SECURITIES ARBITRATION ALERT 2023-26 (7/13/23)

George H. Friedman, Editor-in-Chief

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DID YOU KNOW?

WE ARE BACK FOR THE THIRD QUARTER OF 2023. LOTS GOING ON, INCLUDING A NEW FEATURE ARTICLE. *We are back after a quarterly break, and the news, court decisions and awards have been piling up in our absence. We kick off the third quarter with a new feature article authored by your publisher and editor-in-*

chief, SEC Submits Staff Report to Congress on Investment Adviser Arbitration: Bombshells Galore. *In it, he offers an analysis of a new SEC staff report to Congress on investment adviser arbitration. Spoiler alert: staff express several concerns. We also report on a South Carolina Supreme Court case finding no interstate commerce – and thus no Federal Arbitration Act applicability. And we have our usual collection of Squibs, Short Briefs, Quick Takes, and Articles of Interest. In other words, a jam-packed new issue of the* Alert.

FEATURE ARTICLE

SEC SUBMITS STAFF REPORT TO CONGRESS ON INVESTMENT ADVISER ARBITRATION: BOMBSHELLS GALORE*, by George H. Friedman.* We reported in SAA 2023-19 (May 18) that by our reckoning the SEC might be facing a looming late **June** deadline to report to the House on investment adviser arbitration. Our precise reporting was: "The 180 days would appear to translate to about June 29." We also published a **May 18 SAA** Blog post, *SEC Seems to be Facing a Late June Deadline to Report to Congress on Investor Adviser Arbitration.* We later reported in SAA 2023-25 (Jun. 29): "The *Alert* has it on good authority that the report's release is imminent. But with the holiday weekend looming, we had to put this issue to bed. We will tweet and blog on any developments during our upcoming off week." It turns out our source was spot on accurate, as the Commission released a June 27 staff report, *Response to Congress: Mandatory Arbitration Among SEC-Registered Investment Advisers* ("Report"). To describe the Report as expressing concerns is putting it mildly. We analyze the 30-page Report below, after providing background borrowed from our past coverage. *Read more…*

(ed: George H. Friedman, Publisher and Editor-in-Chief of the 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 Board Chair of Arbitration Resolution Services. He is an Adjunct Professor of Law at Fordham Law School. He holds a B.A. from Queens College, a J.D. from Rutgers Law School, and is a Certified Regulatory and Compliance Professional. He is admitted to practice in New Jersey and New York, several U.S. District Courts, and the United States Supreme Court.)*

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SQUIBS: IN-DEPTH ANALYSIS

EX-MORGAN STANLEY BROKER ASKS COURT TO INVALIDATE HIS PROMISSORY NOTE, OBJECTS TO ARBITRATION OF DISPUTE. ***A former financial advisor at Morgan Stanley Smith Barney LLC ("MSSB") has filed a complaint in federal court with implications for the enforceability of promissory notes for MSSB loans to California-based brokers. The case also involves the arbitrability of the dispute and the legal effect of FINRA Awards ordering the repayment of those loans.*** The complaint filed in the U.S. District Court for the Northern District of California by V. Thane Stenner against Morgan Stanley Smith Barney FA Notes LLC ("MSSBFAN") and "Does 1 through 10" alleges that his promissory note originated by MSSBFAN when he went to work for MSSB in California was illegal under California

law and therefore unenforceable. The complaint also alleges that the dispute cannot be compelled to arbitration.

Stenner's Promissory Note

According to the complaint: Stenner received a loan from MSSBFAN for $8,823,040 and signed a promissory note in April 2017, when he went to work for MSSB in Palo Alto and San Francisco, California. Stenner received bonuses each year that he met his performance targets while working for MSSB, but these were applied to repayment of the loan (as is typical for promissory notes such as this). Unknown to Stenner, MSSBFAN assigned Stenner's promissory note to MSSB and Morgan Stanley Smith Barney Financing LLC ("MSSBF"), which coerced him into repaying the loan in 2020 and 2021 through various means, including but not limited to accelerating the loan, freezing his securities assets, threatening to report the loan default to credit agencies and filing an "expedited" arbitration against him before FINRA.

