SECURITIES ARBITRATION ALERT 2021-23 (6/17/21)

George H. Friedman, Editor-in-Chief

A NEW FEATURE ARTICLE. *We're delighted to publish a new feature article,* Distinguishing Discovery Procedures in Commercial Arbitration: A Comparative Analysis of AAA and FINRA Rules*, offering an analysis of the markedly different* *approaches taken by FINRA and the AAA to address discovery. After conducting an exhaustive comparative analysis, author Ksenia Matthews concludes that FINRA's more focused approach better serves arbitration's core objectives of speed, economy, and fairness.*

FEATURE ARTICLE

DISTINGUISHING DISCOVERY PROCEDURES IN COMMERCIAL ARBITRATION: A COMPARATIVE ANALYSIS OF AAA AND FINRA RULES, *by Ksenia Matthews.* There is no binding authority that defines the extent of discovery available in arbitration. In fact, discovery can take place in accordance with the parties' agreement. This occurs most times when parties create arbitration agreements, which will often include how the dispute ought to be handled, including discovery. With little guidance from the Federal Arbitration Act, which is limited to conferring power upon arbitrators to summon material evidence, there is a risk that the benefits of arbitration will slowly disappear, as excessive discovery can hinder the speed and efficiency of the proceedings. Two well-known arbitration providers -- the Financial Industry Regulatory Authority and the American Arbitration Association -- both have rules and procedures for dealing with discovery, but they are quite different, with their own benefits and drawbacks. This article examines the approaches taken by these two arbitration administrators, focusing on how both seek to provide for a reasonable amount of information exchanges while maintaining arbitration's hallmark benefits of speed, fairness, and efficiency. *Read more*....
(ed: Ksenia Matthews is a third-year student at Fordham University School of Law. She is an Articles & Notes Editor of the Fordham Law Review, *and a member of the Dispute Resolution Society and the Brendan Moore Trial Advocacy Center at Fordham Law School. The author thanks and acknowledges George H. Friedman, Professor of Commercial Arbitration at Fordham University School of Law, for his assistance in the preparation of this article.)*
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SQUIBS: IN-DEPTH ANALYSIS

EIGHTH CIRCUIT: NO WAIVER OF ARBITRATION RIGHTS BY MOTION TO STRIKE CLASS ACTION (AND OTHER PRO-ARBITRATION RULINGS). ***The Eighth Circuit holds unanimously that the trial court may consider a motion to strike a class action before the plaintiff has moved to certify the class, and that moving to strike class action claims does not mean defendants act inconsistently with their right to arbitrate. Additionally, the Court holds that arbitration clauses expressly incorporated in the signed client agreement satisfy mutual assent and that an arbitration clause applying to one party is not unconscionable.*** *Donelson v. Ameriprise Financial Services, Inc.,* No. 19-3691 (8th Cir. Jun. 3, 2021), deals with mismanagement and misrepresentation of an investment account. The claims brought against Ameriprise Financial Services and co-defendants (collectively, "Ameriprise") included violations of section 10b and Rule 10b-5, as well as section 20 of the *Securities and Exchange Act* and section 206 of the *Investment Advisors Act.* The plaintiff, Mark Donelson ("Donelson"), sought to assert the claims as a class action on behalf of other clients of the financial advisor, to which Ameriprise responded by making a motion to strike these allegations and a motion to compel arbitration. The District Court denied both motions.

FAA Allows Appeal and No Waiver Present
On appeal, the Eighth Circuit affirms its jurisdiction pursuant to Federal Arbitration Act ("FAA") section 16, because defendants had asserted their appeal under FAA section 4 (compelling arbitration). Notably, the Court also finds that section 16 jurisdiction applies broadly to interlocutory orders, including the motion to strike class action allegations. Next, the Court examines whether Ameriprise acted inconsistently with its right to arbitrate, thereby waiving it. The Court holds that motions to strike class action allegations do not indicate defendants waived their right to arbitration; to do so they must move to dismiss the case *on the merits* in order to invoke "litigation machinery." Next, the Court holds that the arbitration clause is valid despite Ameriprise not providing Donelson with a copy of the agreement, because the customer account agreement expressly incorporated the arbitration clause, thereby satisfying the mutual assent requirement.

