SECURITIES ARBITRATION ALERT 2024-07 (2/15/24)

George H. Friedman, Editor-in-Chief

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- ***Land v. IU Credit Union,* No. 23S-CP-00115 (Ind. Feb. 1, 2024)**
- ***Beech v. Western International*, FINRA ID No. 23-00796 (Los Angeles, CA, Jan. 9. 2024)**
- ***Defeo v. Fidelity Brokerage*, FINRA ID No. 23-02322 (Hartford, CT, Jan. 19, 2024)**

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- ***Second Circuit Rules that "Account Update" Mailed by Bank Failed to Bind Customer to Arbitration Agreement/Class Action Waiver,* Lexology (Jan. 31, 2024)**
- ***Investor Groups Renew Push to Rein in Mandatory Arbitration at RIAs,* AdvisorHub (Feb. 1, 2024)**
- ***AAA® Donates $50,000 to AAA-ICDR Foundation® in Memory of Robert E. Meade*, www.adr.org (Feb. 2, 2024)**
- ***Options Cancelled. Lessons from Tesla's Pay Package,* JDSupra (Feb. 2, 2024)**
- ***Finra's Tweaks to Arbitrator Selection to Take Effect in March*, AdvisorHub (Feb. 6, 2024)**
- ***Supreme Court in UBS Case Makes it Easier for Whistleblowers to Win Suits*, Reuters (Feb. 8, 2024)**

DID YOU KNOW?

- **George Washington's Will Called for Arbitration**

Happy Presidents Day!

From the *Alert* to our readers, all the best for this unique American holiday.
As a result, we will be publishing a bit later than usual next week.
For your three-day weekend reading, consider this *SAA* blog post from 2021 that has held up well.
The Presidents and Arbitration: From Washington to Biden: An Update

SQUIBS: IN-DEPTH ANALYSIS

FINRA PUBLISHES REG NOTICE ON FINRA'S RULE CHANGE PROPOSAL IMPLEMENTING ARBITRATOR SELECTION INVESTIGATION REPORT RECOMMENDATIONS. ***FINRA has published a regulatory notice implementing, effective March 4, the Authority's rule change proposal to implement recommendations resulting from the outside investigation of allegations that the arbitrator selection process was rigged.*** Regulatory Notice 24-03, *Amendments to the Arbitration Codes to Make Various Clarifying and Technical Changes*, was published **on February 6**. It states: "FINRA has amended its Codes of Arbitration Procedure (Codes) to make: (1) changes to the arbitrator list selection process in response to recommendations in the report of independent counsel Lowenstein Sandler LLP (Report) and (2) clarifying and technical changes to requirements in the Codes for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record. The amendments are effective for arbitration cases filed on or after March 4, 2024." We covered the subject in detail in a **September 2023** blog post, which we update below.

Brief History: Award Vacated by Trial Court

To review succinctly, Fulton County Superior Court Judge **Belinda E. Edwards** in *Leggett v. Wells Fargo Clearing Services, LLC*, No. 2019CV328949 (Ga. Super. 2022), vacated the Award that sparked the debate in what might be considered a primer on the basic Federal Arbitration Act grounds for vacating an award (i.e., fraud, arbitrator bias, arbitrator misconduct in not hearing relevant or material evidence or failing to grant a reasonable postponement request; or the panel exceeding its authority). Although the Trial Court found all of these bases for vacating the Award, Judge Edwards weighed in on alleged interference with the Neutral List Selection System with some scathing verbiage:

> The Court's factual review of the record evidence leads to its finding that Wells Fargo and its counsel manipulated the FINRA arbitrator selection process in violation of the FINRA Code of Arbitration Procedure, denying the Investors' their contractual right to a neutral, computer-generated list of potential arbitrators.

Wells Fargo and its counsel, Terry Weiss, admit that FINRA provides any client Terry Weiss represents with a subset of arbitrators in which certain arbitrators (at least three, but perhaps more) are removed from the list Wells Fargo agreed, by contract, to provide to the Investors in the event of a dispute. Permitting one lawyer to secretly red line the neutral list makes the list anything but neutral, and calls into question the entire fairness of the arbitral forum.

Award "Unvacated"

Wells appealed, and, in a unanimous decision, the Georgia Court of Appeals reinstated the Award in *Wells Fargo Clearing Services, LLC v. Leggett*, No. A22A1149 (Ga. Ct. App. 2022). The unanimous decision rejected all bases upon which Judge Edwards vacated the Award. As reported in SAA 2022-42 (Nov. 10), Leggett on **August 22, 2022** filed a Petition for *Certiorari,* seeking review by the Georgia Supreme Court.

