SECURITIES ARBITRATION ALERT 2021-44 (11/25/21)

George H. Friedman, Editor-in-Chief

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- ***The 'Third Act' in the Kabab-Ji Saga—What Law governs the Arbitration Agreement (Law of the Seat or Law of the Underlying Contract)?* Akin Gump Blog (Nov. 12, 2021)**
- ***Ex-J.P. Morgan Rep Claimed He Ran Gardening Business to Get COVID Loan: FINRA,* ThinkAdvisor (Nov. 15, 2021)**
- ***Supreme Court of Puerto Rico Validates Implicit Consent for Arbitration Agreements in the Employment Context,* JDSupra (Nov. 15)**
- ***House Panel Passes Bill to Prohibit BDs, Advisors From Requiring Arbitration*, ThinkAdvisor (Nov. 16, 2021)**
- ***SEC Announces Enforcement Results for FY 2021*, www.sec.gov (Nov. 18, 2021)**

DID YOU KNOW?

- **The *Alert*'s Blog is on a "Top 10" Arbitration Blogs to Follow List**

We wish our readers, all the best during this truly American holiday!

SEVERAL COMMENTS, UNIVERSALLY SUPPORTIVE BUT WITH MANY SUGGESTING FURTHER CHANGES, ON NASAA'S PROPOSED MODEL RULES TO ADDRESS UNPAID AWARDS AND FINES. ***The comment period closed in early November on NASAA's draft model rules to address the lingering problem of unpaid arbitration awards and fines. The comment letters – including those from PIABA and SIFMA – were all supportive, but with most suggesting further improvements.*** 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.

Several Comments, All Supportive, But with Most Suggesting Improvements
Comments were due **November 4**, and as of press time eleven were posted on the NASAA Website. We present below some representative institutional comments. Footnotes have been omitted. Given space limitations, we encourage readers to consult the leAAtters for details and specifics, especially as to requested comments on these questions (*ed: repeated* verbatim): 1. Are there issues related to unpaid customer-initiated arbitration awards that the proposed rules would not address? 2. The "automatic stay" under the Bankruptcy Code generally stays any action to collect a debt owed by a person that has filed a bankruptcy petition. In light of this, is additional language necessary in

the second provision to clarify that proposed rules do not interpret a bankruptcy filing as an attempt to avoid payment of any final judgment or arbitration award? 3. Does the broad reach of paragraph three undermine the focus on unpaid customer-initiated arbitration awards? 4. Are there other ways to address unpaid customer-initiated arbitration awards? 5. What concerns do you have about the proposed rules?

Generally Supportive
Financial Services Institute: "The Financial Services Institute (FSI) supports this important proposal and appreciates the opportunity to comment. The Financial Industry Regulatory Authority's (FINRA) alternative dispute resolution system, and specifically its arbitration program, provides an accessible mechanism for resolving disputes quickly, economically, and fairly. The continued reliance on, and success of, FINRA arbitration requires that participants view the program as fair and effective. We believe that the Model can make an important contribution to ensuring that awards are paid, compensating the harmed party as well as supporting confidence in the arbitration program."

Supportive, But More Should Be Done
Insured Retirement Institute: "While FINRA rules already address unpaid arbitration awards for member firms and associated persons, as the Request for Public Comment notes, firms that become suspended under those rules may still register with NASAA member jurisdictions in other capacities, such as an investment advisor or investment adviser representative. The model rule would appropriately and effectively address this issue, but only if the model rule is carefully constructed to work in conjunction (and not conflict) with the relevant FINRA rules. As such, we respectfully request that the portions of the rule dealing with 'attempts' to avoid payment be removed, as this creates a gray area, seems unnecessary, and is inconsistent with the FINRA rules. A firm or an individual either fails to pay or pays the award, and we believe the final model rule should reflect this." Other changes are also suggested.

PIABA: "PIABA supports the adoption of NASAA's proposed Model Rules as described in its October 5, 2021, proposal. PIABA supports the suspension or expulsion of brokerage firms, advisory firms, broker-dealer representatives, and investment advisory representatives who fail to pay arbitration awards. The proposed rules would allow the state regulators to suspend or expel a financial professional or firm if they fail to pay an arbitration award or otherwise attempt to avoid payment of any client or customer-initiated arbitration. While the proposed Model Rules are undoubtedly a positive step and important tool for regulators, PIABA repeats its longstanding call to NASAA and the securities industry to institute an Investor Recovery Fund: the most effective solution to address the serious unpaid arbitration issue."