The Gravamen of the Complaint

The Complaint explains: "Plaintiff will prove that MSSBFAN ***unlawfully*** engaged in the business of originating, servicing, and collecting on loans because MSSBFAN:[] a. Never held a valid license to originate, service and collect on loans from the California regulator, the California Department of Financial Protection and Innovation ('CA DFP'); and[] b. Never held a valid license as a foreign business entity from the Secretary of State for California" (emphasis in the original). In fact, MSSBFAN signed a Consent Order to that effect dated October 19, 2020, in which it agreed to pay $1,000,000 in monetary penalties to CA DFP and was ordered to cease and desist its illegal activity.

The Complaint also alleges that the assignments to MSSB and MSSBF (which were necessary because MSSBFAN dissolved itself): "are void and unenforceable because MSSBFAN did not cure the violations and was not registered or licensed to enter contracts or assignments" and "the Defendants failed to disclose and willfully concealed from Plaintiff the unlawful and unlicensed activities to avoid waiver of the loan penalties applied to borrowers…." Stenner seeks declaratory relief, cancelling of the loan and return of all principal and interest already paid, including the bonuses applied to the loan (which he contends should be treated as unpaid wages) or, in the alternative: "economic damages representing the total value of the promissory notes plus interest plus non-economic damages, punitive damages, attorneys' fees, costs and other relief."

Arbitrability Issue

Stenner asserts that his action cannot be compelled to arbitration because: "MSSBFAN, having been dissolved, renders a pre-dispute arbitration clause unenforceable.[] This action is not subject to pre-dispute arbitration before FINRA because FINRA Rule 13200(a) permits FINRA arbitration only between members and or associated persons. MSSBFAN is not, and was never, a FINRA member or associated person. Plaintiff does not consent to arbitrate at FINRA.[] This action is also not subject to arbitration before JAMS because there is no arbitration clause between Plaintiff and MSSBFAN.[] This action is not subject to pre-dispute arbitration before JAMS or FINRA because

Defendants will try to impose waiver of rights buried in an unsigned document called 'CARE: Guidebook' that was created to impose unenforceable waiver of rights on employees.[] … An illegal contract that is subject to void or revocation rights, renders the arbitration agreement unenforceable." Moreover, his prior arbitration has no res judicata or collateral effect on this action because, among other reasons: "MSSBFAN's promissory notes prohibited Plaintiff from asserting counterclaims in the expedited arbitration thereby preserving all of his rights asserted herein."
*(ed: *Email us at Help@SecArbAlert.com for a copy of the Complaint. **We have found no FINRA Award based on this promissory note or, indeed, any involving Mr. Stenner. ***The complaint expressed Plaintiff's intention to amend his complaint at a later time to name other co-conspirators in the purported "web of affiliates, subsidiaries, officers and persons" associated with MSSBFAN (hence the "Does 1 through 10" in the caption), even though it's clear he already knows the identity of some of those future defendants. Our educated guess is that he doesn't want to name MSSB yet, because FINRA rules do require him to arbitrate with that entity. ****You can find articles on the complaint here and here. *****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.)*
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AFTER FINDING NO INTERSTATE COMMERCE, SOUTH CAROLINA SUPREME COURT HOLDS PARTIES CANNOT STIPULATE TO FAA COVERAGE. ***Although there seemed to be elements of interstate commerce, the South Carolina Supreme Court finds unanimously that there was not enough to invoke the Federal Arbitration Act ("FAA") and that the parties could not stipulate to FAA coverage.*** It is hornbook law that the FAA applies where interstate commerce is present. Specifically, FAA section 2 provides: "a written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4." Furthermore, well-settled SCOTUS jurisprudence holds that the FAA preempts conflicting state law. *Hicks Unlimited v. UniFirst*, No. 28158 (S. Car. Jun. 14, 2023), touches on both issues.

No Interstate Commerce …
The facts show that: "UniFirst shipped uniforms from Kentucky to South Carolina, and that Hick's payments were made to and deposited by UniFirst in Massachusetts, the site of UniFirst's headquarters and board of directors." Notwithstanding these facts, the Court finds that the FAA's interstate commerce requirement has not been met. How so? Says the Court: "[T]he uniform supply business is not an activity that is, in general, subject to federal control. Reviewing the contract, the pleadings, and surrounding facts reveals that the contract was between a Massachusetts company and a South Carolina company. There is no other sign the contract was to be performed using instrumentalities or

channels of interstate commerce, or that the uniform supply involved any thing or matter located beyond South Carolina's borders."

