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SUBJECT MATTER JURISDICTION UNDER THE FAA

Federal courts do not have jurisdiction to confirm or vacate an arbitration award of securities law claims under the Federal Arbitration Act, except when there is an independent basis for federal jurisdiction (such as diversity) or possibly a substantial claim of "manifest disregard of federal law." The authors discuss the tangled jurisprudence that has led to the "curious distinction" between suits to compel arbitration of securities law claims (jurisdiction allowed) and suits to confirm or vacate an award (jurisdiction denied).

By Sarah L. Cave and Malik Havalic *

The Federal Arbitration Act ("FAA") is familiar to counsel and industry practitioners for its endorsement of and support for arbitration as an alternative means of dispute resolution.[1] Indeed, members of Financial Industry Regulatory Authority ("FINRA") (and previously the National Association of Securities Dealers ("NASD")) are subject to mandatory arbitration provisions under the FINRA rules. In light of this support in federal law, it might come as a surprise to parties who have agreed to arbitrate securities disputes that they may nevertheless not be able to invoke federal subject matter jurisdiction to appear before a federal court for post-award disputes. This is of particular relevance in New York, a hub of securities activity, where domiciled parties are less likely to sit in diversity with one another.[2] This article therefore sounds a note of caution for arbitrating parties who may assume that the federal nature of their dispute is the key to federal court.

As a recent district court decision demonstrates, even the presence of quintessentially federal subject matter, such as securities law, will not guarantee access to a New York federal court for a party seeking to confirm or vacate an arbitral award. The dispute in *Doscher v. Sea Port Securities Group* arose out of an employer-employee relationship; Mr. Doscher was an employee of the Sea Port Group and its broker-dealer, Sea Port Group Securities LLC.[3] Because both Mr. Doscher and the Sea

[1] Codified at 9 U.S.C. §§ 1 *et seq*. (2012).

[2] *Hertz. Corp. v. Friend*, 559 U.S. 77, 78 (2010) (holding that "[t]he phrase 'principal place of business' in § 1332(c)(1) [the diversity jurisdiction statute] refers to the place where a

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corporation's high-level officers direct, control, and coordinate the corporation's activities, *i.e.*, its 'nerve center,' which will typically be found at its corporate headquarters.").

[3] *Doscher v. Sea Port Grp*. Sec., LLC, No. 15-CV-384 (JMF), 2015 WL 4643159, at *1 (S.D.N.Y. Aug. 5, 2015).

* *SARAH L. CAVE is a partner and MALIK HAVALIC is an associate at Hughes Hubbard & Reed LLP in New York. Their e-mail* addresses *are sarah.cave@hugheshubbard.com, and malik.havalic@hugheshubbard.com.*

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Port companies were "person[s] engaged in the investment banking or securities business who [are] directly or indirectly controlled by a FINRA member," they were subject to the mandatory arbitration provisions of the FINRA rules. When a dispute arose, Mr. Doscher ended his employment with the Sea Port Group and initiated arbitration proceedings against the Sea Port companies and a number of affiliated persons and entities. Among Mr. Doscher's allegations were claims for securities fraud under Section 10(b) of the Securities and Exchange Act and SEC Rule 10b-5. While he was successful on the merits, the arbitral arbitration panel awarded him only a fraction of his claimed damages. Dissatisfied, Mr. Doscher commenced an action in the Southern District of New York seeking to vacate and modify the award pursuant to Section 10 of the FAA. Yet, despite Mr. Doscher's having arbitrated claims under federal securities law, and having invoked a federal statute to vacate the award, the district court dismissed his action for lack of federal subject matter jurisdiction.

The FAA and Federal Question Jurisdiction

The text of the FAA offers the best starting point for understanding this seemingly counter-intuitive result. Passed in 1925, the FAA reflects a congressional effort to override perceived judicial hostility against arbitration as a means of dispute resolution. The FAA therefore instituted minimum standards for both state and federal courts with the aim of supporting a "national policy favoring arbitration."[4] The keystone of the Act is Section 2, which renders arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[5] Sections 3 and 4 buttress this pro-arbitration presumption by giving courts the authority to compel arbitration when presented with a valid arbitration agreement. Where a party brings suit "in any of the courts of the United States" over issues which are properly the subject of arbitration, Section 3 instructs "the court in which such suit is pending" to stay the proceedings pending the arbitration.[6] Similarly, Section 4 provides:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, *save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties*, for an order directing that such arbitration proceed in the manner provided for in such agreement.[7]

Here, the emphasized "save for" clause merits special attention as the focal point of judicial reasoning regarding federal jurisdiction under the FAA.

