-to-read Arbitrator Summary Reports, highlights the salient points of each decision, provides fingertip access to PDFs of 60,000-plus securities arbitration Awards, supplies background information from its own files about select Awards, and comes in Lite, Regular (ASR) and Deluxe (ASR-ACR) versions.
(ed: By way of disclosure, SAC, Inc. previously published the Securities Arbitration Commentator, *this publication's antecedent.)*
return to top

Send any messages or inquiries to: George@SecArbAlert.com

Editor's Note & Disclaimer: While we undertake considerable efforts to present information in this publication in a fair and accurate manner, we caution that readers should access referenced material themselves as the best source. Our analyses make liberal use of links, and we offer courtesy copies of materials not on the Internet. Similarly, readers should not rely solely upon our summaries in making legal decisions or consider our commentary to be rendering legal, accounting, or other professional advice or service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. — *adapted from the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.*

Mail to: 194 Carlton Terrace, Teaneck, NJ 07040
T: 917-841-0521
Web: www.SecArbAlert.com Blog: www.sacarbalert.com/blog/
Twitter: @SecArbAlert