SECURITIES ARBITRATION ALERT 2021-36 (9/23/21)

George H. Friedman, Editor-in-Chief

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- ***Harriet Ferber 2012 Family Trust v. UBS Financial Services Inc.*, FINRA ID No. 19-02550 (Houston, TX, Sep. 15, 2021)**

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- ***Galvin Fines MassMutual $4 million in 'Roaring Kitty' Case*, Investment News (Sep. 15, 2021)**
- ***Novel Massachusetts Decision Finds Waiver of Right to Compel Arbitration Based on Pre-Litigation Actions,* National Law Journal (Sep. 15, 2021)**
- ***Borrowers Must Arbitrate 'Rent-a-tribe' Payday Lending Case, 9th Circuit Rules*, Reuters (Sep. 16, 2021)**
- ***NFA Orders London, U.K Swap Dealer ED&F Man Capital Markets Limited to Pay a $150,000 Fine, www.nfa.futures.org (Sep. 17, 2021)***
- ***UBS Ordered to Pay Customer $358K Over Complex Options Strategy*, Financial Advisor IQ (Sep. 17, 2021)**

DID YOU KNOW?

- **A Wealth of Legal Research Material is Available at Cornell Law School**

ALERT! NO *ALERT* NEXT WEEK. *It's the end of another calendar quarter, so we will be taking our customary break from publishing the* Securities Arbitration Alert *as the quarter comes to a close. This week's* Alert *– which leads with an examination of FINRA Dispute Resolution Services' new COVID-19 policies for in-person hearings – is a bit heftier as a result. Look for the next edition of the SAA in your e-mailbox the week of October 3. In the meantime, follow us @SecArbAlert and sign up for updates on our weekly blog posts.*

SQUIBS: IN-DEPTH ANALYSIS

FINRA DISPUTE RESOLUTION SERVICES: "GET VACCINATED OR PARTICIPATE VIRTUALLY (EXCEPT IN FLORIDA)." ***FINRA Dispute Resolution Services ("DRS") on September 17 announced an updated COVID-19 vaccination policy***. Effective **October 4,** all in-person participants must be fully vaccinated to attend hearings. There will be a "proof of negative PCR test" exception through **November 19**, except in Florida – where the exemption will continue indefinitely. Here is the policy in its entirety (footnotes are omitted):

> Effective October 4, 2021 through July 1, 2022, all in-person participants, including arbitrators, mediators, counsel, parties, paralegals, witnesses, and others must be fully vaccinated to attend FINRA Dispute Resolution Services arbitration hearings or mediation sessions (hearing):
>
> - From October 4, 2021 through November 19, in-person attendees may, in lieu of being fully vaccinated, provide proof of a negative PCR test within 72 hours of the start of the hearing, and every 72 hours during the course of the hearing.
> - In-person participants who attest that there are circumstances that prevent them from being vaccinated can attend the hearing virtually or provide proof of a negative PCR test within 72 hours of the start of the hearing, and every 72 hours during the course of the hearing. All costs associated with COVID testing or virtual attendance are the responsibility of the party with an in-person participant who has indicated that there are circumstances that prevent them from being vaccinated.

The policy adds: "Counsel will file an attestation with their FINRA case administrator that they are fully vaccinated and that all of their parties, paralegals, witnesses, etc. are fully vaccinated. Arbitrators and mediators will also be required to file the attestation."

Florida Exception

DRS amended the new policy on **September 21** to create a Florida exception, which reads as follows (footnotes omitted):

> Effective October 4, 2021 through July 1, 2022, for cases with in-person arbitration hearings or mediation sessions (hearing) in Florida, all in-person participants, including arbitrators, mediators, counsel, parties, paralegals, witnesses, and others, must provide proof of a negative PCR test within 72 hours of the start of the hearing and every 72 hours during the course of the hearing. In the alternative, in-person participants in Florida may attest that they are fully vaccinated. All costs associated with COVID testing are the responsibility of the parties or individuals that incurred them**.**

Original Policy from Last Summer

Recall that we reported in SAA 2021-34 (Sep. 9) on the expanded safety protocols established for in-person hearings, which resumed **August 2**. We were able to obtain from FINRA a copy of the form letter sent to all in-person participants. The letter

repeated the safety measures described in *Safety Protocol for In-Person Hearings* and then stated that *all* in-person participants -- including arbitrators -- must submit a daily health certification through FINRA's survey system (FINRA will email a link to the certification to be submitted electronically each day). FINRA will send the chairperson (or an arbitrator designated by the chairperson): "a daily report of any in-person participants who did not fill out the certification." The consequence of non-compliance? "Individuals may not participate in the hearing until they have filled out the certification for that day."