Lack of Mutuality
Similarly, the fact that the arbitration agreement required Donelson to arbitrate claims that he had against Ameriprise but did not require Ameriprise to arbitrate claims it had against him, does not render the agreement unconscionable. Finally, the Court rules that the District Court abused its discretion by denying Ameriprise's motion to strike the class action allegations. The Court reasoned that the claims arising under the *Securities Exchange Act* would not be cohesive, and the claim arising under the *Investment Advisers Act* could not provide the injunctive or declaratory relief required by FRCP 23(b)(2). Therefore, the District Court should have compelled arbitration because the class action claims should have been stricken, and therefore the dispute was one encompassed by the arbitration clause.
*(ed: *This brief was authored by Hayes Favinger, a 3L at St. John's School of Law. He is an intern with the Securities Arbitration Clinic at St. John's. **Ameriprise did not raise the issue of whether arbitrability should be decided by the arbitrator or the District Court until the appeal, so the Court reviewed the issue for plain error and found that the defendants could not satisfy that standard. ***We presume the arbitration agreement in the investment adviser-client agreement did not call for FINRA, but we are not certain. The failure to provide a copy of the arbitration agreement in a BD-customer agreement would have run afoul of FINRA Rule 2268(b)(2), which provides: "Within thirty days of signing, a copy of the agreement containing any such [arbitration] clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.")*
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CUSTOMERS WIN THREE LARGE COVID-ERA AWARDS. ***This analysis of three large COVID-era Awards in favor of customers is provided by Harry Jacobowitz, Esq. He can be reached at harryjacobowitz@optimum.net. The words that follow are his.*** The unavailability of in-person hearings in FINRA arbitrations since March 16, 2020, has raised the issue of whether telephonic and virtual hearings are sufficient methods for customers to prove their cases. With the prospect of in-person hearings returning to all 69 Dispute Resolution Services ("DRS") venues by **August 2**, we thought it was worth looking at the three largest awards to customers in the intervening period, all of which were decided after multiple videoconference evidentiary hearings.

Three Case Studies

In *Schottenstein v. J.P. Morgan Securities LLC*, FINRA ID No. 19-02053 (Boca Raton, FL, Feb. 5, 2021), which we summarized as a Quick Take in SAA 2021-08 (Mar. 4), a family of customers sued J.P. Morgan and two of its brokers. After 43 hearing sessions, the Panel found the respondents liable for constructive fraud, abuse of fiduciary duty, fraudulent misrepresentations and omissions and (except for one broker) elder abuse, awarding more than $18.6 million in compensatory damages, rescission of an investment, attorney fees in an amount to be decided by a court of competent jurisdiction, and $345,260 in legal costs.

In *Apt v. Charles Schwab &Co., Inc.*, FINRA ID No. 19-03250 (Seattle, WA, Mar. 26, 2021), a large group of customers sued two broker-dealers, Charles Schwab and Interactive Brokers LLC. After 29 sessions, the Panel (with one arbitrator dissenting without explanation) held Interactive Brokers liable for more than $2.7 million in compensatory damages and almost $1 million in attorney fees and held Schwab liable for $606,087 in compensatory damages and $328,118 in attorney fees.

Finally, in *Fidalgo Gutierrez v. UBS Financial Services, Inc.*, FINRA ID No. 19-02088 (San Juan, PR, May 13, 2021), the customers (two individuals and a related corporation), who invested in Puerto Rico bond funds, requested compensatory damages from UBS and its Puerto Rico affiliate under a number of different damage theories (net out-of-pocket loss, well-managed portfolio account capital loss, market adjusted damages, rescission for damages as of 2004 and rescission for damages as of 2013 -- at least some of which were likely intended as alternative measures of damages). After a mere 12 sessions, the Panel awarded $142,557 in compensatory damages for breach of fiduciary duty, $4,654,289 in compensatory damages for breach of contract and rescission (with one dissent from awarding this damage item), and $9,767 in expert witness fees. Curiously, although the Panel majority granted rescission, it did not order the return of any securities.