… And Parties Cannot Stipulate to FAA Coverage …
The parties' arbitration agreement stated that disputes would be decided: "pursuant to the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association [AAA] and shall be governed by the Federal Arbitration Act [FAA]." Having found that there was no interstate commerce present, the Court holds that the parties could not via their arbitration agreement stipulate to FAA jurisdiction: "We construe UniFirst's argument to be that parties may agree to have their dispute arbitrated by the FAA's methods and procedure, even if their contract only involves intrastate commerce. But the FAA does not furnish a set procedure for how the arbitration should go; that type of architectural detail is found in the AAA rules, which the parties had already settled on. What UniFirst is really asking us to do is to bless the principle that parties may agree—preemptively—that a court may apply the FAA's federal preemption power to their contract without first peeking behind the curtain to ensure interstate commerce is involved. This we cannot do…. We hold that a party seeking to compel arbitration under the FAA must demonstrate that the contract implicates interstate commerce. Just as the parties may not prove the requisite connection to interstate commerce by agreeing their transaction or relationship 'contemplates' interstate commerce, they may not make the connection by declaring or contemplating the FAA will govern."

… And Carolina's Arbitration Law Thus Governs
With the FAA not in play, the Court turns to South Carolina's arbitration statute and finds that it renders the arbitration clause unenforceable: "Hicks contended the arbitration agreement was unenforceable because it did not comply with the notice requirements of South Carolina's Arbitration Act (SCAA). S.C. Code Ann. §§ 15-48-10 to –240 (2005 & Supp. 2022)…. [B]ecause the contract between Hicks and UniFirst did not involve interstate commerce in fact, the order of the circuit court denying UniFirst's motion to compel arbitration is affirmed, and the court of appeals' opinion is REVERSED."
(ed: We're on board with the "no stipulating to FAA jurisdiction" prong but we disagree with the "no interstate commerce" holding. Numerous SCOTUS cases hold that the FAA's interstate commerce threshold is ***very*** *low. See, e.g.,* Citizen's Bank vs. Alafabco, *539 U.S. 52 (2003), where SCOTUS said: "We have interpreted the term 'involving commerce' in the FAA as the functional equivalent of the more familiar term 'affecting commerce'-- words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power.")*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

AS EXPECTED, *CERTIORARI* PETITION FILED IN SECOND CIRCUIT CASE HOLDING THAT CFPB FUNDING METHOD *IS* CONSTITUTIONAL. We reported in SAA 2023-14 (Apr. 13) that, in a split with its sister Circuit, the Second Circuit held unanimously in *CFPB v. Law Offices of Crystal Moroney*, No. 20-3471 (2d Cir. Mar. 23, 2023), that the Consumer Financial Protection Bureau's ("CFPB") funding