SIFMA: "The issue of unpaid FINRA arbitration awards is a legitimate concern that merits attention. SIFMA generally supports appropriately designed reforms intended to reduce the number of unpaid awards. Accordingly, we generally support NASAA's Model Rules, with recommendations to narrow them in certain respects, expand them in

others, and clarify when and whether they apply, as set forth below.... The Model Rules would apply only to 'investment-related, customer-initiated' arbitration awards. The Model Rules are under-inclusive in this respect. If, for example, a firm brought an arbitration claim against a customer (e.g., to collect on margin debt), the customer counterclaimed and prevailed, and the firm failed to pay the award, then arguably that unpaid award would not be covered by the Model Rules because it was not 'customer-initiated.' The Model Rules should be revised to cover such awards." Other changes are also suggested.

Law School Securities Arbitration Clinics: Comments were received from three clinics: **Cornell;** **Northwestern**; and **St. John's**. All were supportive but suggested improvements. We quote from the St. Johns clinic's letter: "While the Proposed Rules are a noble effort to help ensure award payment, there may still be room for other improvements. Although an investor may try to recover their award by asking a court to convert the arbitration award into a judgment, this still does not ensure that the investor is compensated. While the Clinic appreciates that such brokers or investment advisers would be prevented from committing further misconduct within the industry because they would be subject to disciplinary action, this does not protect the investors whom they have already wronged by failing to comply with arbitration awards. We believe that a compensation fund would be appropriate to ensure that investors may have some path by which they can be made whole." Other changes are also suggested.

Opposed
None, even comments from individual commenters.
*(ed: *We're a bit surprised that FINRA has apparently not commented. **We're not clear on next steps, but we'll track this one.)*
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WASHINGTON STATE COURT VACATES $4.6 MILLION AWARD BECAUSE ONE ARBITRATOR'S INADEQUATE DISCLOSURE TAINTED PANEL. ***Arbitrators have an affirmative duty to reveal potential conflicts of interest, especially when such a disclosure is expressly required by the forum in which they serve, and may taint the entire panel via inadequate disclosures.*** That was the lesson in *Charles Schwab & Co., Inc. v. Guerrero*, No. 21-2-05414-1-SEA (Wash. Super. Ct., Kings Cty., Oct. 26, 2021), where the single arbitrator on a three-member panel failed to disclose her history as a securities fraud plaintiff. This resulted in the vacatur of an award, despite FINRA's mid-case recusal of the offender.

The Dispute, Recusal and Award
The underlying arbitration claim was brought by a group of 26 customers against two broker-dealers, Charles Schwab and Interactive Brokers LLC, alleging unsuitability, breach of the Washington Consumer Protection Act and Washington State Securities Act, and other causes of action. The Award in *Apt v. Charles Schwab & Co., Inc.,* FINRA ID No. 19-03250 (Seattle, WA, Mar. 26, 2021), contained little information on the facts of the case or procedural history. However, the respondents' Petitions to Vacate (which are

the only pleadings we have seen) agree on certain points: 1) respondents were merely custodians of the claimants' accounts, which were managed by an unrelated investment advisor; 2) the case was bifurcated, with an initial hearing on the sole issue of liability; and 3) the original panel ruled in favor of claimants on that issue. The Petitions further allege that they discovered for the first time after the liability finding that one of the arbitrators on the panel, Pamela Bridgen, failed to disclose that she was a plaintiff in two securities fraud cases that were similar to the one she was hearing, and that she held an account with a broker-dealer acquired by Schwab. Both respondents demanded the recusal of all panelists, but all three refused. FINRA then recused only Ms. Bridgen, replacing her with a new arbitrator. The revised panel then took evidence on the issue of damages and the two retained arbitrators awarded the claimants a total of $3,333,482.35 in compensatory damages, plus interest, and $1,312,475.98 in attorney fees. The replacement arbitrator dissented, and no Panel member offered even a word of explanation for their respective decisions.