An Observation

As of May 31, 2021, there were 61 non-stipulated Awards issued in Customer-Member cases that went to hearing since March 16, 2020, and had at least two hearing sessions. They had a "win rate" – i.e., where the customers(s) were awarded any damages – of 52% (32/61). This included the three Awards described above and nine more with total amounts awarded between $500,000 and $2 million, all 12 of which were decided after evidentiary hearings by videoconference and collectively constituted 37.5% of all "wins." Admittedly, this is too small a sample to draw any firm conclusions and it must necessarily have a higher win rate than Customer-Member Awards as a whole (since the

criteria selects out cases that were dismissed or voluntarily withdrawn or were decided after a minimal presentation by the claimants). However, it compares reasonably well to non-stipulated Customer-Member Awards decided in 2019 after two or more hearing sessions, which had a win rate of 53% (83/157) and had total amounts awarded of at least $500,000 in 34 Awards (41% of all "win" Awards). This suggests that videoconferencing might turn out to be an effective way for customers to present their cases, if FINRA arbitrators allow the practice to continue.
(Jacobowitz: The individual brokers in Schottenstein *and* Interactive Brokers *filed petitions to vacate the first two Awards and we predict that the respondents in* Fidalgo Gutierrez *will do the same.)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

FINRA RELEASES 2021 ANNUAL BUDGET SUMMARY. DRS CASH FLOWS EXPECTED TO BE DOWN SIGNIFICANTLY. FINRA on **May 17** issued its *2021 Annual Budget Summary*, showing that Dispute Resolution Services ("DRS") accounts for four percent of the Authority's expected 2021 cash flow – just below the 5% reported the prior three years. DRS is also mentioned in the nine-page *Budget Summary* starting on page 5. There, we learn that the Office is expected to generate $47.1 million in cash flow, down significantly from the $59.9 million reported in the *2020 Budget Summary*. As for FINRA proper, the *Summary* states that operating revenues are projected to be $924.2 million, a decrease compared to 2020. The reasons? "The COVID-19 pandemic presented a unique set of circumstances in 2020 that contributed to increased revenues due primarily to higher trading volumes and a large number of public offerings. While the budget anticipates that overall trend may continue, it projects that revenues will decline by nearly six percent in 2021 as trading volumes and filing fees from public offerings stabilize. Additionally, FINRA realized lower operating expenses than budgeted for 2020, due to vacancies created from a one-time voluntary retirement program implemented in 2020 that took more time to fill than anticipated during the pandemic, as well as significant reductions in travel and in-person testing expenses. Operating expenses are anticipated to increase in 2021 by approximately 3.5 percent over 2020 budgeted levels, with headcount gradually rising to budgeted levels and in-person testing and travel expected to pick up as the year progresses."
*(ed: *Wonder why the DRS expected cash flow is expected to be significantly down this year – more than 20% – given that case filings were up 4% last year? **Kudos to FINRA for again letting in the sunshine on its financials. ***As we already knew, DRS is a very small (but important!) part of FINRA's operation. The anticipated 4% of "cash flow by key function" is the smallest of those listed on page 5.)*
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FINRA PUBLISHES 2020 FINE DATA REPORT. HARD TO DETERMINE DRS' PIECE OF THE PIE, BUT IT LOOKS SMALL. FINRA for the fourth year in a row has published information on how it uses fine money. *Report on Use of 2020 Fine Monies* shows that the Authority in 2020 levied $57.0 million in fines, but that "fines-eligible-expenditures" were actually $90.2 million. What was Dispute Resolution

Services' ("DRS") slice of the fine money pie? Hard to say. The sole reference to DRS states in the *Registration, Testing and Corporate Systems Enhancements* section: "FINRA invested $7.6 million to transform and enhance its registration, testing and continuing education systems.... The investment also includes enhancements to the PROCTOR system through which FINRA administers and delivers computer-based testing and training, as well as enhancements to Dispute Resolution systems and corporate websites." Investor ed garnered $3.5 million, although the Report notes that the FINRA Foundation is separately funded.
(ed: As we've said before, this is a welcome development in aid of transparency.)
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SEC RELEASES REGULATORY AGENDA. ARBITRATION NOT ON THE LIST. The SEC on **June 11** issued its annual regulatory agenda, with no express references to arbitration or dispute resolution. A Press Release, *SEC Announces Annual Regulatory Agenda*, lists these "notable proposed and final SEC rulemaking areas" (repeated *verbatim*):

- Disclosure relating to climate risk, human capital, including workforce diversity and corporate board diversity, and cybersecurity risk
- Market structure modernization within equity markets, treasury markets, and other fixed income markets
- Transparency around stock buybacks, short sale disclosure, securities-based swaps ownership, and the stock loan market
- Investment fund rules, including money market funds, private funds, and ESG funds
- 10b5-1 affirmative defense provisions
- Unfinished work directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, including, among other things, securities-based swaps and related rules, incentive-based compensation arrangements, and conflicts of interest in securitizations
- Enhancing shareholder democracy
- Special purpose acquisition companies
- Mandated electronic filings and transfer agents.