Independent Investigator's Report

As summarized in SAA 2022-38 (Oct. 13), FINRA in **June 2022** released a 37-page *Report of the Independent Review of FINRA's Dispute Resolution Services – Arbitrator Selection Process*, which was announced in a corporate Press Release and a separate statement from the Audit Committee. The investigation was directed by **Christopher Gerold**, a partner in Lowenstein Sandler LLP's Securities Litigation and Corporate Investigations & Integrity Practice Groups.

Recommended Changes

After discussing methodology and the operation of the Neutral List Selection System, the Report concluded that there were no irregularities, and it closed with recommendations for improvement. The core recommendations were (*ed: presented* verbatim *from the Release*):

- Implementing ongoing, mandatory training for staff;
- Requiring written explanations, upon a party's request, of approval or denial of a causal challenge to the selection of an arbitrator or an arbitrator removal by the DRS Director for cause;
- Conducting an updated external procedural review of the arbitrator selection algorithm to determine if it is still the most effective means for creating random, computer-generated arbitrator lists; and
- Updating the DRS Manual and rules to clarify staff roles and procedures, and to ensure consistency and transparency.

FINRA's management accepted all recommendations, added other improvements, and now posts on its Website a live progress report on implementation. *Status Report on Lowenstein Sandler LLP Recommendations* shows that all items have been implemented.

Late December 2022 Rule Filing

On **December 23, 2022**, FINRA filed with the SEC SR-FINRA-2022-033, *Proposed Rule Change to Amend the Codes of Arbitration Procedure.* The filing describes it as: "a proposed rule change to amend the Code of Arbitration Procedure for Customer Disputes ('Customer Code') and the Code of Arbitration Procedure for Industry Disputes

('Industry Code') (together, 'Codes') to make changes to provisions relating to the arbitrator list selection process in response to recommendations in the report of independent counsel Lowenstein Sandler LLP. The proposed rule change also makes clarifying and technical changes to requirements in the Codes for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record." We referred readers to published analyses of the 96-page rule filing: *Finra Proposes Tweaks to Arbitrator Selection*, AdvisorHub (Jan. 3, 2023); *Finra Moves to Make Arbitrator Selection Process More Transparent*, Financial Advisor (Jan. 5, 2023); and *Finra Floats Revamped Arbitrator-Selection Process*, Financial Advisor IQ (Jan. 6, 2023).

Post-Rule Filing Activity

We present below in bullet format the several events that took place since the rule change proposal was filed in **December 2022.** All dates in the bullets are in **2023**:

- The proposed rule was published in the *Federal Register* on **January 12** (Vol. 88, No. 8, P. 2144), making comments due **February 9.**
- We analyzed in SAA 2023-07 (Feb. 16) the handful of comments received from PIABA and three law school clinics posted on the SEC's Website, describing them as generally supportive but recommending improvements.
- FINRA by a **February 14** letter extended to **April 12** the SEC's time to act.
- On **April 4** a unanimous Georgia Supreme Court declined to review the underlying case, stating: "Certiorari – Writ denied …. All the Justices concur, except Boggs, C. J., not participating."
- FINRA on **April 11,** filed its response to comments, and Amendment No. 1 to Proposed Rule Change.
- The SEC on **April 18** published in the *Federal Register* (Vol. 88, No. 74, P. 23720) Order Instituting Proceedings To Determine Whether To Approve or Disapprove. The Order requested comments by **May 9**, with rebuttal comments to be submitted on or before **May 23**. No comments are posted on the SEC's Website.
- FINRA by a **July 3** letter extended to **September 8** the SEC's time to act.

Rule Approved and Published

We reported in SAA 2023-35 (Sep. 14) that the Commission approved the rule filing a day early on **September 7, 2023**¸via Release No. 34-98317. The Summary to the 57-page Approval Order reads: "The proposed rule change, as modified by Amendment No. 1 …, would amend provisions of the Codes governing the arbitrator list selection process to: (1) exclude arbitrators from the arbitrator ranking lists based on certain conflicts of interest; (2) permit the removal of an arbitrator for cause at any point after receipt of the arbitrator ranking lists until the first hearing session begins; and (3) provide parties with a written explanation of the decision by the Director of FINRA Dispute Resolution Services … to grant or deny a request to remove an arbitrator. In addition, the proposed rule change, as modified by Amendment No. 1, would amend procedural rules in the Codes, such as those pertaining to holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and

providing a hearing record" (footnotes omitted). As we reported in SAA 2024-38 (Oct. 5), the Approval Order was published in the *Federal Register* on **September 13** (Vol. 88, No. 176, P. 62835).