That Didn't Take Long

We observed in #34 that: "while the *Health Certification Form* surveys participants on COVID-19 symptoms and possible exposure, it does not inquire about vaccination status." Our editorial note said: "This all makes sense, but we are puzzled by the lack of any references to vaccination status. In some locations such as New York City, individuals are required to furnish proof that they are vaccinated before entering certain indoor public venues."

*(ed: *We are no longer puzzled. **Although the new policy runs through July 1, 2022, the date: "is subject to change as health and safety conditions warrant." ***We suspect that the Florida exception was created in response to that State's restrictions on mandatory or proof of vaccination policies.)*

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DIVIDED NINTH CIRCUIT RULING ON CALIFORNIA AB-51 FAA PREEMPTION IS ALSO A SPLIT DECISION: STATUTE IS PREEMPTED IN PART. ***A split Ninth Circuit has finally ruled on the validity of AB-51, which would restrict predispute arbitration clauses ("PDAA") in employment relationships. The mandatory PDAA preclusions in the new law withstand Federal Arbitration Act ("FAA") preemption scrutiny, but the criminal and civil penalties for mandatory PDAA use do not.*** We sometimes wonder whether courts read the *Alert.* Just about a month after SAA 2021-32 (Aug. 19) wondered about when we might expect a decision soon from this Court on an FAA preemption challenge to AB-51, a split Court holds in *Chamber of Commerce of the United States v. Bonta*,* No. 20-15291 (9th Cir. Sep. 15, 2021), that the bulk of the law is not preempted by the FAA.

California AB-51: A Review

As reported in SAA 2020-05 (Feb. 5), the federal District Court in *Chamber of Commerce of the United States v. Becerra*, No. 2:19-at-01142 (E.D. Calif. 2019), issued a preliminary injunction staying the planned **January 1, 2020** implementation of California AB-51, pending final determination on the merits of a suit challenging the statute. The law would have essentially banned mandatory arbitration of employment discrimination, sexual harassment, and wage law disputes. The statute also provides that an employer can't: "threaten, retaliate or discriminate against, or terminate" an employee or job applicant who refuses to consent to waiver. There are both civil and criminal penalties for violations, but the law has some carve-outs seemingly included to avoid FAA and

federal securities acts preemption. The Plaintiffs were seeking declaratory and injunctive relief -- based on FAA preemption -- to block effectiveness of AB-51.

Preliminary Injunction Issued, Appeal Filed
After temporarily restraining California from enforcing the law, the District Court in a Minute Order issued **January 31, 2020,** granted in full the request for a preliminary injunction enjoining California from enforcing the new law. District Court Judge **Kimberly Mueller**'s 36-page Opinion found that the Plaintiffs were likely to prevail on their FAA preemption arguments and would suffer irreparable harm in the interim. The State then appealed to the Ninth Circuit in **February 2020,** and filed its brief in May. The core argument in the 66-page brief? "The district court abused its discretion, committing legal error, by assuming the Federal Arbitration Act (FAA) and its preemption jurisprudence applied to the new sections of the California Labor Code and Government Code added by California Assembly Bill 51 (AB 51). But the two key substantive provisions of AB 51, Labor Code Section 432.6 subdivisions (a) and (b), do not prohibit parties from entering into arbitration agreements or prevent their enforcement. Instead, they regulate employer conduct, prohibiting actions by employers that require applicants or employees to waive rights as a condition of employment, and prohibiting discrimination, retaliation, and termination of employees that decline to enter into such waivers."

Oral Argument December 2020
We reported in SAA 2020-47 (Dec. 27, 2020) that the Ninth Circuit on **December 7, 2020**, had heard oral argument in *Chamber of Commerce of the US v. Becerra*, No. 20-15291, an FAA preemption challenge to AB-51. The Court posted in several formats audio and video recordings of the 43-minute oral argument. The Chamber's brief can be found here; the State's here. The Panel that heard the appeal was: **Carlos Lucero** (Clinton appointee, sitting by designation), **William Fletcher** (Clinton), **Sandra Segal Ikuta** (G.W. Bush).