mechanism does not violate the Constitution's Appropriations Clause. Said the Opinion: "As a threshold matter, we cannot find any support for the Fifth Circuit's conclusion in Supreme Court precedent. To the contrary, the Court has consistently interpreted the Appropriations Clause to mean simply that 'the payment of money from the Treasury must be authorized by a statute.' We are not aware of any Supreme Court decision holding (or even suggesting) that the Appropriations Clause requires more than this 'straightforward and explicit command.' Here, Congress expressly appropriated the CFPB's funding by enacting the CFPA [Consumer Financial Protection Act], see 124 Stat. at 1955–2113, and we are 'not at liberty to depart from binding Supreme Court precedent, "unless and until the [Supreme] Court reinterprets" [such] precedent' itself.[] We likewise find no support for the Fifth Circuit's reasoning in the Constitution's text" (citations omitted). Our editorial comment in # 14 was: "We suspect SCOTUS will have the last word!" We later reported in SAA 2023-19 (May 18) that Moroney on **April 28** had asked the Second Circuit to stay issuing a mandate, pending its seeking *Certiorari*, to us signaling that a Petition was coming. That turns out to be the case. On **June 21**, Moroney filed a *Certiorari* Petition *in Law Offices of Crystal Moroney, P.C. v. Consumer Financial Protection Bureau*, No. 22-1233, identifying this issue for review: "Whether the Consumer Financial Protection Agency's funding structure—which imposes no meaningful constraints on the authority of the President or CFPB to choose the Bureau's amount of annual public funding—violates the Appropriations Clause, U.S. Const. Art. I, Sec. 9, Cl. 7, and renders unenforceable the CID [Civil Investigative Demand] issued in this case."
(ed: We reported in SAA 2023-10 (Mar. 9) that the Supreme Court had granted a Certiorari *Petition seeking review of* Community Financial Services Ass'n of America v. CFPB*, No. 21-50826 (5th Cir. Oct. 19, 2022). There, a unanimous Fifth Circuit held that the CFPB's funding method is unconstitutional. We see a* Cert. *grant in* Moroney*, and then the two cases being consolidated.)*
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COURT MAY EQUITABLY TOLL THE FAA'S THREE-MONTH WINDOW FOR VACATUR EFFORTS. The Federal Arbitration Act ("FAA") provides in section 12: "Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered." Can a court equitably toll the time limit where a party seeks to vacate an award based on after-discovered fraud? "Yes," says the Eleventh Circuit in *NuVasive, Inc. v. Absolute Medical, LLC*, No. 22-10214 (11th Cir. Jun. 21, 2023), a case of first impression. First, the facts: "Following arbitration, the litigation resumed to resolve NuVasive's remaining [non-arbitrable] claims. In discovery, Absolute Medical produced text messages that Soufleris had sent to Hawley while Hawley testified before the arbitration panel. The text messages concerned the subject matter of Hawley's testimony, and his testimony on cross-examination appeared to be consistent with answers suggested in Soufleris's contemporaneous texts. Based on this new information, NuVasive moved the district court to vacate the arbitration panel's award under 9 U.S.C. § 10(a)(1) on the ground that the award had been procured by fraud. Absolute Medical objected that NuVasive filed the motion to vacate after the statutory three-month deadline, but the district court tolled the

deadline and ultimately vacated the arbitration panel's award.[] Absolute Medical, Soufleris, AMS, and the sales representatives now appeal the district court's order granting NuVasive's motion to vacate the arbitration panel's final award" (footnote omitted). And the holding? "We hold that the three-month window in [FAA] § 12 may be equitably tolled in the appropriate circumstances. To be clear, we hold only that equitable tolling is *available* in the FAA context. Litigants still must demonstrate that their cases present circumstances warranting this extraordinary remedy" (emphasis in original). *(ed: *Seems right. **See to the same effect* Law Finance Group, LLC v. Key*, No. S270798 (Calif. Jun. 26, 2023), covered elsewhere in this Alert.)*
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NEW AAA MEDIATION CERTIFICATION VENTURE. An **April 25** Press Release, *MC3-Certified Mediators Will Qualify for the AAA Mediation.org Affiliates Panel; American Arbitration Association Becomes Educational Partner for MC3,* states: "The American Arbitration Association® (AAA®) announces that its AAA Mediation.org division has entered a collaboration agreement with MC3, a nonprofit organization providing a robust certification standard for mediators. MC3, established in 2019, sets education, training, mediation experience, and continuing education requirements for mediators to obtain and retain their MC3 certification. These criteria and services are designed to ensure the public can be confident that mediators certified by MC3 are familiar with legal/litigation terminology and courtroom procedures, and also adhere to the ethics guiding mediation practice and policy." What does this mean on a practical level? Says the release (*ed: repeated* verbatim):

> • MC3-Certified Mediators will qualify for the AAA Mediation.org Affiliates Program, which includes a variety of tools and opportunities to help mediators build their practices. Affiliates Program membership elevates and differentiates mediator listings in the AAA Mediation.org searchable database.
> • AAA will become an educational partner to MC3, providing programs for initial certification training and additional educational offerings that will meet the standard for MC3's continuing education requirements.
> • AAA and MC3 will jointly educate practitioners, disputants, and attorneys throughout the alternative dispute resolution (ADR) field about the benefits that can be derived from working with both organizations.
> • MC3-Certified Mediators will receive a 10% discount on continuing education programs provided by AAA Mediation.org, and all AAA Panelists will receive a 10% rebate on the cost of MC3's initial certification.

