SECURITIES ARBITRATION ALERT 2021-46 (12/9/21)

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- ***Gamboa v. Northeast Community Clinic*, No. B304833 (Calf. Ct. App. 2 Nov. 30, 2021)**
- ***Pettijohn v. J.P. Morgan Securities, LLC*, FINRA ID No. 21-01167 (Los Angeles, CA, Oct. 15, 2021)**
- ***Hutchinson et al v. Credit Suisse Securities (USA) LLC*, FINRA ID No. 16-02825 (Chicago, IL, Nov. 5, 2021)**

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- ***Court Compels Arbitration Where Employer's Right to Modify Terms is not "Unfettered,"* Lexology (Nov. 30, 2021)**
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- **Back to Civics 101 on the Life Span of Bills in Congress**

SQUIBS: IN-DEPTH ANALYSIS

UPDATE: FINRA BOARD APPROVES CODIFICATION OF EXPEDITED TREATMENT FOR CASES INVOLVING SENIOR OR SERIOUSLY ILL PARTIES. ***As reported previously, the FINRA Board met in person December 1 – 2***

and considered an arbitration-related rule change proposal. The proposed changes to the* Code of Arbitration Procedure *were approved. As reported in SAAs 2021-45 (Dec. 2) & -44 (Nov. 24), FINRA's Board of Governors met **December 1 – 2**, and among other actions approved a rule change proposal to codify the exiting FINRA Dispute Resolution Services ("DRS") program to expedite administration of arbitration cases involving senior or seriously ill parties.

An Arbitration Rulemaking Item

CEO **Robert W. Cook**'s pre-meeting memo of **November 29** showed an arbitration-related rulemaking item: "proposed amendments to the *Codes of Arbitration Procedure* to accelerate the processing of arbitration proceedings for elderly or seriously ill parties...." As reported in SAA 2019-10 (Mar. 6), FINRA DRS has since **2004** had a special program to expedite the arbitration process for older (age 65+) or seriously ill investors. While Arbitrators and staff have been trained to speed these cases along, one drawback has always been that the *Codes* don't permit staff to shorten any timeframe in the rules without consent of the parties. Under the existing program: "staff will endeavor to do the following on an expedited basis: Complete the arbitrator selection process; Schedule the initial pre-hearing conference; Serve the final award; and Determine whether the parties are interested in mediation." Arbitrators are sensitized to respond favorably to requests for expedited treatment, specifically: "the arbitration panel is expected to press for hearing dates and discovery deadlines that will expedite the process, yet still provide a fair amount of time for case preparation: Scheduling hearing dates; Considering postponement requests; and Setting discovery deadlines."

Scant Additional Details on the Proposal

Looks like we will need wait to learn chapter and verse, because Mr. Cook's post-meeting memo provides little additional insight as to what's in store. It states: "*Accelerated Processing of Arbitration Proceedings for Elderly or Seriously Ill Parties* – The Board approved publication of a Regulatory Notice soliciting comment on proposed amendments to the Codes of Arbitration Procedure to accelerate case processing for seriously ill parties and parties who are 75 or older." But, we did learn that, in keeping with the "new normal" for rule change proposals, the Board has authorized staff to publish a Regulatory Notice seeking comments, rather than a 19b filing with the SEC.

We Knew This Was Coming

Way back in SAA 2019-10 (Mar. 6), we reported on this possible change. Specifically, we said that, according to a **March 2019** Financial Adviser IQ story, *This Arbitration Rule Change Could Dramatically Affect Many Older Respondents,* DRS Director of Arbitration **Richard Berry** had said that staff would be presenting to the National Arbitration and Mediation Committee a rule proposal to codify expedited treatment for investors age 75 and over. The story quoted Mr. Berry as follows: "We encourage parties to shorten deadlines and for the panel to expedite the cases. It's not working as well as we'd like. We want to make sure we have a program that really works." What else might be in store? We'll have to await the results of the meeting, but one major change we note: the existing program sets the "older" threshold at age 65; the proposed rule at 75. Also, in