Ninth Circuit Majority: FAA Does Not Preempt Part of AB 51…
On **September 15, 2021,** a split Court finds that the general restrictions on mandatory PDAA use are consistent with the FAA. Says the majority: "[T]he FAA does not require parties to arbitrate when they have not agreed to do so." *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)…. Today we are asked to abandon the framework of FAA preemption of state rules that selectively invalidate or refuse to enforce arbitration agreements, ignore the holding of *Volt*, and nullify a California law enacted to codify what the enactors of the FAA took as a given: that arbitration is a matter of contract and agreements to arbitrate must be voluntary and consensual. As we read California Labor Code § 432.6, the state of California has chosen to assure that entry into an arbitration agreement by an employer and employee is mutually consensual and to declare that compelling an unwilling party to arbitrate is an unfair labor practice. We are asked by plaintiffs to hold that the FAA requires parties to arbitrate when but one party desires to do so. Our research leads to nothing in the statutory text of the FAA or Supreme Court precedent that authorizes or justifies such a

departure from established jurisprudence, and we decline to so rule. Thus, we must reverse the judgment of the district court." The preliminary injunction is vacated as a result.

… But Criminal and Civil Penalties Are Preempted
The majority rules, however, that the potential criminal and civil penalties imposed on employers are preempted by the FAA: "… operation of other provisions within the California Code renders a violation of § 432.6 a misdemeanor offense and opens an employer to potential civil sanctions. The imposition of civil and criminal sanctions for the act of executing an arbitration agreement directly conflicts with the FAA and such an imposition of sanctions is indeed preempted. We therefore affirm the district court as to the application of Labor Code § 433 and Government Code § 12953 to arbitration agreements covered by § 1 of the FAA."

Dissent by Judge Ikuta
Judge **Ikuta** offers a blistering, humorous dissent: "Like a classic clown bop bag, no matter how many times California is smacked down for violating the Federal Arbitration Act (FAA), the state bounces back with even more creative methods to sidestep the FAA. This time, California has enacted AB 51, which has a disproportionate impact on arbitration agreements by making it a crime for employers to require arbitration provisions in employment contracts. Cal. Lab. Code §§ 432.6(a)–(c), 433; Cal. Gov't Code § 12953. And today the majority abets California's attempt to evade the FAA and the Supreme Court's caselaw by upholding this anti-arbitration law on the pretext that it bars only nonconsensual agreements. The majority's ruling conflicts with the Supreme Court's clear guidance in *Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S. Ct. 1421, 1428–29 (2017), and creates a circuit split with the First and Fourth Circuits. Because AB 51 is a blatant attack on arbitration agreements, contrary to both the FAA and longstanding Supreme Court precedent, I dissent."
*(ed: *California Attorney General Rob Bonta was substituted for his predecessor, Xavier Becerra. **We continue to see this one as destined for SCOTUS, with perhaps a Petition for* en banc *review along the way. ***As reported previously, the U.S. Chamber has a Webpage dedicated to this case. ****An* Alert *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