(ed: MC3 is: "a nonprofit-organized to ensure user and public confidence in the mediation process by setting standards for mediator training, education, and ethics, and by maintaining those standards through its certification program.")
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SAVE THE DATE: ANNUAL PLI SECURITIES ARBITRATION (HYBRID) PROGRAM IS SEPTEMBER 7 IN NEW YORK CITY. The Practising Law Institute's annual securities arbitration seminar, *Securities Arbitration 2023*, will take place **September 7** in New York City. The program announcement states: "This year's

Securities Arbitration program will feature FINRA Dispute Resolution leadership and arbitrators, as well as noted academics and experienced attorneys who represent both customers and industry. Our faculty will provide practical tips for arbitrating and mediating securities cases. The ethical challenges involved in the utilization of AI assistance, conflicts of interest, responsibilities to the organizational client, clients with diminished capacity, fairness to opposing counsel and the elimination of bias in the forum will be explored. Finally, they will take a look at the latest hot topics and future trends in securities arbitration for 2023." The event will once again be chaired by **Sandra Grannum**, and will feature more than 20 panelists, including FINRA's **Richard Berry**. The "hybrid" seminar will be available in person and by video.
*(ed: *Registration – in person or video – is $1,940, and qualifies for CLE credit in several states. **The in-person program will take place at PLI, 1177 Avenue of the Americas in Manhattan.)*
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Andes Petroleum Ecuador v. Occidental Exploration and Production Co.*, No. 21-3039-cv (2d Cir. Jun. 15, 2023)**: "But while the District Court may exercise its broad discretion to award pre-judgment interest, here the District Court appears to have adopted Andes's proposed final judgment without further explanation. The District Court provided no justification for its determination of the due date of payment or its application of the 365/360 method. Because we are not confident, on this record, that the District Court accurately calculated the compound interest, we vacate the District Court's award of pre-judgment interest and remand for further consideration of OEPC's two objections. On remand, the District Court should adequately explain its calculation of pre-judgment interest."

***Law Finance Group, LLC v. Key*, No. S270798 (Calif. Jun. 26, 2023)**: "Law Finance Group, LLC, prevailed in an arbitration against Sarah Plott Key and filed a petition to confirm the award. Key filed a response seeking vacatur of the award, but she did so outside the 100-day deadline prescribed by Code of Civil Procedure section 1288.2. The primary questions now before us are whether, as the Court of Appeal held, this 100-day deadline is jurisdictional and, if not, whether the deadline is subject to the equitable doctrines of tolling and estoppel. We hold that the section 1288.2 deadline neither is jurisdictional nor otherwise precludes equitable tolling or estoppel. We remand for the Court of Appeal to determine in the first instance whether Key is entitled to equitable relief from the deadline." (*ed: See to the same effect* NuVasive, Inc. v. Absolute Medical, LLC, *No. 22-10214 (11th Cir. Jun. 21, 2023), covered elsewhere in this* Alert.)

***Cvejic v. Skyview Capital*, No. B318880 (Calif. Ct. App. 2 Jun. 28, 2023)**: "The order allowing Cvejic to withdraw from arbitration was proper.[] The Legislature enacted section 1281.98 in 2019 to curb a particular arbitration abuse. The abuse was that a defendant

could force a case into arbitration but, once there, could refuse to pay the arbitration fees, thus effectively stalling the matter and stymying the plaintiff's effort to obtain relief.... As the legislative history and caselaw direct, we strictly enforce this statute."

***Won v. UBS Financial*, FINRA ID No. 22-01403 (Los Angeles, CA, Apr. 27, 2023)**: Although a Panel denies Respondent broker-dealer's requests for sanctions, it decides to dismiss the customer's claims without prejudice." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Jallow v. Charles Schwab*, FINRA ID No. 19-00105 (Los Angeles, CA, May 1, 2023)**: "A customer prevails on his claim against Respondent broker-dealer and is awarded compensatory damages, while a Non-Party broker is granted her request for expungement of this matter from her CRD record. The customer's case involved his placement in Respondent's Troubled Asset Relief Program related to PNC Financial." *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Meshel, Tamar, *Employment Arbitration: Recent Developments and Future Prospects*, 39 OHIO STATE JOURNAL ON DISPUTE RESOLUTION __ (2024, Forthcoming): "This Article is the first to examine the impact of the Supreme Court's latest Federal Arbitration Act (FAA) decisions on the debate surrounding so-called 'forced' employment arbitration. In *Southwest Airlines Co. v. Saxon*, the Supreme Court held that airport cargo loaders were exempt from arbitration under § 1 of the FAA, which excludes certain workers 'engaged in interstate commerce' from the scope of the Act. In *Viking River Cruises, Inc. v. Moriana*, the Court held that the FAA did not preempt a judge-made rule prohibiting waivers of representative claims brought by employees under California's Labor Code Private Attorneys General Act.[] The Article argues that in both *Southwest Airlines* and *Viking River* the Supreme Court placed—for the first time—subtle limits on the use of arbitration in the employment context."