the above-referenced interview, Mr. Berry was asked about specifics. He replied: "For example, we could decide to shorten the answer deadline, shorten the time to submit a list or shorten discovery deadlines."
*(ed: *This is a welcome change, since when all is said and done, the existing program does not abrogate the time frames in the* Codes. ***We are curious about whether cases under the current program actually have moved more quickly. We have commissioned a study of that question and will release the results by the end of the year. ***Next stop is publication of the Reg Notice. ****The Dispute Resolution Task Force Report contained recommended improvements in this area. ****The Board of Governors will meet next on March 9-10, 2022.)*
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FINRA DRS POSTS STATS THROUGH OCTOBER: OVERALL ARBITRATION FILINGS CONTINUE TO DECLINE, BUT MEDIATIONS ARE GOING THROUGH THE ROOF. ***FINRA Dispute Resolution Services ("DRS") posted case statistics through the end of October, with the overall arbitration case filing trends continuing from prior months but with a confirmed major change in mediation stats.***
In brief, the headlines are: 1) overall arbitration filings through **October** – 2,527 cases – are down 26% (had been -27% in **September**); 2) cumulative customer claims, which had been off 2%, are now down 5% from **2020**; 3) industry disputes remain way down at minus 48%; 4) mediation cases are *really* surging; and 5) for the fourteenth month in a row, pending cases declined. Overall arbitration turnaround times were 14.9 months, with hearing cases now taking 17.1 months. Also, there are now 8,466 DRS arbitrators, 4,015 public and 4,451 non-public.

What's Going on With Mediation Filings?
Nine out of ten mediation cases (89%) continue to result in a settlement. Of greater interest: there were 513 mediation cases in agreement, a significant *47% increase* over 2020 (and an improvement from September's already impressive plus 29%). This is the third month in a row with a significant increase in monthly and cumulative mediation filings. We were not yet sure what's fueling the surge, but we had a hunch that the resumption of in-person hearings in August is somehow linked to it. Rather than guessing, we went right to the source and asked FINRA. Director of Arbitration **Rick Berry** attributed the dramatic increase to: the return to in-person hearings; ending waiver of postponement fees for all cases (September 2021); comfort at being in person after inauguration of DRS's mandatory vaccination policy; growing use of Zoom for mediations; and the return of Mediation Settlement Month.

What COVID Backlog?
For months after the pandemic's onset in March 2020, the pending cases stat built up to a high of 5,415 open cases in **August 2020**. The last fourteen months, however, have each experienced declines in pending cases, reflecting a 1,195-case reduction from last year's high water mark. Pending cases through October stand at 4,420, a decrease of 123 cases from September. This now leaves a cumulative *decrease* of 561 pending cases since the

onset of the COVID-19 pandemic in March 2020. Stated differently, closed cases are up 18% this year, while pending cases are down 20%.
*(ed: *Again, kudos to FINRA DRS for eliminating the backlog. **Our thanks to Mr. Berry for providing insights on what's fueling the surge in mediations. ***Overall and hearing processing times have ticked up a bit the past few months. Wonder if the resumption of in-person hearings in August is somehow linked to it, too? One clue: the number of virtual hearings or motions for them have been declining.)*
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SEC'S INVESTOR ADVISORY COMMITTEE MET LAST WEEK. TURNS OUT ARBITRATION *WAS* ON THE AGENDA. *Although the Committee's formal Agenda did not appear to reference arbitration, the topic was indeed discussed at its December 2 meeting.* As reported in SAAs 2021-45 (Dec. 2) & -44 (Nov. 25), the SEC's Investor Advisory Committee met virtually on Thursday, **December 2.** The Sunshine Act Notice provided 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."

Hidden Agenda Item
We said in our prior reporting that the Agenda had no obvious dispute resolution items. We added, however, this editorial remark: "While we say 'no obvious dispute resolution items,' we note that one of the panelists for the discussion on elder abuse is Professor **Christine Lazaro**, Director of the St. John's Law School's Securities Arbitration Clinic, a past PIABA President, and an SAA Editorial Advisory Board member." It turns out our hunch was correct, as reflected in Prof. Lazaro's prepared remarks. We include below direct quotes of interest (ed: footnotes omitted):

Law School Clinics Need Financial Help
"Presently, there are only a dozen Clinics like mine across the country, and most are concentrated in the New York area. In Florida, there is only a single Clinic. There are no clinics at all in large states like California or Texas. In fact, there are no Clinics in 44 of the 50 states. Most of us are permitted to represent clients based on local rules or court orders and are therefore limited in terms of where we may practice. The Clinics also provide important investor education and fraud awareness, meeting with seniors and other vulnerable populations in our local communities to advance financial literacy and ensure that the investors understand their rights.

