SECURITIES ARBITRATION ALERT 2021-40 (10/28/21)

George H. Friedman, Editor-in-Chief

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- ***Zhu v. Waddell & Reed*, FINRA ID No. 20-01332 (Seattle, WA, Sep. 17, 2021)**

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- **RPS Submitter, U Iowa Legal Studies and Steinitz, Maya, *Third Party Funding of Investment Arbitration,* U Iowa Legal Studies Research Paper No. 2021-42 (Jun. 24, 2021)**
- ***Governor Newsom Signs a Slew of New Employment Laws for 2022*, Proskauer Rose LLP California Employment Law Blog (Oct. 18, 2021)**
- ***Morgan Stanley Loses FINRA Arb Case on Botched Options Trading,* ThinkAdvisor (Oct. 18, 2021)**
- ***Arbitrators Rule Against Morgan Stanley, FA in Options Trading Dispute,* Financial Advisor IQ (Oct. 19, 2021)**
- ***Consumer Groups Urge CFPB to Regulate Fee-based Earned Wage Access Products as Credit*, Ballard Spahr LLP Consumer Finance Monitor Blog (Oct. 20, 2021)**
- ***U.S. Chamber of Commerce Seeks En Banc Review of Decision on FAA Preemption and California's AB 51,* National Law Review (Oct. 21, 2021)**
- ***BofA to Employees: Report Covid Vaccine Status by November 1,* Financial Advisor IQ (Oct. 25, 2021)**

DID YOU KNOW?

- **CFTC, Too, Has a Whistleblower Program**

A NEW FEATURE ARTICLE. *Just in time for Halloween, we're delighted to publish a new feature article,* Tales from the Arbitration Crypt, *offering your publisher's reflections on a multi-decade career influenced by random, weird, other-worldly events.* Spoiler alert*: serendipity is sometimes better than planning, but don't count on it.*

FEATURE ARTICLE

TALES FROM THE ARBITRATION CRYPT*, by George H. Friedman*. With Halloween upon us, I thought it might be an interesting break from our usual serious scholarly fare for your author to share some humorous horror stories drawn from decades in the alternative dispute resolution field. A few names have been changed or eliminated – not mine – to protect the guilty. To whet readers' appetites, here are some key headers: **"Beam Me Up Scotty!"; Not the Genuine Article I – The Potemkin Award; Not the Genuine Article II – I Said *What*??; Not the Genuine Article III – The Traffic Ticket Excuse; Bartleby the Arbitrator;** and **I'm from the Future. Go with Cloud-based ADR.** *Read more…*

(ed: George H. Friedman, Publisher and Editor-in-Chief of the online Securities Arbitration Alert *and an ADR consultant, retired in 2013 as FINRA's Executive Vice President and Director of Arbitration, a position he held from 1998. He also serves as non-executive Chairman of the Board of Directors of Arbitration Resolution Services. He is an Adjunct Professor of Law at Fordham Law School, and is also a member of the AAA's national roster of arbitrators.)*

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SQUIBS: IN-DEPTH ANALYSIS

SCOTUS TO HEAR *BADGEROW* NOVEMBER 2: WHAT YOU NEED TO KNOW. ***The remaining arbitration-centric case on the Supreme Court's docket,* Badgerow v. Walters*, No. 20-1143, has been set for oral argument on November 2. We offer below this handy guide to the case, which involves a FINRA arbitration Award.*** As reported in SAA 2021-19 (May 20), the Supreme Court on **May 17** granted *Certiorari* in a case involving application of the "look through" standard (described below). The Court will review *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. We borrow from our past coverage to provide background on the case and issues.

The Case Below

A FINRA Panel rendered an Award denying AP Badgerow's claims against Ameriprise and three "franchise advisors," triggering a petition to vacate by Badgerow in a Louisiana trial court. The Respondents then removed the case to federal court. Thereafter, the District Court confirmed the Award, finding no fraud in its procurement as Badgerow had alleged. Before the Fifth Circuit was whether the District Court acted properly in determining it had federal jurisdiction to support removal.