(ed: Although arbitration reform is not on the anticipated regulatory actions list, as articulated in our June 10 blog post, Are We Seeing the Start of a Tectonic Shift on Mandatory PDAAs in the Financial Services Field?*, we think the Commission will at least exercise its Dodd-Frank* section 921 *authority to study securities arbitration. Perhaps this is included in: "Unfinished work directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010"?)*

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EEOC UPDATES COVID-19 GUIDANCE ON RETURNING TO THE OFFICE. With COVID-19 clearly in retreat in the U.S., and with many employers ramping up efforts to return employees to the workplace, the EEOC on **May 28** issued a Press Release offering updated guidance, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*. The key takeaways (listed essentially *verbatim* are:

1) Federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the ADA and Title VII of the Civil Rights Act of 1964 and other EEO considerations. Other laws, not in EEOC's jurisdiction, may place additional restrictions on employers.

2) Federal EEO laws do not prevent or limit employers from offering incentives to employees to voluntarily provide documentation or other confirmation of vaccination obtained from a third party (not the employer) in the community.

3) Employers that are administering vaccines to their employees may offer incentives for employees to be vaccinated, as long as the incentives are not coercive.

4) Employers may provide employees and their family members with information to educate them about COVID-19 vaccines and raise awareness about the benefits of vaccination.

*(ed: *EEOC stresses that this is a live document and was prepared before the CDC issued new guidance for the fully-vaccinated on May 13. **This guidance naturally impacts financial services firms – some of which have announced staff returns to the office – and for that matter, FINRA, AAA, and other ADR providers.)*

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SECOND CIRCUIT REJECTS MANIFEST DISREGARD CHALLENGE TO FINRA AWARD, TERMING IT A "DOCTRINE OF LAST RESORT" A unanimous Second Circuit Panel in *Jefferies LLC v. Gegenheimer*, No. 20-2273-cv (2d Cir. Jun. 3, 2021) (summary order), denies a "manifest disregard" challenge to a FINRA Award, finding that none of the elements of this "doctrine of last resort" are present. "First, Gegenheimer argues that the arbitration panel manifestly disregarded New York's so-called exclusive remedy rule…. Even assuming the exclusive remedy rule applies here, Gegenheimer has failed to meet his burden of establishing manifest disregard, because the arbitration panel had at least a 'colorable justification' for finding the liquidated damages provision enforceable." The Court also found that the Arbitrators' failure to render an explained Award did not constitute manifest disregard of the law: "Even where explanation for an award is deficient or non-existent, we will confirm it if a justifiable ground for the decision can be inferred from the facts of the case," quoting *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc*., 592 F.3d 329, 339 (2d Cir. 2010. Last, the Court rejects Gegenheimer's contention that the arbitration panel manifestly disregarded New York law on restrictive covenants in employment contracts: "Here too Gegenheimer fails to carry his burden of establishing manifest disregard. To start, Gegenheimer did not present the panel with any cases involving *pre*-employment non-compete agreements. Thus, it cannot be said that the panel was aware of law that was 'clearly applicable to th[is] case" (emphasis in original).

*(ed: *No surprise here; in our view, manifest disregard is on life support in this Circuit. **An* Alert *h/t to Editorial Board member David Robbins, Esq., of Kaufmann Gildin & Robbins LLP, for alerting us to this decision.)*
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DISTRICT COURT: UNCONSCIONABILITY CHALLENGE TO PDAA IN GENERAL, VERSUS DELEGATION CLAUSE IN PARTICULAR, TO BE DECIDED BY ARBITRATOR. The facts in *[Zeevi v. Citibank, N.A.,]()* No. 2:19-cv-02206-GMN-BNW (D. Nev. Feb. 16, 2021), are relatively simple. Customer Zeevi's deposit account agreement with Citibank contained a predispute arbitration agreement ("PDAA") with a delegation clause. Zeevi sued the bank for violating the Telephone Consumer Protection Act, alleging that the bank was not authorized to make automated cell phone calls or send him text alerts for transactions involving less than $100. The bank moved to stay litigation and compel arbitration per the PDAA. The question before the Court was who – a judge or an arbitrator – should decide Zeevi's assertion that the PDAA was unconscionable? Judge **Gloria M. Navarro** decides that, because Zeevi asserted that the PDAA as a whole was unconscionable, the delegation provision required that the issue be decided by an arbitrator: "In the present case, the parties clearly and unmistakably assigned the arbitrability of the arbitration agreement to the arbitrator by expressly delegating disputes including 'claims relating to the enforceability or interpretation' of the arbitration agreement…. Accordingly, the [Supreme Court's] holding in *Rent-A-Center* controls, and the authority to decide the unconscionability of the arbitration agreement lies with the arbitrator, unless Plaintiff specifically argues that the delegation clause is unconscionable."
(ed: Seems right.)
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QUICK TAKES: CASES AND AWARDS WORTH READING