Where Section 3 and 4 are front-end mandates enabling arbitration to go forward, Section 9 operates on the back-end by directing courts to confirm and recognize arbitration awards as judgments.[8] A critical exception to this second mandate is made for awards vacated for one of the four enumerated grounds in Section 10 of the FAA.[9] Courts have consistently

[4] *See, e.g.*, *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984) ("In enacting § 2 of the federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.").

[5] 9 U.S.C. § 2 (2012).

[6] 9 U.S.C. § 3 (2012).

[7] 9 U.S.C. § 4 (2012) (emphasis added).

[8] .Section 9 begins: "If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." 9 U.S.C. § 9 (2012).

[9] *See* 9 U.S.C. § 10 (2012) (permitting vacatur "(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were

declared that the threshold for vacatur under Section 10 is a high one. Section 10 does not authorize courts to review the arbitration award on the merits, nor does it permit vacatur even when arbitrators make mistakes of fact or law. Instead, courts are directed to confirm awards unless they observe serious public policy conflicts, impropriety, or due process concerns such as biased arbitrators or fraud.[10] These provisions have nevertheless been the subject of much judicial attention, including from the Supreme Court. In particular, some courts have read Supreme Court dicta interpreting Section to create a controversial, fifth, non-enumerated grounds for vacatur where an award is rendered in "manifest disregard of the law."[11]

Despite giving rise to a body of substantive law, however, many long-standing interpretations of the FAA's text have determined that it did not create federal subject matter jurisdiction. This puzzling attribute of the FAA is best summarized in an oft-quoted footnote from a 1983 Supreme Court opinion, *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*[12] In concluding that the lower court abused its discretion by staying arbitration pending parallel state proceedings, the Court observed, "the presence of federal law issues must always be a major consideration weighing against surrender" of federal jurisdiction, but also noted:

> The Arbitration Act is something of an anomaly in the field of federal court jurisdiction. It creates a body of federal substantive law establishing and regulating the duty to honor an agreement to arbitrate, yet it does not create any independent federal question jurisdiction under 28 U.S.C. § 1331…or otherwise.[13]

This view was propelled by the text of the FAA itself. In a subsequent case, the Supreme Court labeled the lack of independent federal question jurisdiction "implicit" in the language of Sections 3 and 4, which referred to courts in which suits were already pending, and to courts "which, save for such [arbitration] agreement, would have jurisdiction under title 28," respectively.[14]

As a result, non-diverse parties arbitrating a simple breach of contract dispute did not have recourse to federal courts simply because they invoked the FAA. Instead, the FAA established the applicable law on the recognition and enforcement of arbitration agreements and awards that state courts were obligated to apply to the parties' dispute.[15] But what about an instance where the parties arbitrated a dispute under federal law? Does the presence of indisputably federal questions in the underlying arbitration establish an "independent" basis for federal jurisdiction when a party petitions to compel arbitration or confirm an award?

Westmoreland *and Section 4*

The Second Circuit addressed this question in *Westmoreland Capital Corp. v. Findlay*.[16] Westmoreland was a financial planning and investment

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guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.").

[10] *See, e.g.*, *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006) ("Only 'a barely colorable justification for the outcome reached' by the arbitrators is necessary to confirm the award."); *Wallace v. Buttar*, 378 F.3d 182, 190 (2d Cir. 2004) ("A federal court cannot vacate an arbitral award merely because it is convinced that the arbitration panel made the wrong call on the law."); *Ottley v. Schwartzberg*, 819 F.2d 373, 376 (2d. Cir. 1987) ("[T]he showing required to avoid summary confirmation is high."); *Nat'l Bulk Carriers, Inc. v. Princess Mgmt. Co*., 597 F.2d 819, 825 (2d Cir. 1979) ("[O]nly 'clear evidence of impropriety' justifies denial of summary confirmation…").