The FAA and Federal Jurisdiction

Because the Federal Arbitration Act ("FAA") does not confer federal jurisdiction, another basis must be present. As reported in SAA 2021-39 (Oct. 21), a wonderful primer on the FAA and federal jurisdiction was provided by the unanimous Connecticut Supreme Court decision in *A Better Way Wholesale Autos, Inc. v. Saint Paul*, No. SC20386 (Conn. Oct.

12, 2021). The case dealt with whether the shorter time to vacate an award under state law – Connecticut General Statutes § 52-420 (b) – was preempted by the FAA. The Court held it was not, because the State's law: "… does not stand as an obstacle to the accomplishment of the federal policy to enforce arbitration agreements." Footnote 6 explains: "The parties disagree as to whether the plaintiff could have brought the application to vacate in federal court rather than in state court. As we discussed, it is undisputed that the FAA does not create subject matter jurisdiction in federal courts. Therefore, a federal court must have an independent basis of subject matter jurisdiction over an FAA claim. See, e.g., *Vaden v. Discover Bank*, supra, 556 U.S. 59; *Hall Street Associates, LLC v. Mattel, Inc*., supra, 552 U.S. 581–82. An independent basis of jurisdiction may be established, among other ways, through (1) diversity of citizenship; see, e.g., *Equitas Disability Advocates, LLC v. Daley, Debofsky & Bryant, P.C*., supra, 177 F. Supp. 3d 204; *Kiewit/Atkinson/Kenny v. International Brotherhood of Electrical Workers, Local 103, AFL-CIO*, 43 F. Supp. 2d 132, 135 (D. Mass. 1999); or (2) federal question jurisdiction over the underlying dispute pursuant to 28 U.S.C. § 1331. See, e.g., *Vaden v. Discover Bank*, supra, 59–60; see also, e.g., id., 62 (approving 'look through' approach to determine whether federal court has federal question jurisdiction under FAA)."

The "Look Through" Standard Under FAA Section 4 Motions to Compel

The Supreme Court in *Vaden v. Discover Bank*, 556 U.S. 49 (2009), held that jurisdiction over a petition to compel arbitration under FAA section 4 is determined by the nature of the underlying dispute. This was based on section 4 language providing that a motion to compel arbitration can be brought in "any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties." The *Vaden* standard became known as the "look through" standard.

Majority of Circuits Extend the Standard to Award Confirmation

Over the years, a majority of Circuits considering the question (First, Second, Fourth, and Fifth) have extended the "look through" standard to post-award motions to confirm or vacate/modify. See, for example, *Doscher v. Sea Port Group Securities, LLC*, 832 F.3d 372 (2d Cir. 2016), where the Second Circuit extended *Vaden*'s "look through" jurisdictional test to motions to confirm (FAA section 10) or modify (FAA section 11) awards under the FAA. The Third and the Seventh Circuits have adopted a contrary view, limiting the "look through" standard to actions to enforce arbitration agreements. See, for example, *Goldman v. Citigroup Global Markets Inc*., 834 F.3d 242 (3d Cir. 2016).

Applying the "Look Through" Standard Here

Applying the "look through" test to the underlying FINRA arbitration, the Fifth Circuit held that the District Court had federal subject matter jurisdiction to support removal of the vacatur action filed in state court. Said the unanimous Opinion: "Applying the look-through analysis, we have held, first, that the district court correctly found that Badgerow's Title VII declaratory judgment claim against Ameriprise in the FINRA arbitration was a federal-law claim. We have held, second, that all of Badgerow's claims

against the Principals and Ameriprise in the FINRA arbitration arose from the same common nucleus of operative fact, and that under the principle of supplemental jurisdiction, federal jurisdiction obtains over Badgerow's state-law tortious interference and whistleblower claims. The district court therefore properly held that Badgerow's federal claim against Ameriprise in the FINRA arbitration invested federal jurisdiction over Badgerow's Louisiana petition to vacate the FINRA arbitration award as to the Principals."

Issue Before SCOTUS and *Amicus* Briefs
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." We checked the Court's docket, and as of press time, only three *Amicus* Briefs have been filed, with these two in support of Respondent: 1) the Chamber of Commerce of the United States of America; and 2) the Securities Industry and Financial Markets Association.