"Many of the Clinics were started with grant money, either from a state securities regulator or from the FINRA Investor Education Foundation. However, there are no sources of on-going funding available for these types of Clinics. This Committee

previously recommended that the FINRA Investor Education Foundation consider funding to existing Clinics beyond the start-up grants. The Committee further recommended that FINRA consider allocating fines and penalties to fund Clinics. Finally, the Committee recommended that [the] Commission request legislation from Congress to allow it to permanently fund Clinics utilizing the SEC Investor Protection Fund.

"None of these recommendations have been acted upon. As a result, the number of Clinics continues to decline, depriving elder investors of quality representation, protection, and education."

Unpaid Arbitration Awards Remain a Problem
"For those elder investors who are able to identify misconduct, seek assistance, and obtain representation in the arbitration process, there is still no assurance that they will be compensated. Even when investors are successful in arbitration, approximately one out of every three investors is left with an unpaid arbitration award. In 2019, 20 cents of every dollar awarded in arbitrations went unpaid.

"This is particularly troubling for elder investors who have relied on their investments to provide for their retirement income. They do not have the luxury of time to recover these lost funds through other means. They are often retired and may be unable to find employment to provide replacement income. They have already suffered for years as they worked their way through the dispute resolution process, only to be left no better off than when they started. Addressing the unpaid award problem for these most vulnerable investors must be made a priority. Since 2016, PIABA issued three studies examining these issues. PIABA offered several possible solutions, the most encompassing being a national recovery pool. There are a number of ways such a pool could be funded. It may be funded with fine money. It may be funded through firm assessments, either based on the number of brokers at the firm or based on FINRA's risk assessment of the firm. Most recently, PIABA suggested that contributions to a pool could be a condition of utilizing a mandatory pre-dispute arbitration clause.

"While further thought is given to how to effectively address this concern across the industry, it is imperative that the regulators step in and at a minimum, set up an investor recovery fund so that elder investors may be able to recover their lost funds after working their way through the dispute resolution process."
*(ed: *Well said, Prof! **We are heartened to see a spotlight being shined on ongoing funding for clinics.)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

AAA HAS A WEBPAGE DEDICATED TO HEARING FACILITIES STATUS. With the COVID-19 variants situation continuing to evolve, it's important for constituents to have easy access to the latest ADR provider information on hearing facility status and policies. Our readers know that FINRA maintains such a Webpage, but so does the AAA. The *Hearing Facilities Update* page states: "AAA-ICDR offices are