Evident Partiality

Both respondents filed in Washington Superior Court (the court of first instance) petitions to vacate the award on the ground of evident partiality. The Court agrees, explaining: "Ms. Bridgen's failure to disclose her involvement in a factually similar securities-related dispute (and related bankruptcy litigation) was fatal to her ability to serve as a neutral decision-maker. FINRA recognized this failing, and removed Ms. Bridgen from the arbitration panel. The question before the Court is not whether Ms. Bridgen's participation caused evident partiality, but whether the remedy imposed by FINRA was sufficient. The Court concludes that it was not. 'A finding of evident partiality in one arbitrator generally requires vacatur of the arbitration award.' *Schmitz v. Zelveti*, 20 F.3d 1043, 1049 (9th Cir. 1994). The fact that the arbitrator who substituted in for Ms. Bridgen dissented from the remaining panelists is not dispositive of the issue of prejudice, but is instructive. See Id. (noting that a tainted panel is reasonably inferred 'when the other panel members vote with the evidently partial arbitrator.')." The Schmitz court reasoned that arbitration panelists reach a decision after a joint decision, giving the tainted arbitrator "an opportunity to persuade the others."

Did Respondents Wait Too Long to Object?

The other issue is whether respondents waived their objections by waiting until after the liability ruling. While agreeing "that the timing of the objection is suspect," the Court excuses the delay: "Unlike many of the cases cited by Defendants, Ms. Bridgen did not leave a trail of clues that Plaintiffs should have been expected to follow. She was not selected by the opposing party, and therefore presumed to be possibly aligned with that party. The Court does not find that Plaintiffs were on constructive notice of Ms. Bridgen's bias. Although Plaintiffs raised the issue of bias after a significant portion of their case had been litigated, they did not raise the issue for the first time after arbitration concluded." Although the Court does not order a remand, the case will presumably be heard again before a new FINRA panel.

*(ed: *An* Alert *h/t to Peter Boutin, Esq. of Keesal Young & Logan, Los Angeles, CA, for bringing this case to our attention and providing us with the Court's Opinion and*

*Petitions to Vacate. Mr. Boutin's firm represented Charles Schwab in the underlying arbitration and vacatur proceeding. **We can provide the aforementioned documents to interested subscribers upon request. Email us at Help@SecArbAlert.com to order. ***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. ****Claimants reportedly sued the errant investment advisor in court, presumably because FINRA did not have jurisdiction over it. *****Was there any way the arbitrators could have salvaged their award? Probably not, given the Court's adoption of the* Schmitz *standard, which cited no exceptions potentially applicable to the* Apt *Award. However, FINRA's need to step in to recuse Ms. Bridgen, the remaining arbitrators' failure to offer a persuasive explanation of their decision, and, of course, the "untainted" arbitrator's dissent, did not help.*

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UPDATE: MARGIN DEBT HAS HIT AN ALL-TIME HIGH, APPROACHING $1 TRILLION. We reported in SAA 2021-13 (Apr. 15) that margin debt through **February** this year grew to $814 million, up dramatically from a year before. We said in our Squib: "Clearly, the growing margin numbers bear close watching." We can now report that the latest FINRA margin stats (through **October**) show that overall margin debt has ballooned to nearly $936 billion. We also said in #13: "We'll be keeping an eye on the 'Margin Calls' Controversy Type on FINRA's monthly report." Through **September,** this category has dropped off the "top 15" list, which is not surprising, given the robust capital markets. As we said in #13, what this growth in margin debt portends in the long term for arbitration filings remains to be seen. Arbitration claims generally rely upon realized losses. If investors hold through a downturn and the market quickly recovers, potential losses evaporate. Margin trading increases the chances of realized losses in market declines because that's when margin calls test investors' resolve (and financial wherewithal.)

*(ed: *We covered this topic in depth in our April 15 blog post,* Margin Debt Hits An All-time High of $814 Billion. Any Arbitration Implications? ***An SAA h/t to Securities Arbitration Commentator founder and President Richard P. Ryder for alerting us to this news.)*

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FINRA BOARD MEETS – IN PERSON – NEXT WEEK: NO AGENDA YET. FINRA's Board of Governors will next meet **December 1 – 2.** A FINRA spokesperson tells us that, for the first time since the onset of the COVID-19 pandemic, the Board will be meeting in person. The agenda will be published next week. As usual, we will follow up to see whether there are any dispute resolution action items.