FINRA BOARD MEETS VIRTUALLY THIS WEEK. NO DR ITEMS ON THE AGENDA. As reported in SAA 2021-35 (Sep. 16), FINRA's Board of Governors is meeting virtually **September 23 – 24**. The published Agenda does not have any dispute resolution-related items. As usual, we will follow up after the meeting results are posted. The next meeting on the schedule is **December 1 – 2.**
*(ed: *We'll tweet any news as soon as we have it and will cover the results in a future* Alert. *** As we've said before, we imagine these meetings will continue to be virtual until conditions permit them to be held in-person.)*
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TURNS OUT FINRA DID AMEND ITS RULES TO ALLOW VIRTUAL HEARINGS … FOR DISCIPLINARY HEARINGS. Readers may recall our **May 2020** Letter from the Editor, *Change the Code to Support Virtual Hearings*, authored during the midst of the COVID-19 pandemic after FINRA Dispute Resolution Services ("DRS") had cancelled in-person hearings and moved to virtual hearings. The thrust of the Letter? "While Rule 12409 authorizes Arbitrators to interpret the *Code*, methinks the argument that this extends to directing virtual hearings over a party's objection would rest on a slender reed under the doctrine of *expressio unius est exclusio alterius* ('when one or more things of a class are expressly mentioned, others of the same class are excluded'). In other words, why spell out in several parts of the *Code* Arbitrator authority to conduct electronic hearings in certain circumstances, but not here? I suggest FINRA consider a simple rule filing for immediate effectiveness that authorizes Arbitrators – perhaps on a temporary basis or whenever in-person hearings are impractical – to direct that hearings be held by videoconference." It turns out that FINRA indeed took just such steps, but not for arbitrations. FINRA Rule 9261 (Evidence and Procedure in Hearing), which governs disciplinary proceedings, was temporarily amended effective **October 2020** by SR-FINRA-2020-027. Subsection (b) states: "If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference." The Rule bears this header in red: "This version contains temporary amendments introduced with the filing of SR-FINRA-2020-027, which was filed for Immediate Effectiveness. The temporary amendments in SR-FINRA-2020-027 became operative on October 1, 2020, and as extended by SR-FINRA-2020-042, SR-FINRA-2021-006 and SR-FINRA-2021-019, are in effect through December 31, 2021, pending any future extensions."
(ed: Your Editor-in-Chief stands by his recommendation to DRS.)
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FOLLOWING UP ON WITHDRAWAL OF *SERVOTRONICS* CERTIORARI PETITION. We reported in SAA 2021-34 (Sep. 9) that, just a month out from the scheduled **October 5** oral argument, Servotronics had notified the Supreme Court that it was dismissing its Petition for Certiorari in *Servotronics, Inc. v. Rolls-Royce PLC and the Boeing Company*, No. 20-794. Specifically, Servotronics' counsel on **September 8** filed a letter with the Court, stating: "I am writing to report that Servotronics anticipates filing a dismissal motion pursuant to Rule 46 of the Rules of the Court *within the next few days*" (our emphasis). No reason was given, but we noted that the underlying arbitration in London was concluded recently. The SCOTUS docket had two September 8 entries: "Letter of petitioner notifying the Clerk of intention to file a Rule 46 motion to dismiss filed. (Distributed); REMOVED from the October 2021 ARGUMENT CALENDAR." As we said in our editorial note in # 34, "We're really curious as to why *Servotronics* was suddenly withdrawn. Mootness may be the cause, given this summer's conclusion of the underlying arbitration. Meanwhile, the split remains." We checked the SCOTUS docket

and as of press time the Rule 46 dismissal motion has not been posted. We also inquired of Petitioner's counsel who informed us that the motion will be filed this week.
(ed: We remain curious, so we'll keep checking.)
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SPEAKING OF ARBITRATION-CENTRIC CASES AT SCOTUS, MOSTLY QUIET ON THE *BADGEROW* FRONT. We reported in SAA 2021-34 (Sep. 9) that the remaining arbitration-centric case on the Court's docket, *Badgerow v. Walters,* No. 20-1143, has been set for oral argument on **November 2**, according to the **November 2021** calendar. We checked the Court's docket, but to date only two *Amicus* Briefs have been filed, both in support of Respondent: 1) the Chamber of Commerce of the United States of America; and 2) the Securities Industry and Financial Markets Association. Recall that, as reported in SAA 2021-19 (May 2), the Supreme Court on **May 17** agreed to review (see p. 2 of the Order List) *Badgerow v. Walters*, 975 F.3d 469 (5th Cir. 2020), a case we analyzed in SAA 2020-36 (Sep. 23). In the underlying case, the Fifth Circuit held that the District Court was correct when it applied the "look-through" standard to determine that it could remove a state court action to vacate an Award. The issue identified for review in the granted Petition for *Certiorari*: "Whether federal courts have subject-matter jurisdiction to confirm or vacate an arbitration award under Sections 9 and 10 of the FAA where the only basis for jurisdiction is that the underlying dispute involved a federal question."
(ed: We'll keep checking. More Amicus *Briefs are bound to be filed soon.)*
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DIVIDED NINTH CIRCUIT COMPELS ARBITRATION OF TRIBAL PAYDAY LOAN DISPUTE. In our experience, most motions to compel arbitration of disputes arising out of tribal lender payday loan agreements fail, typically because of unconscionability. Thus, it was a surprise to see the normally consumer arbitration-resistant Ninth Circuit order arbitration in *Brice v. Plain Green, LLC*, No. 19-15707 (9th Cir. Sep. 16, 2021), albeit with a strong dissent. The predispute arbitration agreement ("PDAA") in the loan documents had a delegation clause. The loan agreement also called for application of tribal law, and carried a 400%+ interest rate. Based primarily on unconscionability, the District Court declined to compel arbitration of the plaintiffs' RICO claims. On appeal, a split Ninth Circuit reverses. The humorous majority Opinion states: "We must decide whether a provision allowing an arbitrator, instead of a court, to decide whether an arbitration agreement that is governed by something other than federal law is unenforceable because it requires the parties to prospectively waive their federal rights. Already confused? You're not alone. Grappling with the Supreme Court's decision *in Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010), we work our way through this brain twister and conclude that an agreement delegating to an arbitrator the gateway question of whether the underlying arbitration agreement is enforceable must be upheld unless *that specific delegation provision* is itself unenforceable. Because we conclude that the delegation provision in the contract at issue is not itself an invalid prospective waiver (while not resolving whether the arbitration agreement as a whole is a prospective waiver), we reverse the district court and remand with instructions to compel