***[Soliman v. Subway Franchisee Advertising Fund Trust, Ltd]()*., No. 20-946 (2d Cir. Jun. 8, 2021)**: "Plaintiff-Appellee Marina Soliman had filed a putative class action lawsuit alleging that a text message sent to her smartphone by Subway after she opted out of a Subway promotional program violated the Telephone Consumer Protection Act. In its motion to compel arbitration, Subway argued that Soliman was bound by the promotional program's terms and conditions on Subway's website (containing an arbitration provision), which were generally referenced along with a web address for the terms-and-conditions website on a print advertisement displayed in a Subway store that Soliman visited, and that Soliman viewed that advertisement to obtain a short code to enroll in the program by text on her phone…. In short, taking the facts together as a whole, we conclude that the terms and conditions in this case were not reasonably conspicuous and, thus, a reasonable consumer would not realize she was agreeing to be bound to such terms and conditions by texting Subway in order to begin receiving promotional offers."

***[Off-Spec Solutions LLC v. Transportation Investors LLC]()*, No. 47940 (Idaho May 19, 2021)**: "This appeal involves the enforceability of two forum selection clauses governed by California law. The questions presented are: (1) whether a forum selection clause is unenforceable under California law if enforcement would contravene a strong public policy of the forum where suit is brought (in this case, Idaho); and, if yes, then (2) whether the forum selection clauses at issue must be invalidated based on the public policy set forth in Idaho Code section 29-110(1). We hold that California law requires an examination of the public policy of the forum in which suit is brought, and that the forum selection clauses at issue violate the strong public policy of the State of Idaho. We affirm the district court's ruling that claims arising from the parties' purchase agreement and LLC agreement must be arbitrated in Idaho."

***Howell's Well Service v. Focus Group Advisors*, 2021 OK 25 (May 18, 2021)**: "We resolve today's first impression issue with a finding that Oklahoma's pleading statutes do not require a party to plead the right to arbitration in a responsive pleading. Here, Defendants/Appellants' motion to compel arbitration met the statutory requirements of the OUAA [Oklahoma Uniform Arbitration Act]. This finding, however, did not end our analysis because Oklahoma law provides that a party may waive their right to arbitration even when properly requested. After conducting an examination of the pertinent facts herein, we conclude Plaintiffs/Appellees failed to satisfy their burden of proof on the issue of waiver of the right to arbitration."

***Rauf v. T Rowe Price Investment Svcs., Inc*., FINRA ID No.19-03115 (Cincinnati, OH, May 14, 2021)**: In this small claims arbitration, an Arbitrator awards a customer compensatory damages against Respondent broker-dealer, explains why he did not award punitive damages, and expresses his frustration that the case was not settled: "This case does not warrant punitive damages as TRPIS attempted to resolve their mistakes and did finally restore Claimant's accounts to the desired actions, albeit only after considerable time, effort, and consternation of Claimant. Claimant appears to not have suffered any additional loss from the loss of use or access to her funds for approximately 17 days, other than her claim of lost interest. This case cried out to be settled as I previously advised the parties."

***Silvestre v. JP Morgan Securities, LLC*, FINRA ID No. 19-03303 (Los Angeles, CA, May 10, 2021)**: An Arbitrator explains why he has denied a broker's request for reformation of his Form U5 record: "Respondent's filing of Claimant's Form U5 and amended Form U5 were accurate, truthful and timely filed as required by the applicable requirements and regulations. Accordingly, Claimant's request that his Form U5 be modified is denied." (*ed: Provided courtesy of SAC's ARBchek facility, www.arbchek.com*.)