open for in-person hearings. In light of our desire to keep you and our employees safe, we have put a number of safety precautions and protocols into place. During this time, the AAA-ICDR will make available as many of our valued amenities as possible given current state and local COVID-19 guidance. The AAA-ICDR hearing rooms have also been equipped with upgraded video conferencing technology to facilitate hybrid hearings and remote participation. The AAA-ICDR can assist with these alternative hearing arrangements." Constituents are encouraged to communicate with their case manager or click on links provided for each location.
(ed: See, for example, midtown Manhattan).
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STILL NO WORD FROM SCOTUS ON SECTION 1782 *CERT.* PETITIONS. We reported in SAA 2021-43 (Nov. 18) that SCOTUS would on **December 3** consider the *Cert.* Petitions in *AlixPartners LLP v. The Fund for Protection of Investors' Rights in Foreign States*, No. 21-518, and *ZF Automotive US Inc. v. Luxshare Ltd.*, No. 21-401, both of which ask the Court to resolve a Circuit Court split on whether 28 U.S.C. § 1782 provides for discovery in aid of private, foreign, commercial arbitration or only covers cases administered by governmental arbitration forums. Under this statute, a party to a matter pending in a "foreign or international tribunal" can seek an *ex parte* discovery order in aid of arbitration. With these cases set to be considered at the Court's December 3 conference, we hoped and expected the **December 6** Order List to include disposition of these two *Cert.* Petitions. Alas, the list is devoid of any reference to either case, but both cases are now listed for consideration at the **December 10** conference.
*(ed: *Hard to discern what happened, and conjecture is pointless. **The next Order List will be issued on December 13. We'll keep our eyes open. ***We continue to think at least one of these cases has a good shot, since SCOTUS obviously has an interest in this issue.)*
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SCOTUS DENIES *CERTIORARI* IN SOUTH CAROLINA SUPREME COURT CASE FINDING POAS DID NOT EMPOWER HOLDER TO ENTER INTO ARBITRATION AGREEMENT. The Supreme Court on **December 6** denied *Certiorari* in *Arrendondo v. SNH SE Ashley River Tenant, LLC*, Op. No. 28011 (S.C. Mar. 10, 2021), a case we covered in SAA 2021-11 (Mar. 25). The facts in the case below were relatively simple. Arrendondo held a General Durable Power of Attorney ("GDPOA") and a Health Care Power of Attorney ("HCPOA") when she signed the papers necessary to admit her father to a nursing home. The documents she signed at admission did not contain a predispute arbitration agreement ("PDAA"), nor was arbitration discussed. Later that day, a different rep contacted Arrendondo and told her she: "needed to sign additional documents related to [her] father's admission to the facility" (brackets in original), which she did. Among this second group of documents was the PDAA, which provided that it: "requires arbitration of all claims involving potential damages exceeding $25,000 … bars either party from appealing the arbitrators' decision, prohibits an award of punitive damages, limits discovery, and provides Respondents the unilateral right to amend the agreement." The first issue in the case was

Arrendondo's authority to agree to arbitrate, relative to the wrongful death action Arrendondo brought after her father's demise. "No," said a unanimous South Carolina Supreme Court, because: "… neither power of attorney gave Arredondo the authority to execute the arbitration agreement." The Court distinguished its holding with the SCOTUS decision in *Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S. Ct. 1421 (2017): "we emphasize our analysis does not turn upon the presence or absence of an explicit reference to arbitration or arbitration agreements in the powers of attorney." In a lengthy analysis, the Court found that both Powers were narrow and that, "under the facts of this case, neither the GDPOA nor the HCPOA granted Arredondo authority to execute the arbitration agreement." The question presented in the denied **August 9** Petition to SCOTUS was: "whether the FAA preempts the South Carolina Supreme Court's arbitration-specific approach to construing comprehensive powers of attorney to preclude an agent's power to agree to arbitrate future claims."
*(ed: *The SCOTUS case is* SNH SE Ashley River Tenant, LLC v. Arredondo*, No. 21-196, appearing on page 2 of Order List. **We're a bit surprised. Despite the South Carolina Supreme Court's strenuous effort to distinguish this case from* Kindred*, the two cases sure seemed to us to be very similar.)*
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CPR'S 2022 VIRTUAL INTERNATIONAL MEDIATION COMPETITION SET FOR MARCH. PRE-REGISTRATION DEADLINE IS DECEMBER 16. CPR's *2022 International Mediation Competition*, has been set for **March 26 - April 3.** Due to the ongoing pandemic, the competition will take place virtually. The event is: "a unique opportunity for students to learn and practice mediation and negotiation skills through the role-playing of a mediation problem drafted by experienced mediators and practitioners. The competition convenes students and distinguished ADR professionals from around the globe providing exceptional networking opportunities." Pre-registration, which is done online, is open until **December 16**.
(ed: The competition problem: "will involve an international business dispute mediated pursuant to the CPR International Mediation Procedure.")
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Al-Qarqani v. Saudi Arabian Oil Co*., No. 21-20034 (5th Cir. Dec. 2, 2021)**: "The historical narrative behind the arbitral award at issue in this case is exotic and complicated. Plaintiffs claim rights under a 1933 agreement between Standard Oil of California and the Kingdom of Saudi Arabia and a 1949 agreement between the purported ancestors of the plaintiffs and the Arabian American Oil Company. In this proceeding, the plaintiffs seek to enforce an arbitral award against defendant, Saudi Arabian Oil Company, which they were awarded by an Egyptian arbitration panel. Notwithstanding the complexity of the underlying historical facts, and notwithstanding the alleged shenanigans underlying the arbitration proceedings, we can resolve this appeal with clarity: there is no agreement for us to enforce, thus bringing this appeal to a quick end. Defendant Saudi Arabian Oil Company is an instrumentality of a foreign state and is therefore immune from suit under the Foreign Sovereign Immunities Act of