Follow the Oral Argument Live
As reported in SAA 2021-34 (Sep. 9), the Court on **September 8** announced that arguments scheduled for October, November, and December will be in-person. However: "Courtroom access will be limited to the Justices, essential Court personnel, counsel in the scheduled cases, and journalists with full-time press credentials issued by the Supreme Court. Out of concern for the health and safety of the public and Supreme Court employees, the Courtroom sessions will not be open to the public." There will be a live audio feed available here. Also, audio recordings and transcripts are posted on the SCOTUS Website on the same day an argument is heard. The schedule indicates that *Badgerow* will be the second case heard on November 2.
*(ed: *Only the jurisdictional issue was before the Fifth Circuit, "not in any instance, the merits of the confirmation of the FINRA arbitration dismissal award." **In our view, the split in the Circuits clearly warranted the* Cert. *grant. ***We'll hold off on our outcome prediction until after the oral argument. But we can just imagine the late Justice Scalia posing this question: "So let me get this straight: it's OK to apply 'look through' to enforcing the arbitration agreement, but not the eventual award?? Do I hear you correctly?")*
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CUSTOMER WINS $2.5 MILLION AWARD AGAINST HER BROKER EX-HUSBAND. ***FINRA arbitration panels are free to hand out multi-million-dollar awards to claimants with nary a word about the underlying facts, or why they found the winner's case so compelling or worth so much. Fortunately, we were able to obtain the pleadings by the claimant and the losing respondent, shedding light on those questions.*** The Award in question is *Snyder v. J.P. Morgan Securities LLC*, No. 18-03816 (Boca Raton, FL, Sep. 27, 2021), where a customer (whom we shall hereinafter refer to as Elizabeth) recovered $2,554,896 in compensatory damages, plus post-judgment interest, from her broker and one-time husband (whom we shall hereinafter

refer to as Barry). We don't claim to know the facts, since the Award made no findings. The following are summaries of the allegations in Elizabeth's and Barry's respective pleadings, which we present "as is."

Elizabeth: My Ex-Husband Abused My Trust in Him

After Elizabeth and Barry divorced, he continued to support her and their children through alimony and child support. As a broker, he went through a succession of employers. When he joined Credit Suisse Securities (USA) LLC, Elizabeth transferred her trust account to that firm, where a team that included Barry but was headed by someone else managed the account well. Credit Suisse terminated Barry over concerns about the accuracy of records of certain orders he "said he took from customers," and he brought the account with him to J.P. Morgan, telling Elizabeth that he left Credit Suisse seek a better opportunity. At J.P. Morgan, he churned the account and made overconcentrated, leveraged and unsuitable trades in stocks.

Barry advised Elizabeth to transfer the trust accounts to a new company he set up for her, Linkster Holdings, LLC, purportedly for estate planning purposes. Shortly thereafter, Barry revealed that he was leaving J.P. Morgan to set up a so-called "family office." However, he failed to reveal the fact that J.P. Morgan terminated him for improprieties and that Linkster and the "family office" were intended to circumvent registration requirements because he was unemployable in the securities industry. Barry caused Elizabeth to transfer her accounts to a new broker-dealer, which he used to continue engaging in the same improper strategies, draining Elizabeth's savings.

Barry: I Saved My Ex-Wife from Herself

At the time of the divorce, Elizabeth and the children received more than $10 million in assets, but she spent "her money wildly and uncontrollably" and turned to Barry after suffering massive losses at the hands of another broker, leaving her with only $2 million. Barry "picked up the pieces for her" and managed her money, first at Credit Suisse and then at J.P. Morgan, successfully growing the accounts, despite Elizabeth ignoring his advice to rein in her lavish lifestyle and spending.

Barry continued to employ the same investment strategy throughout his career at Credit Suisse and J.P. Morgan, albeit with less success at the latter. Not only wouldn't he defraud his wife, but his investments were "commonly aligned with hers," and he suffered far more losses than she did. The losses were the result of two stock in which Barry concentrated the accounts after doing due diligence to determine their suitability, and Elizabeth understood the risks of investing. He created Linkster to protect her assets from creditors. It was Elizabeth who initiated transferring her accounts from J.P. Morgan after that firm asked her to leave.