(ed: We'll tweet any news as soon as we have it and will cover the results in a future Alert.*)*

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SEC'S INVESTOR ADVISORY COMMITTEE TO MEET VIRTUALLY DECEMBER 2. NO ARBITRATION OR MEDIATION AGENDA ITEMS. The SEC on **November 18** announced that its Investor Advisory Committee would be meeting virtually on Thursday, **December 2** from 10:00 a.m. to 4:00 p.m. Eastern Time. The Agenda has no dispute resolution items. The Sunshine Act Notice offers this description of items to be covered: "opening remarks, announcement of new officers, and announcement regarding a disclosure subcommittee; welcome remarks; approval of previous meeting minutes; a panel discussion regarding crypto and digital assets: helping to ensure investor protection and market integrity in the face of new technologies; a panel discussion regarding the SEC's potential role in addressing elder financial abuse issues; a discussion of a recommendation regarding individual retirement accounts; subcommittee reports; and a non-public administrative session." The meeting will be webcast at www.sec.gov.
(ed: Questions? Contact Vanessa A. Countryman at 202-551-5400.)
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NFA WARNS MEMBERS TO COMPLETE ANNUAL REGISTRATION PROCESS BY DECEMBER 3. The National Futures Association ("NFA") on **November 19** issued Notice to Members I-21-37, *Action encouraged: Complete Firm Application and Annual Registration Update processes prior to December 3, 2021*. The Notice states: "On December 4, 2021, NFA will update the Firm Application and Annual Registration Update in the Online Registration System (ORS). In order to complete these updates, all incomplete Firm Application (FIRMAPPL) and Annual Registration Update (FIRMARU) processes will be deleted. Therefore, NFA encourages firms to complete any FIRMAPPL or FIRMARU process listed on the Processes Not Complete page in ORS no later than December 3, 2021. This system implementation will not affect any completed applications or processes.[] To implement these updates, ORS will be unavailable from 8:00 a.m. CT/9:00 a.m. ET until 5:00 p.m. CT/6:00 p.m. ET on Saturday, December 4, 2021."
(ed: Questions? Contact NFA's Information Center at 312-781-1410 or 800-621-3570 or by email to: information@nfa.futures.org.)
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CALIFORNIA AB-51 UPDATE: TIME EXTENDED FOR RESPONSE TO CHALLENGERS' MOTION FOR *EN BANC* REHEARING. We reported in SAA 2021-40 (Oct. 28) that the challengers had 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 restricts 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." On

October 20, the Chamber and the other challengers filed the expected motion for *en banc* review. We last reported that a response was due **November 11**. The Court, however, on **November 10** granted unopposed motions by Bonta and the other Appellants to extend the time to file an opposition to **December 10**. In the meantime, several *Amicus* Briefs have been filed by groups such as the: California Restaurant Association; Civil Justice Association of California; Employers Group; and Restaurant Law Center.
*(ed: *We continue to 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.)*
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FEDERAL CIRCUIT: INCORPORATION OF CALIFORNIA'S ARBITRATION STATUTE CONSTITUTED CLEAR DELEGATION IN INTERNATIONAL DISPUTE. It is well-established that delegation of arbitrability questions must be demonstrated by "clear and unmistakable" evidence that this was the parties' intent. See, for example, *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995). Courts pondering this issue typically look to language in the parties' arbitration agreement. But what happens where the language did not expressly spell out delegation, but instead incorporated California's arbitration statute, which in California Code of Civil Procedure ("CCCP") § 1297.161 provides that in international cases: "The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement." In *ROHM Semiconductor USA, LLC v. MaxPower Semiconductor, Inc.*, No. 21-1709 (Fed. Cir. Nov. 12, 2021), a unanimous Federal Circuit holds that this constituted clear and unmistakable evidence of delegation. Says the Court: "Virtually all courts to consider the question, including this court, have concluded that, in contracts between sophisticated parties, incorporation of rules with a provision on the subject is normally sufficient 'clear and unmistakable' evidence of the parties' intent to delegate arbitrability to an arbitrator…. [I]t is fair to hold the parties to all provisions of their contract, including those incorporated by reference. To hold otherwise would deprive sophisticated parties of a powerful tool commonly used to simplify their contract negotiation -- adoption of provisions established by neutral third parties. And to refuse to give effect to the plain language of the contract, both its incorporation of the CCCP and the CCCP's delegation of arbitrability to an arbitrator, would ignore a basic premise of contract law -- that contracts are written legal instruments and their words are not to be ignored."
*(ed: *The Court also rejected ROHM's assertion that this was not an international arbitration: "No matter how ROHM USA tries to pigeonhole this action into its 'domestic action' moniker, moreover, this case is merely one aspect of a sprawling international dispute." **The Federal Circuit should not be confused with the DC Circuit. According to the Court's Website, the Court: "has nationwide jurisdiction in a variety of subject areas, including international trade, government contracts, patents, trademarks, certain money claims against the United States government, federal personnel, veterans' benefits, and public safety officers' benefits claims.")*
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***Reeves v. Enterprise Products Partners*, No. 20-5020 (10th Cir. Nov. 9, 2021)**: "Darrell Reeves and James King worked as welding inspectors for Enterprise Products Partners through third party staffing companies, Cypress Environmental Management and Kestrel Field Services. Reeves brought a collective action claim to recover unpaid overtime wages under the Fair Labor Standards Act, 29 U.S.C. § 216(b). King later consented to join the putative collective action and was added as a named plaintiff. Enterprise argues that both Reeves and King signed employment contracts with their respective staffing companies that should compel arbitration for both parties in this case. We agree. Under the doctrine of equitable estoppel, we find that these agreements require the claims to be resolved in arbitration. Because Reeves and James's claims allege substantially interdependent and concerted misconduct by Enterprise and non-defendant signatories, Cypress and Kestrel, arbitration should be compelled for these claims."