1976, 28 U.S.C. §§ 1602–1611, which generally provides that federal courts have no jurisdiction over sovereigns. Consequently, we VACATE the judgment of the district court and REMAND this case with instructions to the district court to dismiss for lack of jurisdiction."

***Braden v. Optum RX, Inc.*, No. 21-cv-02046-TC-GEB (D. Kan. Nov. 15, 2021)** "The parties' arbitration agreement is not illusory because there was bilateral consideration and UnitedHealth did not retain an 'unfettered' right to modify the agreement. By its terms, the arbitration agreement is binding on both parties and governs their claims against each other…. Moreover, UnitedHealth's right to amend the policy is not 'unfettered' and thus does not make the agreement illusory…. Braden [also] argues that even if the delegation provision permissibly delegates authority to decide arbitrability issues, the provision itself is unenforceable because it is illusory. But her argument fails because it challenges the agreement as a whole, rather than the delegation provision specifically."

***Gamboa v. Northeast Community Clinic*, No. B304833 (Calf. Ct. App. 2 (Nov. 30, 2021)**: "Hope Gamboa sued the Northeast Community Clinic (Clinic) for employment related claims. The Clinic moved to compel arbitration under Code of Civil Procedure section 1281.2. The trial court denied the motion. Because the Clinic failed to prove the existence of an arbitration agreement by a preponderance of the evidence after Gamboa produced evidence disputing an agreement, we affirm." (*ed: An* Alert *h/t to Editorial Board member Peter R. Boutin, Esq., of Keesal, Young & Logan, for alerting us to this decision.*)

***Pettijohn v. J.P. Morgan Securities, LLC*, FINRA ID No. 21-01167 (Los Angeles, CA, Oct. 15, 2021)**: An Arbitrator explains why he has decided to deny a broker's request for expungement of a customer complaint from his CRD record after finding the broker did not meet his burden of proof: "Expungement is an extraordinary remedy with a high burden of proof which Claimant failed to meet in this hearing. The decision is based, in part, on the FINRA award in Case Number 17-00791 -- in which the Panel, after an 11-day hearing in which Claimant testified, found for the customer and awarded compensatory damages. The Arbitrator did take into account that Claimant was not named and did not make an individual contribution to the award - both of which facts are on the Claimant's BrokerCheck® Record. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Hutchinson et al v. Credit Suisse Securities (USA) LLC*, FINRA ID No. 16-02825 (Chicago, IL, Nov. 5, 2021)**: Claims asserted by 15 associated persons result in an $8+ million Award from a Majority-Public Panel, for claimed: "breach of contract, fraud, unjust enrichment, violation of the FINRA Rules of Fair Practice, and violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1, et seq. ('IWPCA')." The claims: "related to Claimants' allegation that Respondent closed its private banking division in the United States ('U.S.') in a manner that breached its obligations to Claimants." The case featured 37 prehearing sessions and 126 hearing sessions spanning **February 2018** to **August 2021**, resulting in nearly $233,000 in session fees alone. (*ed:*

An SAA *h/t to Attorney Barry R. Lax of Lax & Neville LLP for alerting us to the decision. His firm represented some of the Claimants.*)
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

A. Vij, *Arbitration Tech Toolbox: Are We Ready for the ArBot?* Kluwer Arbitration Blog (Dec. 3, 2021): "At the time the New York Convention (1958) and the UNCITRAL Model Law (1985) were being drafted, the possibility of sophisticated technology rather than natural persons running and controlling an arbitration must have seemed far-fetched. But, at the same time, the language employed in both the Convention and the Model Law did not expressly exclude the use of technological tools in conducting an arbitration or deciding the outcome of an arbitration. In fact, the Model Law was amended in 2006 to respond to the evolving practices of international trade and technological development, such as the use of electronic communication.[] While the underlying assumption of these instruments seems to remain that an arbitrator must be a natural person, such assumption is no longer fail-safe in the world of digitalization. The interpretation that only a natural person is capable of acting as an arbitrator seems limiting especially in light of growing demands for access to justice."