[11] The phrase "manifest disregard of the law" does not appear in the FAA, but emerged from dicta in *Wilko v. Swan*. 346 U.S. 427, 436-37 (1953) ("[T]he interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation."), *overruled on other grounds by Rodriguez de Quijas v. Shearson/Am. Exp., Inc*., 490 U.S. 477 (1989). *See generally* Hiro N. Aragaki, *The Mess of Manifest Disregard*, 119 YALE L.J. ONLINE 1 (2009), http://yalelawjournal.org/forum/the-mess-of-manifest-disregard.

[12] 460 U.S. 1 (1983). In that decision, the Supreme Court was discussing Chapter One of the FAA (9 U.S.C. §§ 1-16). Chapters Two and Three, which deal with arbitration under international treaties, do create federal question jurisdiction over arbitrations falling under those two chapters.

[13] *Id.* at 25 n. 32.

[14] *Southland Corp. v. Keating*, 465 U.S. 1, 15 n.9 (1984).

[15] *Id*. at 16.

[16] 100 F.3d 263 (2d Cir. 1996).

firm that, along with its owners and an employee, was accused by investors of misleading them to invest in worthless enterprises controlled by Westmoreland's principals and agent. The investors commenced an arbitration under the NASD rules, alleging violations of the Securities and Exchange Act. Westmoreland thereafter petitioned a federal district court in New York to stay the arbitration under Section 4 of the FAA, arguing that the investors' claims were time-barred by the Securities Exchange Act statute of limitations, as well as the NASD Code of Arbitration. The court, however, *sua sponte,* determined that it did not have subject matter jurisdiction and dismissed Westmoreland's petition.

On appeal, the Second Circuit began by announcing that "[i]t is well-established…that the FAA, standing alone, does not provide a basis for federal jurisdiction."[17] In the Second Circuit's view, the "save for" language of Section 4 presented a question because it "appears to confer jurisdiction on federal courts to issue motions to compel arbitration in cases where the court would have jurisdiction over the underlying claims." Nevertheless, the Second Circuit adopted the contrary view echoed by other courts, relying especially on Judge Leval's analysis of Section 4 in *Valenzuela Bock*,[18] another district court decision involving securities law. There, faced with the same issue, Judge Leval noted the "bad statutory drafting" of the FAA before proceeding to analyze the statute in light of both the FAA's purpose and legislative history.[19] In particular, Judge Leval noted that at the time of the FAA's enactment, a federal court could not compel arbitration at all because the arbitration agreement would be seen as having "ousted" that court's jurisdiction. He concluded that Congress intended the "save-for" language to remove this barrier. Adopting Judge Leval's conclusion, the *Westmoreland* court thus endorsed the view that "the language of FAA § 4 is not intended to confer jurisdiction, but should instead be read as a response to the antiquated common law principle that an agreement to arbitrate would oust the federal courts of jurisdiction."

In support of this conclusion, the *Westmoreland* court added that attributing a contrary meaning to the "save for" clause in Section 4, which does not appear elsewhere in the FAA, would create an "odd distinction" by giving federal subject matter jurisdiction over Section 4 petitions to compel arbitration, but not Section 9 petitions to confirm an award. The court found that the "distinction would truly be 'bizarre,' because '[t]he interest of the federal court in determining whether the arbitration award was entered in manifest disregard of the federal law…would seem to be far greater than the federal interest in seeing that the claims could be arbitrated." With this reasoning, the Second Circuit held that the underlying substance of an arbitration dispute was not relevant for establishing subject matter jurisdiction. Instead, a "petition under FAA § 4 to compel or stay arbitration must be brought in state court unless some other basis for federal jurisdiction exists, such as diversity of citizenship or assertion of a claim in admiralty."

Greenberg *and Sections 9 and 10*

Four years after *Westmoreland*, the Second Circuit acknowledged the "far greater" federal interest under Sections 9 and 10 that *Westmoreland* mentioned. In *Greenberg v. Bear, Stearns & Co.*, petitioner Greenberg commenced an NASD arbitration against Bear Stearns, the clearing broker for his primary broker.[20] Greenberg alleged fraud and market manipulation arising out of Bear Stearns' securities clearing services. The arbitral panel ultimately dismissed his claims. Greenberg then moved in federal court to vacate the award pursuant to Section 10, arguing that the dismissal "violated public policy and manifestly disregarded the law." The district court concluded that he failed to demonstrate grounds for vacatur.