Barry's BrokerCheck Report

Lacking any analysis of the rival claims, we reviewed Barry's BrokerCheck entry and report to find out what light they might shed. The report confirms Elizabeth's allegation about the reason Barry left Credit Suisse, but contains no disclosures in connection with

his parting ways with J.P. Morgan in 2015. Curiously, though, his registration history shows that he never again worked as a broker and next reveals him as a SEC-registered investment advisor in 2018. Barry stated that he was not named as a respondent in any arbitration, and the report confirms that that was true when he filed the Statement of Answer, but is no longer true, as there is a separate pending arbitration alleging "excessive and unauthorized trading" from his days at J.P. Morgan.
*(*A SAC h/t to Elizabeth's counsel, Robert Wayne Pearce, Esq. of Boca Raton, FL, for supplying the pleadings to us. **This Squib was prepared by Harry A. Jacobowitz, President of HAJ Research and Writing LLC. Mr. Jacobowitz, a member of the Pennsylvania bar, and his firm perform legal research and writing for attorneys and handle substantive searches of SAC's Award database. He can be contacted at harryjacobowitz@optimum.net. ***Email us at Help@SecArbAlert.com for the pleadings described in this* Alert *and a summary of the claimant's damage requests based on several alternative methods of calculation. ****Elizabeth also named three broker-dealers as respondents. She settled with two of them, but the third had already shuttered its doors before she filed the arbitration. Although it never entered an appearance in the case, the Panel did not hold it liable.)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

REMINDER: COMMENTS DUE NOVEMBER 4 ON NASAA'S PROPOSED MODEL RULES TO ADDRESS UNPAID AWARDS AND FINES. As reported in SAAs 2021-38 (Oct. 14) & -37 (Oct. 7), the North American Securities Administrators Association ("NASAA") released for public comment draft model rules to address the lingering problem of unpaid arbitration awards and fines. Specifically, NASAA issued an **October 5** Press Release, *NASAA Seeks Public Comment on Proposed Model Rules to Combat Unpaid Arbitration Awards and Fines,* describing the proposals. As we said in #37, these are the headlines (*ed: repeated* verbatim): Specifically, the Model Rules would add the following provisions to the existing rules on dishonest or unethical business practices by broker-dealers, agents, investment advisers and investment-adviser representatives:

- Failing to satisfy an arbitration award resulting from a client or customer-initiated arbitration,
- Attempting to avoid payment of any client or customer-initiated arbitration; or,
- Failing to satisfy the terms of any order resulting from a regulatory action taken against the registrant.

This is a friendly reminder that comments – *electronic form only* – are due **November 4.** *(ed: Email comments to NASAA at NASAAComments@nasaa.org with a cc: to the Project Group Chairs, Kristen Standifer(kstandifer@dfi.wa.gov), Patrick Costello (patrick.costello@sec.state.ma.us), and Stephen Brey (breys@michigan.gov).)*
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CALIFORNIA AMENDS ARBITRATION STATUTE AS TO CONSUMER AND EMPLOYMENT DISPUTES. California Governor **Gavin Newsome** on **September 22** signed into law SB-762 -- amendments to the State's arbitration statute, impacting

consumer and employment matters. Specifically, sections 1281.97 and 1281.98 of the Code of Civil Procedure have been amended, and a new section 1657.1 is added to the Civil Code. What's changed? According to the latest analysis (*ed: we've reformatted the text for ease of review*):

- Existing law generally regulates the nature of contracts and establishes principles for the interpretation of contracts. This bill would require any time specified in a contract of adhesion for the performance of an act required to be performed to be reasonable.
- Existing law provides that if an employment or consumer arbitration requires the party which drafted the arbitration agreement to pay fees and costs before arbitration can proceed or during the pendency of an arbitration, the drafting party is in breach of the agreement, in default of arbitration, and waives its right to compel arbitration if it does not pay the fees within 30 days after the date they are due. This bill would require the arbitration provider to provide invoices for the fees and costs described above, in their entirety, to all parties to the arbitration on the same day and by the same means.
- The bill would require those invoices to be issued as due upon receipt unless the arbitration agreement expressly provides a different time for payment. For fees and costs due during the pendency of the arbitration, the bill would require any extension of time for the due date to be agreed upon by all parties to the arbitration.
- The bill would make technical and conforming changes."