Reg Notice

We closed # 2024-38 with: "What's next? FINRA will publish a Regulatory Notice setting the effective date(s). Along the way there will be staff and arbitrator training." Mission accomplished.

*(ed:*Kudos to FINRA and the SEC. **Again, the amendments are effective for arbitration cases filed on or after March 4, 2024.)*

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PIABA AND OTHERS PUSH FOR ACTION ON RIA ARBITRATION. ***A coalition of consumer advocates is urging the SEC to act on investment adviser arbitration, in the wake of a recent report by the SEC Office of the Investor Advocate.*** As reported in SAA 2024-01 (Jan. 4), the SEC Office of the Investor Advocate issued a report recommending that predispute arbitration agreement ("PDAA") use by investment advisers be studied and that in the meantime PDAA use be suspended. The report also raised serious concerns about PDAAs calling for administration by private ADR providers.

Core Findings and Recommendations

The report was announced in a **December 5** press release, *SEC Office of the Investor Advocate Publishes Its Policy Recommendations on Mandatory Arbitration and Registered Index-Linked Annuities Research*. The Report on Activities for the fiscal year 2023 to Congress expresses serious concerns about PDAA use in advisory agreements: "With regard to mandatory arbitration clauses, we are concerned that a number of characteristics of these clauses in advisory agreements are not in the best interest of retail investors. We make a number of recommendations to help promote a fairer, more balanced framework for arbitrations between advisers and their retail clients. In light of our concerns, we also strongly encourage investors to learn about the differences between arbitration and litigation, and to ask appropriate questions of their advisers where mandatory arbitration clauses are included in advisory agreements."

PIABA and Others to SEC: "Do Something"

A **February 1** press release, *Investor-Advocacy Coalition to Push SEC for RIA Reforms in Wake of Scathing Report,* states that a coalition of investor advocacy groups, including: the Public Investors Advocate Bar Association (PIABA), the American Association for Justice (AAJ), Americans for Financial Reform, Better Markets, Consumer Federation of America, the National Association of Consumer Advocates (NACA), and Public Citizen, would be announcing a campaign urging the SEC to address registered investor advisers ("RIA") arbitration at a livestreamed news conference: "The February 1st news event follows a scathing report by the SEC's Office of the Investor Advocate (OIA) released in December, which found many RIA forced arbitration agreement may be in 'violation of the [advisers'] fiduciary duty.' The report

also found that approximately 61% of SEC-registered advisers serving retail investor clients incorporated forced arbitration clauses into their investment advisory agreements. The OIA report echoed what PIABA previously had described as an 'untenable' system for aggrieved investors who seek restitution for improper investment practices by their RIA, which can often dissuade wronged investors from seeking compensatory damages for losses they've suffered."

Problems with Private ADR Fora

The release adds that: "Unlike brokerage firms, which must designate FINRA as the arbitration forum, RIAs most commonly require clients to file arbitration claims with privately run dispute resolution forums such as the American Arbitration Association or JAMS, where arbitrators set their own fees – unlike the FINRA forum, where FINRA sets the arbitrators' rates. According to arbitration attorneys, it is not uncommon for an AAA or JAMS arbitrator to charge $8,000 or more for a day's work. Total arbitration costs can easily exceed $64,000 for five days of hearings and three days of pre-hearing and post-hearing work. The costs can triple if there are three arbitrators hearing the dispute…. Under many RIA-investor agreements, the privately run forums require the expected fees to be deposited prior to the case proceeding. This means that an investor may have to deposit tens of thousands of dollars just to have their claim move forward. RIAs, knowing the forum fees are cost-prohibitive for most clients, use these types of forced arbitration clauses to shield themselves from liability for their misconduct."
*(ed: *The panelists at the news conferences were: Joe Peiffer, President, PIABA; Brady Williams, Legal Counsel, Better Markets; Micah Hauptman, Director of Investor Protection, Consumer Federation of America; Christine Hines, Legislative Director, National Association of Consumer Advocates; and Martha Perez-Pedemonti, Civil Justice & Consumer Rights Counsel, Public Citizen. **See our December 2023 feature article on the report. ***Where this goes, of course, remains to be seen.)*
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SHORT BRIEFS: CONCISE NEWS YOU NEED TO KNOW