***SEC Report Raises Alarms About RIAs' Use of Mandatory Arbitration Clauses*, AdvisorHub (Jun. 28, 2023)**: "A Securities and Exchange Commission report to Congress on Tuesday raised concerns about registered investment advisory firms' use of mandatory arbitration clauses in retail customer agreements and whether current disclosure requirements are adequate for investors.[] The SEC staff report estimates approximately 61% of RIAs serving retail investors have mandatory arbitration clauses in their investment advisory agreements. But the report said that even determining the prevalence of arbitration clauses is difficult because of the lack of publicly available information."

***The CFPB's Proposal to Create a Public Registry*, Holland & Knight Blog (Jun. 28, 2023)**: "In this episode of his 'Clearly Conspicuous' podcast series, "The CFPB's Proposal to Create a Public Registry," consumer protection attorney Anthony DiResta dives into the Consumer Financial Protection Bureau's (CFPB) proposed rule to establish

a public registry of supervised nonbanks' terms and conditions in form contracts that potentially waive or limit consumer rights and protections. Mr. DiResta explains the CFPB's origin, purpose and defined role as a federal consumer protection agency with circumscribed powers. The CFPB was not designed to act as a legislative body or as a platform to publish information. According to the bureau, the proposed public registry will increase market transparency and improve governmental and regulatory oversight."

***#SCOTUS's Other Arbitration Case: How RICO Can Enforce an Award*, CPR Speaks (Jun. 29, 2023)**: "With the conflict resolution world's U.S. Supreme Court focus last week on Coinbase v. Bielski (see Russ Bleemer & Cenadra Gopala-Foster, "Supreme Court: While a Denial of Arbitrability Is Appealed, a Stay of Litigation Is Mandatory," CPR Speaks (June 23, 2023) (decision details available here), nearly lost in the shuffle was a RICO case that preceded it.[] That earlier case involved an arbitration award--and it could affect the enforcement of awards down the road.[] The June 22 decision in *Yegiazaryan v. Smagin*, No. 22–381 (decision available here), affirmed a U.S. Ninth Circuit Court of Appeal ruling that a foreign citizen can rely on the Racketeer Influenced and Corrupt Organizations (RICO) Act to enforce an international arbitration claim in U.S. courts."

***Equitable Tolling May Apply to Deadline for Motion to Vacate Arbitration Award*, Lexology (Jun. 30, 2023)**: "NuVasive, a manufacturer of medical products, had an exclusive distribution agreement, including noncompetition provisions, with Absolute Medical, LLC. After Absolute Medical disclaimed that agreement and started using the same salespeople to work for NuVasive's competitor, NuVasive sued. The district court ordered arbitration of one of NuVasive's claims—for breach-of-contract damages—and stayed most of the other claims. The arbitration panel issued an award finding that Absolute Medical had breached the contract, but denied NuVasive's claims for lost profit damages." (*ed: See our coverage elsewhere in this* Alert.)

***Finra Posts $218 Million Net Loss for 2022; CEO Pay Jumps 11.5%*, AdvisorHub (Jun. 30, 2023)**: "The Financial Industry Regulatory Authority generated a net loss of $218.1 million in 2022, a reversal from a net profit of $218.8 million in 2021, according to the regulator's annual report published on Friday.[] Finra said the declines were driven primarily by a $166.9 million loss (mostly unrealized) in its $2 billion investment portfolio as well as an expected $60.2 million operating loss. The regulator's revenues were hampered by a decrease in the number of public offerings and lower trading activity fees, it said. At the same time, costs rose on technology expenditures and wage increases."

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DID YOU KNOW?

UN CHARTER CALLS FOR ADR, NOT WAR. One wouldn't know it based on the number of ongoing armed conflicts, but the United Nations Charter provides that ADR should be used to resolve member conflicts that may devolve into war. *Chapter VI -- Pacific Settlement of Disputes* provides in Article 33: "1. The parties to any dispute, the

continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. 2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."
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Send any messages or inquiries to: George@SecArbAlert.com

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