*(ed: *A redlined version is available. **It's not clear to us when the changes become effective. We invite readers with knowledge to let us know at George@SecArbAlert.com. ***We don't see any Federal Arbitration Act ("FAA") preemption issues because the changes don't appear to frustrate the goals of the FAA.)*
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CALIFORNIA AB-51 UPDATE: CHALLENGERS MOVE FOR *EN BANC* REHEARING. As expected, the challengers have moved for rehearing *en banc* in *Chamber of Commerce of the United States v. Bonta*, No. 20-15291 (9th Cir. Sep. 15, 2021). As reported in SAA 2021-36 (Sep. 23), a split Ninth Circuit in *Chamber of Commerce* ruled on the validity of California AB-51 – a law that would restrict predispute arbitration clauses ("PDAA") in employment relationships. The divided Court held that the mandatory PDAA use preclusions in the new law withstand Federal Arbitration Act ("FAA") preemption scrutiny, but the criminal and civil penalties for mandatory PDAA use do not. Recall that our prescient editorial note in #36 was: "We continue to see this one as destined for SCOTUS, with perhaps a petition for *en banc* review along the way." We later reported in SAA 2021-37 (Oct. 7) that on **September 22** the plaintiffs-appellees filed a motion for a 21-day extension on the time to file a petition for rehearing *en banc*. The Court granted the unopposed motion **September 28,** making the due date **October 20**. Precisely on time, the Chamber and the other challengers filed the motion. The basis, as reflected in the table of contents: **The Panel's decision violates Supreme Court precedent; AB51 violates Section 2 of the FAA; AB51 is an obstacle to accomplishment of the FAA's objectives; The panel majority's bifurcated approach to preemption is unworkable and does not save its analysis; The Panel's decision creates a Circuit split on the reach of FAA preemption, an issue of**

nationwide importance; and **The issue is extraordinarily important because the Panel's decision affects thousands of businesses in California that have millions of workers**." A response is due in 21 days, or on or about **November 11**.
*(ed: *We think there's a good shot the motion will succeed. **As we understand it, the injunction against enforcement of AB-51 remains in effect at least until the Court decides the motion. ***Email Help@SecArbAlert.com for a copy.)*
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BACK TO CONTRACTS 101: PDAA REQUIRES OFFER AND ACCEPTANCE, MISSOURI COURT HOLDS. We sometimes forget that predispute arbitration agreements ("PDAA"), like any contract, requires offer and acceptance. We say "any contract" because decades of SCOTUS holdings say that a PDAA is separable from the contract in which it is embedded. *Trunnel v. Missouri Higher Education Loan Authority*, No. WD84114 (Mo. Ct. App. Sep. 21, 2021), asks what's the result where an employee acknowledges receipt of the PDAA but doesn't sign it? The answer from the unanimous Court: "The PDAA fails because while there's been an offer from the employer, there hasn't been acceptance by the employee." This, despite the fact that the "Acknowledgment of Receipt" provided at the signature line: "I ACKNOWLEDGE RECEIPT OF THE MANDATORY ALTERNATIVE DISPUTE RESOLUTION/ADR PROCESS POLICY." Why? Says the Opinion: "Standing alone, the ADR Process document represents nothing more than a published statement of MOHELA's alternative dispute resolution policies and processes. Though the ADR Process document unilaterally states that it applies to all employees, the document includes no language or other feature (such as a signature line) that would permit a court to conclude that the ADR Process document is an offer as to which an employee could manifest assent."
(ed: Hmm. We're not so sure.)
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Dodson International Parts Inc. v. Williams International Co*., No. 20-3193 (10th Cir. Sep. 13, 2021)**: "We hold that the claims in Dodson's federal-court complaint are encompassed by the arbitration clause; that the district court did not abuse its discretion in denying Dodson's untimely motion to reconsider; and that Dodson has failed to establish any grounds for vacatur of the arbitrator's award or for denial of confirmation of the award."