On appeal, the Second Circuit began with the question whether the district court had federal subject matter jurisdiction to hear the case in the first place. Citing *Westmoreland*, the *Greenberg* court confirmed the basic holding that "[s]imply raising federal law claims in the underlying arbitration is insufficient to supply [an] 'independent basis'" for federal jurisdiction.[21] It further acknowledged that the "holding in *Westmoreland* logically extends to motions to vacate an arbitration award under § 10." The court then changed direction, recognizing that federal jurisdiction may nonetheless exist if the petition to vacate *itself* raises a "substantial federal question." This query in turn depended on the "ground for the petitioner's challenge to the award." In the case before the court, the petitioner's vacatur argument was based on alleged

[17] *Id*. at 267.

[18] *Drexel Burnham Lambert, Inc. v. Valenzuela Bock*, 696 F. Supp. 957 (S.D.N.Y. 1988).

[19] *Westmoreland*, 100 F.3d at 267-68, (*discussing* Valenzuela Bock, 696 F. Supp. at 960-63).

[20] *Greenberg v. Bear, Stearns & Co*., 220 F.3d 22, 24-25 (2d Cir. 2000).

[21] *Id*. at 26.

manifest disregard of *federal* law. The standard for vacatur on manifest disregard grounds requires a court to first identify the applicable federal law and then determine whether it was manifestly disregarded by the award. In the court's view, this "process so immerses the federal court in questions of federal law and their proper application that federal question subject matter jurisdiction is present." Accordingly, the court held:

> where, as here, the petitioner complains principally and in good faith that the award was rendered in manifest disregard of federal law, a substantial federal question is presented and the federal courts have jurisdiction to entertain the petition.

Greenberg ultimately affirmed the district court's decision because the standard for manifest disregard was not met, but its holding on Section 10 created a wrinkle. The court concluded that neither Section 4 nor Section 10 created an independent basis for federal subject matter jurisdiction, but if a petitioner brought an action under Section 10 *and* pleaded manifest disregard of federal law as the reason for vacatur, federal subject matter jurisdiction existed.

The Supreme Court and Section 4

In 2009, the Supreme Court changed the landscape yet again. In *Vaden v. Discover Bank*,[22] the Court considered the issue addressed by *Westmoreland*. The dispute in *Vaden* began when Discover Bank filed suit against Vaden, a Discover cardholder. Discover's suit was brought in state court for the recovery of arrearages owed by Vaden; Vaden in turn filed defenses and counterclaims under Maryland state law. At that point, Discover petitioned a federal district court to compel arbitration pursuant to Section 4 on the basis of an arbitration clause in the parties' credit card agreement. Although neither party had until that point invoked federal law, Discover now argued that Vaden's counterclaims were in fact preempted by the Federal Deposit Insurance Act, thus creating a basis for federal subject matter jurisdiction. In the Second Circuit, Discover's argument would have been plainly foreclosed by *Westmoreland*, but the question made its way to the Supreme Court in order to resolve a circuit split on the issue.[23] *Vaden* resulted in a dissent joined by three justices, but the majority and the dissent agreed on one point: "a federal court should determine its jurisdiction by 'looking through' a § 4 petition to the parties' underlying substantive controversy." *Westmoreland* was no longer good law.

In reading the "save-for" clause, the Court could see nothing other than an exhortation to "look through" the petition to the underlying controversy in order to determine whether the court would have had jurisdiction over the dispute but for the arbitration agreement. The Court went on to disagree with Judge Leval's *Valenzuela Block* analysis (among others) on which *Westmoreland* had relied. Labeling it a "textual implausibility," the Court found that Section 2 — the FAA's "centerpiece provision — sufficiently attended to the "ouster" problem that Judge Leval identified.[24] Parties now had access to federal courts when seeking to compel arbitration if their dispute was grounded in federal law.