***Court Compels Arbitration where Employer's Right to Modify Terms is not "Unfettered,"* Lexology (Nov. 30, 2021**): "A number of recent court decisions have invalidated employment arbitration agreements where the employer reserves the right to modify terms. Courts have increasingly held that modification rights make the employer's promise to arbitrate illusory, and thus, the agreement to arbitrate lacks consideration. Bucking this trend, however, the District of Kansas, in an opinion by Judge Toby Crouse, recently affirmed that an employment arbitration agreement which does not give the employer 'unfettered' authority to modify its terms is supported by valid consideration and is enforceable. The Court also held that an arbitration agreement which incorporates AAA delegation rules is a "clear and unmistakable" delegation, giving the arbitrator the authority to rule on his or her own jurisdiction and issues of arbitrability." *(ed: See our coverage elsewhere in this* Alert*.)*

***Gensler, Clayton Contend That Crypto Regulatory Challenges will Abate as the Industry Consolidates*, The Block (Dec. 1)**: "Chair of the Securities and Exchange Commission Gary Gensler and former chair Jay Clayton both say they see a productive future for crypto, but only in an 'environment of trust.' That path to regulation will become easier as the space centralizes and consolidates, according to the two chairs."

***Bipartisan Push to Curb Arbitration of Sexual Harassment Claims Gaining Momentum*, Lexology (Dec. 2, 2021)**: "As we previously reported, arbitration agreements have come under increasing scrutiny in recent years, especially with regard to claims for sexual harassment/assault arising during employment. A number of states have already attempted to limit employers' ability to require arbitration of such claims. For example, state legislatures in California, Maryland, New Jersey, New York, Vermont, and Washington have passed statutes in recent years limiting employers' ability to require

arbitration of sexual harassment and (depending on the state) other claims…. Because the FAA preempts only state laws, not other federal statutes, there have been occasional efforts in Congress by opponents of arbitration to enact a federal law limiting or outright prohibiting arbitration in the employment setting. These efforts have not previously advanced very far. But some recent bills have bipartisan support and may have a chance at passage."

***U5 Defamation Wins Stack Up, But Tables Have Not Turned to Brokers' Advantage, Lawyers Say*, AdvisorHub (Dec. 2, 2021)**: "Brokers have prevailed in a recent spate of arbitration claims accusing their former employers of slapping defamatory language on their U5 termination forms. But the string of successes appears to be more of a coincidence and not a sign that the tables have turned to brokers' advantage when it comes to increasingly common disputes over the language firms use in filing the required notices, according to multiple employment lawyers who often represent brokers."

***Sixth Circuit Emphasizes the Importance of Challenging an Arbitration Agreement's Delegation Clause to Allow Court to Resolve the Arbitration Agreement's Enforceability*, National Law Review (Dec. 4, 2021)**: "Who decides whether parties to an arbitration agreement have to arbitrate their dispute? If there's a delegation clause, it'll be the arbitrator—unless a party specifically challenges the delegation clause. The Sixth Circuit issued a 2-1 decision in *In re: StockX Customer Data Security Breach Litigation* emphasizing this point and declining to rule on an arbitration agreement's enforceability because the agreement contained a so-called "delegation clause." (*ed: See our coverage elsewhere in this* Alert.*)*
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DID YOU KNOW?

BACK TO CIVICS 101 ON THE LIFE SPAN OF BILLS IN CONGRESS. Our Squib in SAA 2021-45 (Dec. 2), *Legislative Update: The Latest from Congress*, discussed the status of several arbitration-related bills in Congress. This prompted a reader to ask about the shelf life of a bill. A congressional term runs two years from noon January 3 of odd years. For example, the current 117th Congress runs until January 3, 2023. Any bills not enacted by that date expire and must be reintroduced to be considered by the 118th (and any future) Congress.
(ed: For more details see https://ballotpedia.org/117th_United_States_Congress.)
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