***Patterson v. Superior Court of Los Angeles County*, No. B312411 (Calif. Ct. App. 2 Oct. 18, 2021)**: " … may an employer's arbitration agreement authorize the recovery of attorney fees for a successful motion to compel arbitration of a FEHA [California Fair Employment and Housing Act] lawsuit even if the plaintiff's opposition to arbitration was not frivolous, unreasonable or groundless? Because a fee-shifting clause directed to a motion to compel arbitration, like a general prevailing party fee provision, risks chilling an employee's access to court in a FEHA case absent section 12965(b)'s asymmetric standard for an award of fees, a prevailing defendant may recover fees in this situation only if it demonstrates the plaintiff's opposition was groundless. [] No such finding was

made by the superior court in the underlying action before awarding real party in interest Charter Communications, Inc. its attorney fees after granting Charter's motion to compel Michael Patterson to arbitrate his FEHA claims." (*An* Alert *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.)*

***BREA 3-2 LLC v. Hagshama Fla. 8 Sarasota, LLC*, 3D20-1154 (Fla. Dist. Ct. App. Sep. 29, 2021)**: "We hold that the arbitration clause, by which the parties agreed to arbitrate any dispute 'under the Agreement,' constitutes a narrow arbitration provision, and that the claims alleged in the complaint below (usury and related claims premised on an allegedly usurious loan) do not have the requisite 'direct relationship' to the underlying agreement such that the parties agreed to arbitrate this dispute."

***Clemensen v. CliftonLarsonAllen Wealth Advisors, LLC*, FINRA ID No. 20-03020 (Orlando, FL, Sep. 17, 2021)**: An Arbitrator explains why he decided to deny a broker's request for expungement of a customer complaint from his CRD record, finding that the complaint was not clearly erroneous. Also noteworthy, *both* the customer involved in the complaint and Respondent broker-dealer opposed the broker's request for expungement: "The evidence presented during the hearing on August 26, 2021, and the documents submitted after August 26, 2021, together with the pleadings and exhibits presented, did not meet the standard for granting expungement under FINRA Rule 2080 and other applicable FINRA rules. Although the Customer chose not to participate in the hearing, the information presented established that the Customer's complaint was not clearly erroneous, Claimant admitted to providing an incorrect calculation to the Customer, and the Customer's complaint was not false. The request is denied." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Zhu v. Waddell & Reed*, FINRA ID No. 20-01332 (Seattle, WA, Sep. 17, 2021)**: An All-Public Panel explains in great detail why it decided to deny a broker's case, finding that she failed to prove the essential elements of each of her claims by a preponderance of the evidence despite their denial of Respondent broker-dealer's Motion for Directed Verdict. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

RPS Submitter, U Iowa Legal Studies and Steinitz, Maya, *Third Party Funding of Investment Arbitration*, U Iowa Legal Studies Research Paper No. 2021-42 (June 24, 2021): "This Essay discusses Third-Party Funding in Investment Arbitration. It describes the rise of third-party funding of investment arbitration; the debate over the definition of litigation/arbitration finance; the forms arbitration finance takes; the normative debate in favor and against third-party funding of investment arbitration; the effects of arbitration funding on the arbitral process; developments in national, international, and soft law governing investment arbitration funding; and the likely effects of third-party funding on the international bar."

***Governor Newsom Signs a Slew of New Employment Laws for 2022*, Proskauer Rose LLP California Employment Law Blog (Oct. 18, 2021**): "The 2021 legislative season came to a close, Governor Gavin Newsom signed numerous bills into law. From arbitration to workplace safety, these laws will impact employers across the state. We have summarized the most important ones for you here: Arbitration - Arbitration fees will now need to be paid upon receipt of invoice unless the arbitration agreement expressly establishes a payment schedule. The new law is meant to prevent employers from causing delay in arbitration proceedings by failing to timely pay fees or asking for extensions, unless all parties agree. The new law also provides that any time specified in a contract of adhesion for the performance of an act required to be performed shall be reasonable (SB 762)." (*ed: see our coverage elsewhere in this* Alert.)