REMINDER: *BISSONNETTE* ORAL ARGUMENT IS FEBRUARY 20. We reported in SAA 2024-03 (Jan. 18) that the Supreme Court had set oral argument in *Bissonnette v. LePage Bakeries Park St. LLC*, No. 23-51, for Tuesday **February 20**. The **July 2023** Petition states: "The Federal Arbitration Act exempts the 'contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.' 9 U.S.C. § 1. The First and Seventh Circuits have held that this exemption applies to any member of a class of workers that is engaged in foreign or interstate commerce in the same way as seamen and railroad employees—that is, any worker 'actively engaged' in the interstate transportation of goods. The Second and Eleventh Circuits have added an additional requirement: The worker's employer must also be in the 'transportation industry.' The question presented is: To be exempt from the Federal Arbitration Act, must a class of workers that is actively engaged in interstate transportation also be employed by a company in the transportation industry?" Several *amicus* briefs have already been filed. Noteworthy briefs were filed by Amazon.com, the

California Employment Law Council, and the Chamber of Commerce of the United States.
*(ed: *The oral argument audio will be livestreamed at www.supremecourt.gov. Transcripts will be found here, and audio files here. **See* Arbitration, Ready to Argue: Amicus Views on Overturning Bissonette at the Supreme Court *in the February 6 CPR Speaks blog.)*
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IT'S BAAAACK. INVESTOR CHOICE ACT REINTRODUCED. The *Investor Choice Act* ("*ICA"*) was reintroduced **January 31** by Sen. **Jeff Merkley** (D-OR) and by Rep. **Bill Foster** (D-IL). The action was announced in a press release. This iteration of the *ICA* – H.R. 7168 and S. 3715 – is essentially the same as the old one introduced in the last Congress by the same legislators. It would amend the Federal Arbitration Act ("FAA"), the *Securities Exchange Act of 1934,* and the *Investment Adviser Act of 1940,* to ban the use of mandatory predispute agreements by broker-dealers and investment advisers and guarantee class action participation. Specifically, the bills' text would declare it unlawful for BDs, funding portals, municipal securities dealers, or investment advisers: "to enter into, modify, or extend an agreement with customers or clients of that entity with respect to a future dispute between the parties that:

> (1) mandates arbitration for that dispute;
> (2) restricts, limits, or conditions the ability of a customer or client of that entity to select or designate a forum for resolution of that dispute; or
> (3) restricts, limits, or conditions the ability of a customer or client of that entity to pursue a claim relating to that dispute in an individual or representative capacity or on a class action or consolidated basis."

The *ICA* also retains a section amending the *Securities Act of 1933* to state: "A security may not be registered with the Commission if the issuer, in its bylaws, registration statement, or other governing documents mandates arbitration for any disputes between the issuer and the shareholders of the issuer." If enacted, the changes would be retroactive, rendering void existing non-conforming arbitration agreements. Pending arbitrations would not be impacted.
(ed: The non-partisan www.govtrack.us gives the ICA *just a 1% chance of enactment. We agree; hard to see this one passing the GOP-controlled House.)*
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SEC TO HOST LAW SCHOOL ADVOCACY CLINICS. The SEC announced in a **February 2** Press Release that the Office of the Ombuds will be hosting its *2024 Investor Advocacy Clinic Summit* at SEC Headquarters in Washington, D.C., and livestreamed at https://www.sec.gov/ on Friday, **March 1**, from 11 a.m. to 4 p.m. ET. The release notes that: "For the first time, the list of Summit invitees includes law schools without investor advocacy clinics, many of which are located in areas of the U.S. where free legal services for investors are scarce." Law students and their professors: "will engage with SEC staff and invited guests about issues addressed and lessons learned while providing free legal services to underrepresented investors." Participating law school clinics include: Benjamin N. Cardozo School of Law, Cornell University Law School, Fordham