The Law after Vaden

In the wake of *Vaden*, a New York petitioner might not be faulted for concluding that *Vaden* cleared a path to establishing federal subject matter jurisdiction for all actions under the FAA as long as the underlying dispute involved squarely federal subject matter, for instance, the securities laws. After all, it was the now-abrogated *Westmoreland* that highlighted the problem with inconsistent jurisdiction grants amongst the FAA provisions: if the federal judiciary has a sufficient interest in compelling arbitrations arising out of federal law disputes, surely the same reasoning applied with equal or greater force when determining whether to confirm or vacate an award applying federal law.

In the Second Circuit, this question is, for now, rhetorical. As *Doscher v. Sea Port Group* demonstrates, *Greenberg* remains alive and well — parties seeking to confirm or vacate awards will need to find an independent basis for federal subject matter jurisdiction, notwithstanding the fact that the underlying dispute is firmly grounded in federal law.

The petitioner in *Doscher* argued that the arbitration award should be vacated, in part based on manifest disregard of the law. Doscher alleged that the arbitral panel disregarded FINRA arbitration rules relating to the

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[22] 556 U.S. 49 (2009).

[23] In interpreting the Section 4 language, the Supreme Court observed that "[t]he majority of Courts of Appeals to address the question, we acknowledge, have rejected the 'look-through' approach entirely, as *Vaden* asks us to do here." *Id*. at 63.

[24] *Id*. at 64-65. Unfortunately for Discover Bank, the Court ultimately determined that it nevertheless failed to establish subject matter jurisdiction because its own complaint did not raise federal law claims, notwithstanding Vaden's allegedly preempted counterclaims. *Id*. at 66-72.

exchange of documents and that this amounted to a disregard of federal law.[25] Judge Furman disagreed, holding that "allegations that an arbitration panel 'manifestly disregarded' FINRA or NASD Rules 'do not constitute a valid claim for manifest disregard of federal law.'" The opening that *Greenberg* had created for Section 10 petitions was thus unavailable for Doscher.

Alternatively, Doscher relied on *Vaden* to argue that courts were now permitted to "look through" FAA petitions, including those under Section 10, to the underlying substance of the dispute. *Westmoreland*'s prohibition of the "look-through" approach was expressly abrogated and, as Judge Furman acknowledged, "the holding in *Westmoreland* was the basis — indeed, arguably the primary basis — for the Court's conclusion in *Greenberg*." Judge Furman continued, however, "[t]his Court… must follow *Greenberg* unless and until it is overruled in a precedential opinion by the Second Circuit itself or 'unless a subsequent decision of the Supreme Court so undermines it that it will almost inevitably be overruled by the Second Circuit.'" Reviewing *Vaden*, Judge Furman then concluded that such a fate was not necessarily inevitable for *Greenberg*. *Vaden* did not address jurisdiction under Sections 9 or 10 at all and the "Supreme Court's holding in *Vaden* was based primarily on the text of Section 4" and its "save for" clause. By contrast, Section 10 "does not include the critical phrase 'save for [the arbitration] agreement' or anything similar." The court went on to identify several other district courts outside of New York that had reached the same conclusion, quarantining *Vaden*'s holding to Section 4.

Although perhaps not as "truly bizarre" as what the *Westmoreland* court envisaged, a curious distinction now exists with respect to federal subject matter jurisdiction under the FAA.[26] Federal courts in the Southern District of New York will not "look through" a Section 9 or Section 10 petition to see if the underlying dispute implicates federal law, but may do so for parties seeking to compel arbitration under Section 4. Therefore, parties arbitrating disputes under the federal securities statutes or SEC rules must establish an independent basis for federal subject matter jurisdiction, such as diversity, in order to gain access to a federal court when seeking to confirm or vacate a federal award. *Greenberg*'s notable exception may provide some comfort here for non-diverse parties determined to avoid state court: if a party can allege that the award was rendered in manifest disregard of federal securities law, federal interests are sufficiently implicated to trigger subject matter jurisdiction. Nonetheless, the state of law in the Second Circuit has resulted in an asymmetry between the front-end (Section 4) and back-end (Sections 9 and 10) provisions of the FAA.