***Morgan Stanley Loses FINRA Arb Case on Botched Options Trading*, ThinkAdvisor (Oct. 18, 2021)**: "Morgan Stanley must pay over $130,000 in compensatory damages and over $8,000 in legal and other fees and costs, plus interest, to a client who alleged the firm was negligent and failed to adequately supervise when trading of Tesla options wasn't executed properly by one of its reps, according to a Financial Industry Regulatory Authority arbitration award on Friday [October 15]."

***Arbitrators Rule Against Morgan Stanley, FA in Options Trading Dispute*, Financial Advisor IQ (Oct. 19, 2021)**: "A Financial Industry Regulatory Authority arbitration panel has ruled against Morgan Stanley and one of its financial advisors over allegations of improper trading in the options of the stock of electric car maker Tesla.[]Andre Danesh filed a claim in December 2020 accusing Morgan Stanley and one of its financial advisors … of negligence, erroneous trading, execution error, failure to properly execute trade and negligent management and supervision, all related to Tesla options, according to a letter of acceptance, waiver and consent published by the industry's self-regulator.... Last week, the Finra panel ruled in favor of Danesh, although it only held [advisor] and the company liable, jointly and severally, for roughly $130,300 in compensatory damages plus interested, around $8,000 in costs and $600 to cover the non-refundable portion of the filing fees with Finra's Dispute Resolution Services, the self-regulator says."

***Consumer Groups Urge CFPB to Regulate Fee-based Earned Wage Access Products as Credit*, Ballard Spahr LLP Consumer Finance Monitor Blog (Oct. 20, 2021)**: "A group of 96 'organizations and individuals, who describe themselves as consisting of consumer, labor, civil rights, legal services, faith, community and financial organizations and academics,' have sent a letter to the CFPB urging the Bureau to regulate fee-based earned wage access (EWA) products as credit subject to the Truth in Lending Act. EWA products provide employees with access to earned but as yet unpaid wages. Such products typically involve an EWA provider that enables employees to request a certain amount of accrued wages, disburses the requested amounts to employees prior to payday, and later recoups the funds through payroll deduction or bank account debits on the subsequent payday."

***U.S. Chamber of Commerce Seeks En Banc Review of Decision on FAA Preemption and California's AB 51*, National Law review (Oct. 21, 2021)**: "As suggested by its previous motion, the U.S. Chamber of Commerce has filed a petition for rehearing en banc after a divided panel of the U.S. Court of Appeals for the Ninth Circuit found the Federal Arbitration Act (FAA) did not preempt California's ban on mandatory arbitration contracts, Assembly Bill 51 (AB 51)." (*ed: see our coverage elsewhere in this* Alert.)

***BofA to Employees: Report Covid Vaccine Status by November 1*, Financial Advisor IQ (Oct. 25, 2021)**: "Bank of America is requiring its roughly 173,000 employees to report their Covid-19 vaccination status by November 1.[] Roughly 105,000 staffers — more than 60% of employees — have done so already, according to a memo sent last week, a spokesperson for the firm confirms. The mandate includes roughly 25,000 Merrill Lynch advisors, according to FA-IQ sister publication *Ignites*."
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DID YOU KNOW?

CFTC, TOO, HAS A WHISTLEBLOWER PROGRAM. We report regularly in the *Alert* on the SEC's whistleblower program, but did you know the Commodity Futures Trading Commission also has a whistleblower program? To qualify for an award: "a whistleblower who significantly contributed to the success of an enforcement action must demonstrate that there is a 'meaningful nexus' between the information provided and the CFTC's ability to successfully complete its investigation, and to either obtain a settlement or prevail in a litigated proceeding." As for recent activity, an **October 21** Press Release, *FTC Awards Nearly $200 Million to a Whistleblower - Largest Award to a Single Whistleblower*, announces: "… an award of nearly $200 million to a whistleblower whose specific, credible, and timely original information significantly contributed to an already open investigation and led to a successful enforcement action, as well as to the success of two related actions, by a U.S. federal regulator and a foreign regulator."
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Send any messages or inquiries to: George@SecArbAlert.com

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Mail to: 194 Carlton Terrace, Teaneck, NJ 07666
T: 917-841-0521
Web: www.SecArbAlert.com
Blog: www.sacarbalert.com/blog/; Twitter: @SecArbAlert