University School of Law, Howard University School of Law, Northwestern University Pritzker School of Law, Elizabeth Haub School of Law at Pace University, St. John's University School of Law, Seton Hall University School of Law, University of Miami School of Law, and the University of Pittsburgh School of Law. Speakers include: the SEC Chair and Commissioners; Division Directors; the Investor Advocate; and the Director of FINRA Dispute Resolution Services, **Rick Berry**. The keynote speaker is: **Nicole Iannarone**, Chair of FINRA's National Arbitration and Mediation Committee and Professor of the Drexel University Kline School of Law.
*(ed: *Exciting news, especially if it results in expanded services to underrepresented areas. **For more info, contact Summit2024@sec.gov.)*
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QUICK TAKES: CASES AND AWARDS WORTH READING

***Conti 11. Container Schiffarts-GMBH & Co. KG M.S. v. MSC Mediterranean Shipping Co. S.A.*, No. 22-30808 (5th Cir. Jan. 29, 2024)**: "While agreeing with much of the district court's well-stated decision, we must reverse because we conclude the court lacked personal jurisdiction over MSC. We agree with the district court that, when assessing personal jurisdiction to confirm an award under the New York Convention, a court should consider contacts related to the underlying dispute—not only contacts related to the arbitration itself. That holding aligns us with every other circuit to have considered the issue. But we disagree with the district court that MSC waived its personal jurisdiction defense through its insurer's issuance of a letter of understanding that was expressly conditioned on MSC's reserving all litigation defenses. We also disagree that the sole forum contact, the loading of the tanks in New Orleans, conferred specific personal jurisdiction over MSC. That contact arose from the unilateral activities of other parties whose actions are not attributable to MSC."

***Kader v. Southern California Medical Center, Inc.*, No. B326830 (Calif. Ct. App. 2 (Jan. 29, 2024)**: "We conclude the date that a dispute has arisen for purposes of the Act depends on the unique facts of each case, but a dispute does not arise merely from the fact of injury. For a dispute to arise, a party must first assert a right, claim, or demand. There is no evidence of a disagreement or controversy in this case until after the date of the arbitration agreement and the effective date of the Act, when the employee filed charges with the Department of Fair Employment and Housing (DFEH) in May 2022. Therefore, the predispute arbitration agreement is invalid, and the order denying the motion to compel arbitration is affirmed."

***Land v. IU Credit Union*, No. 23S-CP-00115 (Ind. Feb. 1, 2024)**: "On transfer, this Court held that, while IUCU provided Land with reasonable notice of its offer to amend the original agreements, Land's subsequent silence and inaction did not—under Section 69 of the Restatement (Second) of Contracts—result in her assent to that offer.[] IUCU now petitions for rehearing, claiming that the Court failed to address certain legal authorities and arguments raised on appeal and in the transfer proceedings. We hereby grant the petition to address these claims. While we affirm our original opinion in full, we leave open the possibility, in some future case, of adopting a different standard governing

the offer and acceptance of unilateral contracts between businesses and consumers" (citation omitted).

***Beech v. Western International*, FINRA ID No. 23-00796 (Los Angeles, CA, Jan. 9. 2024)**: A Panel grants a broker's request for expungement of one customer complaint from his CRD record, but explains in detail why it has decided to deny his request for expungement of a second complaint. The Panel finds that there was no clear showing made under Rule 2080 to support the request. *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*

***Defeo v. Fidelity Brokerage*, FINRA ID No. 23-02322 (Hartford, CT, Jan. 19, 2024)**: Claimant broker loses her case (including both her requests for reformation of her Form U5 record and expungement of her CRD record, after the Panel grants Respondent broker-dealer's Prehearing Motion to Dismiss pursuant to FINRA Rule 13206 (Six-year Eligibility Rule for Industry Disputes). *Provided courtesy of SAC's ARBchek facility (www.arbchek.com).*
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ARTICLES OF INTEREST: RECENT NEWS FROM THE ADR FRONT

Maria José Alarcon, *2023 in Review: Climate Change and ISDS – Reshaping Investment Arbitration to Achieve Climate Goals*, Kluwer Arbitration Blog (Jan. 31, 2024): "In 2023, investor-State dispute settlement (ISDS) reform has been influenced by growing concerns over climate change and state responsibility. This global shift is reflected in numerous requests for advisory opinions from international courts, aiming to clarify states' obligations regarding climate change (see **here**, **here**, and **here**). These developments suggest a move towards a more balanced approach between investor rights and states' environmental duties, potentially leading to significant reforms in investment arbitration, enhancing awareness of its current limitations, especially in addressing climate challenges. This post summarizes key ISDS and climate change developments that took place in 2023."