***McCoy v. Google, LLC*, No. 20-cv-05427-SVK (N.D. Calif. Nov. 9, 2021)**: "The Court finds that Plaintiff cannot satisfy the heavy burden of demonstrating that Defendant had knowledge of an existing right to compel arbitration, given Plaintiff's continuous representations in the Complaint, FAC, and the initial disclosures which put Defendant on notice, erroneously, that Plaintiff was using a Google Pixel XL smartphone. Thus, the Court finds that Defendant has not waived its right to compel individual arbitration. The Court further finds from the evidence before it and the arguments at the hearing that Plaintiff entered into a valid arbitration agreement that encompasses the claims in the FAC. Accordingly, the Court GRANTS Defendant's motion to compel arbitration." (*ed: An* Alert *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.*)

***Kabab-Ji SAL v. Kout Food Group*, [2021] UKSC 48 (Oct. 21, 2021) [UK Supreme Court]**: From the Press Summary: "The Supreme Court unanimously dismisses the appeal on all issues. It holds: (i) that the arbitration agreement is governed by English law (the 'choice of law issue'); (ii) that in English law there is no real prospect of a court finding that KFG became a party to the arbitration agreement (the 'party issue'); and (iii) that, procedurally, the Court of Appeal was right to give summary judgment refusing recognition and enforcement of the [International Chamber of Commerce] award (the 'procedural issue'). Lord Hamblen and Lord Leggatt give the sole joint judgment, with which the other Justices agree."

***O'Neill v. McDonald Partners, LLC*, FINRA ID No. 19-00440 (Cleveland, OH, Oct. 12, 2021)**: A customer is granted rescission of her investment in Eden Rock Montenegro LLC and is awarded compensatory damages relating to her investment in GPB Capital Holdings, an alleged Ponzi scheme. The other two Claimants settled their case against Respondents. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***LaPlante v. Stifel Nicolaus and Company, Inc.*, FINRA ID No. 20-03790 (Jacksonville, FL, Oct. 19, 2021)**: An Arbitration Panel explains why it has denied a broker's request for reformation of her Form U5 record, finding that no evidence was

presented that reflected Respondent broker-dealer has any obligation to expunge any information previously reported on the Form U5: "No evidence was presented to the Panel that reflected Respondent has any obligation to expunge any information previously reported on the Form U5." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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D. Greineder, *Arbitrators Don't Speak Esperanto: The Difficulties and Dominance of English as a Procedural Language in Arbitration*, Kluwer Arbitration Blog (Nov. 7, 2021): "The claim that arbitrators do not speak Esperanto may seem so obvious that it should not be stated at all. The artificial language was conceived in the late nineteenth century by Ludwik Lejzer Samenhof as a simple, neutral language that was not tied to any one culture. People of different national and ethnic groups would be able to adopt it in international or intercultural relations without any of them having the linguistic, cultural and political advantage of speaking their own language and imposing it on others. A common language held out the hope of a common understanding. These days the study of Esperanto, with perhaps only a few hundred thousand speakers globally, is a largely esoteric pursuit, mainly the preserve of obscure idealistic societies. The Vatican may have approved it for use in masses, but it certainly does not figure in the statistics of leading arbitral institutions."