the parties to proceed with arbitration. In reaching our decision, we diverge from the decisions reached by several of our sister circuits" (emphasis in original)."
*(ed: *In a vociferous, lengthy dissent, Judge William A. Fletcher asserts: "My colleagues misunderstand the effect of the choice-of-law provisions in the agreements. Under the choice-of-law provisions, the arbitrator may apply only tribal law and a small and irrelevant subset of federal law. The prospective waivers of most federal law and all state law prevent the arbitrator from applying the law necessary to determine whether the delegation provisions and the arbitration agreements are valid. This renders both the delegation provisions and the arbitration agreements invalid." **For those keeping score at home, the majority Panel members -- Danielle J. Forrest and Lawrence VanDyke -- are Trump appointees, and dissenter Fletcher is a Clinton appointee. ***We think this one is destined for a Petition for* en banc *review.)*
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QUICK TAKES: CASES AND AWARDS WORTH READING

***DoorDash, Inc. v. Campbell*, No. 21-220 (SCOTUS)**: A Petition for *Certiorari* filed **August 9**. The question presented is: "Whether agreements calling for individual arbitration are enforceable under the Federal Arbitration Act with respect to claims asserted under California's Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq*." The Petition seeks review of *Campbell v. DoorDash, Inc.*, No. A159296 (Cal. Ct. App. Nov. 30, 2020), *petition for review denied*, No. S266497 (Cal. Mar. 10, 2021).

***Smith v. Board of Directors of Triad Manufacturing, Inc*., No. 20-2708 (7th Cir. Sep. 10, 2021)**: "In this complex ERISA case, James Smith sued fiduciaries of the retirement plan offered by his former employer, Triad Manufacturing, Inc., for alleged financial misconduct. Add in a class action, an arbitration provision, and issues of notice and consent to plan amendments, and this lawsuit gets even more complicated. The correct resolution here is straightforward, though.[] The ERISA provisions Smith invokes have individual and plan-wide effect. But the arbitration provision in Triad's defined contribution retirement plan precludes relief that 'has the purpose or effect of providing additional benefits or monetary or other relief to any Eligible Employee, Participant or Beneficiary other than the Claimant.' Because that provision prohibits relief that ERISA expressly permits, we affirm the district court's denial of Triad's motion to compel arbitration or, in the alternative, to dismiss."

***Jackson v. Amazon.com*, No. 20-cv-2365-WQH-BGS (S.D. Cal. Sep. 15, 2021)**: "Plaintiff contends that the claims alleged in the FAC [First Amended Class Action Complaint] do not fall within the scope of the arbitration provision because the claims are 'about Amazon spying on Plaintiffs private posts to a private Facebook group' and do not relate to Plaintiffs participation in the Flex program or performance of services. Plaintiff further contends that the arbitration provision is unenforceable and unconscionable..... The alleged wrongs do not arise out of or relate to the 2016 TOS, Plaintiffs participation in the Flex program, or Plaintiffs performance of services. The Court concludes that Plaintiff has met his burden to demonstrate that the claims alleged do not fall within the scope of the arbitration provision. The Motion to Compel Arbitration is denied." A

footnote adds: “The Court does not address whether the arbitration provision is unenforceable or unconscionable because the Court has concluded that the arbitration provision does not cover the claims alleged by Plaintiff.”

***Szamosszegi v. TD Ameritrade, Inc.*, FINRA ID No. 20-03493 (Los Angeles, CA, Aug. 19, 2021)**: A Majority-Public Panel grants Respondent broker-dealer's Prehearing Motion to Dismiss pursuant to Rule 12212(c) of the *Code*, based on the customer's failure to comply with the Chairperson's Order relating to discovery and the production of documents and information: “The Panel finds that dismissal with prejudice is appropriate under Rule 12212 of the Code, as Claimant failed to comply with the Chairperson’s June 4, 2021 discovery-related Order; Claimant also failed to respond to Respondent’s requests for production and documents and information….” The Panel also found that the customer failed to prosecute his claims. *Provided courtesy of SAC’s ARBchek facility (www.arbchek.com).*