Being excluded from federal court need not cause immediate alarm. New York's own arbitration statute, for instance, largely mirrors the FAA, and New York state courts have echoed the federal judiciary's pro-arbitration policy.[27] New York's pro-arbitration view, however, is not shared by all states.[28] Federal courts therefore provide a more consistent forum and are unencumbered by state laws that do not facilitate summary confirmation. Moreover, federal courts have exhibited an increasing willingness to impose sanctions for frivolous challenges to arbitration awards, a practice not yet readily apparent in state courts.[29] Accordingly,

[25] *Doscher v. Sea Port Grp*. Sec., LLC, *supra* note 3.

[26] *Westmoreland* specifically referred to the federal interest in determining whether or not an award was in "manifest disregard" of federal law. As discussed, the *Greenberg* holding confirmed that vacatur efforts on such a basis could generate federal subject matter jurisdiction.

[27] N.Y. C.P.L.R. 7501-7514 (McKinney 2014); *see also Smith Barney Shearson Inc. v. Sacharow*, 689 N.E.2d 884, 889 (N.Y. 1997) (confirming an NASD arbitration award and stating the "decision fortifies and advances the long and strong public policy favoring arbitration. We have declared that 'this State favors and encourages arbitration as a means of conserving the time and resources of the courts and the contracting parties.'") (citations omitted).

[28] *See, e.g., Marmet Health Care Ctr., Inc. v. Brown*, 132 S. Ct. 1201, 1203 (2012) (vacating a decision by the Supreme Court of Appeals of West Virginia, which had declined to enforce arbitration agreements over certain personal injury and wrongful death claims, and referred to the Supreme Court's FAA interpretation as "tendentious" and "created from whole cloth," holding that the "West Virginia court's interpretation of the FAA was both incorrect and inconsistent with clear instruction in the precedents of this Court."); Scott J. Burnham, *The War Against Arbitration in Montana*, 66 MONT. L. REV. 139, 156 (2005) ("In Montana, arbitration is the legal equivalent of the wolf, a critter much despised except by a fringe group that would spread it widely.").

[29] While declining to award sanctions, the Eleventh Circuit has influentially stated that "[w]hen a party who loses an arbitration award assumes a never-say-die attitude and drags the dispute through the court system without an objectively reasonable belief it will prevail, the promise of arbitration is broken." *B.L. Harbert Intern., LLC v. Hercules Steel Co*., 441 F.3d 905, 913 (11th Cir. 2006). Such reasoning has been subsequently cited by courts that have granted sanctions for meritless challenges to arbitration awards. *See, e.g., DMA Int'l, Inc. v. Qwest Comm.*

federal courts continue to recommend themselves to parties seeking to confirm awards. To avail themselves of these advantages, parties who agree to arbitrate questions of federal securities law might therefore consider bringing an action to compel arbitration under Section 4 as a matter of course, then request the proceedings to be stayed pending the outcome of the arbitration. By this strategy, a party may attempt to argue that the matter is already properly before a federal court should an action to confirm or vacate later become necessary.

In the meantime, it is possible, but unlikely, that Congress will intervene in the field and clarify the intent of the FAA. It is possible that subsequent federal district courts in New York will adopt a contrary view to *Doscher*, attributing the "save for" clause as an instance of poor drafting and perhaps invoking *Westmoreland*'s view that the federal interest in confirming or vacating arbitration awards involving federal law is appreciably higher than its interest in compelling such arbitrations. Or perhaps more likely, the Second Circuit will confront the same question directly. Until then, parties and their counsel should be mindful of the lessons of *Doscher* and that arbitration has the potential to preclude their recourse to federal court, despite the fundamentally federal character of their dispute. ■

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Int'l, Inc., 585 F.3d 1341, 1346 (10th Cir. 2009); *DigiTelCom, Ltd. v. Tele2 Sverige AB*, 12 CIV. 3082(RJS), 2012 WL 3065345, at *7 (S.D.N.Y. July 25, 2012); *Manning v. Smith Barney, Harris Upham & Co*., 822 F.Supp. 1081, 1083-84 (S.D.N.Y. 1993); *Quick & Reilly, Inc. v. Jacobson*, 126 F.R.D. 24, 27 (S.D.N.Y. 1989).