***Second Circuit Rules that "Account Update" Mailed by Bank Failed to Bind Customer to Arbitration Agreement/Class Action Waiver*, Lexology (Jan. 31, 2024)**: "We have written many articles about how businesses seek to enter enforceable arbitration agreements containing class action waivers with their customers, whether through 'browsewrap' or 'clickwrap' agreements or by other efforts to 'amend' or 'modify' earlier customer agreements. These mechanisms usually do not require the customer to actually read the contractual terms. This issue is governed by state contract law, and where a customer does not actually read a contract – and thereby does not have 'actual notice' of terms and conditions – a customer is nevertheless bound by terms if the customer is on inquiry notice of the terms and assents to them through conduct that a reasonable person would understand to constitute assent. In a recent case, *Lipsett v. Popular Bank*, No. 22-3193-cv, 2024 WL 111247 (2d Cir. Jan. 10, 2024), a Second Circuit panel recently found that a bank's effort to impose such terms and conditions by mailing an 'update' to a customer was insufficient to establish contractual assent."

Investor Groups Renew Push to Rein in Mandatory Arbitration at RIAs**, AdvisorHub (Feb. 1, 2024)**: "A coalition of investor advocates on Thursday sounded the alarm once again about registered investment advisory firms' widespread use of forced arbitration clauses in client agreements.[]Some of the advocacy groups also sent a letter this week to Securities and Exchange Commission Chair Gary Gensler seeking a ban on those contractual terms. The advocates, including plaintiff lawyers and investor non-profits, are pushing for reforms based on issues raised in an SEC staff report issued last summer."

AAA® Donates $50,000 to AAA-ICDR Foundation® in Memory of Robert E. Meade**, www.adr.org (Feb. 2, 2024)**: **"**The AAA-ICDR mourns the loss of Robert E. Meade, its former Senior Vice President, who passed away on January 8, 2024."

Options Cancelled. Lessons from Tesla's Pay Package**, JDSupra (Feb. 2, 2024)**: "The Delaware court striking down Elon Musk's $50B pay package will garner a lot of headlines and clicks.[]As a corporate lawyer, I have two key observations: 1. This case highlights the increasing importance in Delaware of process…. 2. Let's not rush to reincorporate in [insert western state not called California]."

Finra's Tweaks to Arbitrator Selection to Take Effect in March**, AdvisorHub (Feb. 6, 2024)**: "The Financial Industry Regulatory Authority's plan to reform the process by which parties in its arbitration forum select three-member panels takes effect on March 4, according to a regulatory notice on Tuesday.[]Finra proposed the changes to the selection process in December 2022 after an outside law firm recommended that it increase fairness and transparency of the program, where most industry and customer disputes are heard." (*ed: see our coverage elsewhere in this* Alert.)

Supreme Court in UBS Case Makes it Easier for Whistleblowers to Win Suits**, Reuters (Feb. 8, 2024)**: The U.S. Supreme Court on Thursday made it easier for financial sector whistleblowers to win lawsuits accusing companies of unlawfully firing them as retaliation for disclosing wrongdoing, rejecting a bid by Switzerland's UBS Group (UBSG.S), opens new tab to impose a higher bar.[]The unanimous decision by the justices reinstated a $1.7 million jury verdict for former UBS bond strategist Trevor Murray, who has accused the company of firing him in retaliation for refusing to publish misleading research reports and complaining about being pressured to do so. A lower court had thrown out the jury verdict."
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DID YOU KNOW?

GEORGE WASHINGTON'S WILL CALLED FOR ARBITRATION. With Presidents Day coming soon, we thought we would again share the fact that our nation's first President's* Last Will and Testament called for arbitration to resolve disputes among his heirs. **George Washington's** July 1799 Will provided: "[M]y will and direction expressly is, that all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding; --

two to be chosen by the disputants -- each having the choice of one -- and the third by those two -- which three men thus chosen, shall unfettered by Law, or legal constructions, declare their sense of the Testator's intention ... and shall be binding as if issued by the U.S. Supreme Court."

*(ed: *To be absolutely accurate, George Washington was elected in 1789 as the first President of the* ***Constitutional Republic*** *known as the United States of America. In 1781,* ***John Hanson*** *was the first person elected President of the U.S. under the* ***Articles of Confederation****, the precursor to the Constitution. He evidently didn't have a very good press agent because no one remembers that fact.)*

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