***Harriet Ferber 2012 Family Trust v. UBS Financial Services Inc.*, FINRA ID No. 19-02550 (Houston, TX, Sep. 15, 2021)**: “The causes of action related to Claimant’s allegation that Respondent fraudulently marketed the Yield Enhancement Strategy, an options strategy, as low-risk and obfuscated the substantial risk of loss.... 1. Respondent is liable for and shall pay to Claimant the sum of $357,831.22 in compensatory damages. 2. Respondent is liable for and shall pay to Claimant the sum of $300.00 as reimbursement for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.” Expungement requests were denied.
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Puerta, Sebastian and Samples, Tim, *Investment Law's Transparency Gap* (August 23, 2021): “One of the fastest growing areas of international law in recent times is also one of the most controversial. Between 1990 and 2010, the number of investment treaties surged from less than 500 to over 3,000. Through this expansion, foreign investors gained extensive rights to sue sovereign states directly in arbitration through investment treaty arbitration (ITA). The result: a remarkable transfer of sovereign power to a semi-private supranational adjudication system. Once investors challenged governments through the ITA system, bringing hundreds of claims, backlash ensued. Cases in which foreign investors challenged public interests—for instance, health regulations and emergency financial management—amplified outrage.”

***Galvin Fines MassMutual $4 million in “Roaring Kitty” Case*, Investment News (Sep. 15, 2021): “**Keith Gill’s employment at MML Investors Services overlapped with his involvement in the GameStop and meme stock frenzy that occurred in late 2020 and early 2021, according to the regulator.”

***Novel Massachusetts Decision Finds Waiver of Right to Compel Arbitration Based on Pre-Litigation Actions*, National Law Journal (Sep. 15, 2021):** “Many employers are aware that they could waive the ability to enforce an arbitration agreement if they delay

moving to compel arbitration until after they have engaged in significant litigation activities in court, such as filing a motion to dismiss or serving discovery requests. However, in *Hernandez v. Universal Protection Services*, a Massachusetts Superior Court judge found that an employer waived its right to compel arbitration based on its actions before an employee filed suit in court. As Hernandez is novel and significant, employers may want to consider adopting practices to remind employees of their arbitration agreements when it appears that litigation is likely."

***Borrowers Must Arbitrate "Rent-a-Tribe" Payday Lending Case, 9th Circuit Rules*, Reuters (Sep. 16, 2021):** "A divided federal appeals court on Thursday ruled that a private equity investor in an online payday lending enterprise could force borrowers to arbitrate claims they were charged illegal annual interest rates of more than 400% via a so-called 'rent-a-tribe' scheme…. The 9th U.S. Circuit Court of Appeals' 2-1 ruling for Haynes Investments, which provided capital to lender Think Finance capital, diverged from decisions by three other appeals courts that have declined to compel arbitration in similar tribal internet payday loan cases." (*ed: see our coverage elsewhere in this* Alert.)

***NFA Orders London, U.K Swap Dealer ED&F Man Capital Markets Limited to Pay a $150,000 Fine*, www.nfa.futures.org (Sep. 17, 2021)**: "NFA has ordered London, U.K. swap dealer ED&F Man Capital Markets Limited (ED&F Man) to pay a $150,000 fine. The Decision, issued by NFA's Business Conduct Committee (BCC), is based on a Complaint issued by the BCC and a settlement offer submitted by ED&F Man, in which it neither admitted nor denied the allegations. The Committee found that ED&F Man failed to comply with the qualification testing requirement as to certain associated persons by the compliance date. The complete text of the Complaint and Decision can be viewed on NFA's website."

***UBS Ordered to Pay Customer $358K Over Complex Options Strategy*, Financial Advisor IQ (Sep. 17, 2021)**: "Another Financial Industry Regulatory Authority arbitration panel has ruled in favor of a customer seeking damages from UBS over a complex in-house options investing strategy…. This week, the arbitrators ordered UBS to pay [customer] $357,831.22 in compensatory damages and pay $300 for the non-refundable portion of his filing fee with Finra's dispute resolution services, Finra says." (*ed: see our coverage elsewhere in this* Alert.)

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DID YOU KNOW?

A WEALTH OF LEGAL RESEARCH MATERIAL IS AVAILABLE AT CORNELL LAW SCHOOL. A wonderful legal research resource can be found at the Cornell /law School's Legal Information Institute ("LII"). The Website contains a wealth of info on state and federal cases, statutes, regulations, and executive orders. This is a site worth bookmarking.

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

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