***The 'Third Act' in the Kabab-Ji Saga—What Law governs the Arbitration Agreement (Law of the Seat or Law of the Underlying Contract)?* Akin Gump Blog (Nov. 12, 2021)**: "In a Judgement handed down on 27 October 20211, the UK Supreme Court upheld the English Court of Appeal finding in *Kabab-Ji SAL v. Kout Food Group* of 20 January 2020 that English law as the law governing the relevant contract, also governed questions of the validity of the arbitration agreement despite the fact that the arbitration agreement provided for a seat of arbitration in France, rather than in the United Kingdom. On that basis, the Supreme Court confirmed that the International Chamber of Commerce (ICC) Award rendered in September 2017 was unenforceable in the United Kingdom." (*ed: See our coverage elsewhere in this* Alert.)

***Ex-J.P. Morgan Rep Claimed He Ran Gardening Business to Get COVID Loan: FINRA*, ThinkAdvisor (Nov. 15, 2021)**: "Another former J.P. Morgan broker has been sanctioned by the Financial Industry Regulatory Authority after improperly applying for and receiving a COVID-19 Economic Injury Disaster Loan from the Small Business Administration, claiming he owned a gardening business to qualify, according to FINRA.[] In the application for the loan, [the rep] allegedly 'recklessly misrepresented' that he owned a gardening business that he founded in 2019 and operated as a sole proprietorship out of his home, using his personal phone number and email address, and the business earned revenue and incurred costs in the 12 months prior to Jan. 31, 2020, according to FINRA."

***Supreme Court of Puerto Rico Validates Implicit Consent for Arbitration Agreements in the Employment Context*, JDSupra (Nov. 15)**: "In *Aponte Valentín v. Pfizer Pharmaceuticals*, CC-2018-748,1 the Puerto Rico Supreme Court reinforced the strong public policy favoring arbitration agreements in Puerto Rico, validating continued employment as implicit consent for such agreements."

***House Panel Passes Bill to Prohibit BDs, Advisors From Requiring Arbitration*, ThinkAdvisor (Nov. 16, 2021)**: "The House Financial Services Committee passed a series of bills late Wednesday regarding pre-dispute mandatory arbitration, protecting seniors and reining in fees paid to sponsors of special-purpose acquisition companies.[] The Investor Choice Act, H.R. 2620, which was introduced by Rep. Bill Foster, D-Ill., passed by a 27-23 vote and prohibits broker-dealers and investment advisors from including pre-dispute binding mandatory arbitration clauses in their customer agreements."

***SEC Announces Enforcement Results for FY 2021*, www.sec.gov (Nov. 18, 2021)**: "The Securities and Exchange Commission today announced that it filed 434 new enforcement actions in fiscal year 2021, representing a 7 percent increase over the prior year. Seventy percent of these new or 'stand-alone' actions involved at least one individual defendant or respondent. The new actions spanned the entire securities waterfront, including against emerging threats in the crypto and SPAC spaces. For example, the SEC charged a company for operating an unregistered online digital asset exchange, charged a crypto lending platform and top executives alleging a $2 billion fraud, and brought an action against a special purpose acquisition company, its merger target, top executives, and others for alleged misconduct in a SPAC transaction. The SEC's whistleblower program was critical to these efforts and had a record-breaking year."
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THE *ALERT*'S BLOG IS ON A TOP 10 ARBITRATION BLOGS TO FOLLOW LIST. The *ADR Times* last **April** published *Top 50 ADR Blawgs to Follow*. The *Alert's* blog is included in the "Top 10 Arbitration" list! As a reminder, at least once a week our blog publishes posts on all things financial services arbitration. This free link-rich blog reports events and developments, rule changes, tactical matters, noteworthy awards and arbitration case law. Sign up to receive the latest news from the ADR world right on your desktop every week by completing the free "Get SAA Blog Updates" form on the blog landing page.
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