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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Karton, Joshua, *The (Astonishingly) Rapid Turn to Remote Hearings in Commercial Arbitration*, 46:2 Queen's Law Journal 399 (2021): "Commercial arbitration, like litigation, was forced by the pandemic to resort to remote proceedings. The arbitration community had both the capacity and the motivation to go remote, and did so at remarkable speed. However, it is unclear how durable these emergency adaptations will be -- are remote hearings a new normal, or a crisis response that will fade along with the pandemic? The author argues that remote hearings are indeed here to stay. The experience of commercial arbitration in 2020 shows that the cost and accessibility benefits provided by remote hearings are significant, and that most of the concerns either have practical fixes or evaporate with greater familiarity. Remote hearings neither will nor should become universal, but will likely be a default option in arbitration, especially for international disputes. Nevertheless, planning, vigilance, and a commitment to expend sufficient resources are needed to make remote hearings accessible, effective, and fair."

***Amazon Scrapped Arbitration, But That May Not Help Consumers*, Bloomberg (Jun. 8, 2021)**: "Consumer advocates are cheering Amazon's quiet decision to stop mandating arbitration for most customer disputes. The online retail giant, like other vendors, has heretofore included in its terms of service a ban on lawsuits. Without making a public announcement, the company has switched gears. We might be cheering too soon."

***Schottenstein v. Schottensteins Back in Court Over $19M Arbitration Award*, Financial Advisor IQ (Jun. 10, 2021)**: "The multigenerational saga involving a grandmother, her grandsons and JPMorgan that seemingly ended earlier this year with an award of almost $20 million continues, with the grandmother seeking to reopen the case." (*ed: we covered in SAA 2021-10 (Mar. 18) the effort to vacate the Award in* Schottenstein v. JP Morgan Securities, LLC, *FINRA ID No. 19-02053 (Boca Raton, FL, Feb. 5, 2021).*)

***Morgan Stanley Claws Back $600k in Notes from Fired Florida Broker*, Advisor Hub (Jun. 11, 2021)**: "Morgan Stanley Wealth Management was successful in its bid to reclaim roughly $600,000 in promissory notes, plus interest, from a Florida broker it fired in January for allegedly failing to confirm trades with clients, according to an arbitration award finalized this week. A Financial Industry Regulatory Authority [sole Public] arbitrator ruled Thursday that … a 36-year broker who had been with the wirehouse since 2015, must pay the principal balance of four 'fully-executed' notes totaling $577,561.54, plus interest of $16,126.03, not including any additional interest accrued since May 27. He was also ordered to pay $7,882 in attorney's fees and other costs, according to the award."

***Eighth Circuit Endorses Striking Class-Action Allegations on the Pleadings, Setting Appellate-Level Precedent for Early Termination of Putative Securities Class Action*, National Law Review (Jun. 12, 2021)**: "On June 3, 2021, in *Donelson v. Ameriprise Financial Services, Inc.*, a panel of the U.S. Court of Appeals for the Eighth Circuit ordered class-action allegations in a putative securities fraud class action stricken on the pleadings under Rule 12(f) of the Federal Rules of Civil Procedure, and directed the matter to arbitration. The decision is significant not only for its broad application of an arbitration clause to federal securities fraud claims, but as a rare appellate-level endorsement for striking class allegations under Rule 12(f) -- which permits a court to strike from a pleading 'an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter'-- prior to class discovery and a motion for class certification." (*ed: see our coverage elsewhere in this* Alert.)

***Tips To Avoid A TRO For Brokers Transitioning From Non-Protocol Firms*, Mayer LLP Blog (Jun. 12, 2021)**: "Departing brokers and financial advisors transitioning from non-protocol wirehouses to other firms or independence need to fully understand and be prepared to defend against a Temporary Restraining Order (TRO) from their former employer. Non-protocol firms like UBS and Morgan Stanley are eager to initiate legal action as a matter of course, irrespective of the size of the departing advisor's book of business. In fact, the procedural hurdles associated with presenting and filing a complaint and TRO are relatively low. This article is designed to highlight the pitfalls brokers and advisors should be aware of and avoid when planning their departure. While it may appear that these firms initiate legal action as a matter of course, there are ways to minimize and even avoid costly litigation."
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DID YOU KNOW?

A NICE GLOBAL LIST OF ADR ORGANIZATIONS. Our readers and follows are well aware of the Websites maintained by major ADR institutions. But did you know there are other excellent resources? A case in point is the Website of Business Conflict Management LLC, which among other things has an excellent list of worldwide arbitration and mediation organizations.
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Send any messages or inquiries to: George@SecArbAlert.com

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