

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

FINRA is proposing to amend Rules 12206 and 13206 of the Customer and Industry Codes, respectively, to clarify that the rules toll the applicable statutes of limitation when a person files an arbitration claim with FINRA.

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date
 By
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Rules 12206 and 13206 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”), respectively, to clarify that the rules toll the applicable statutes of limitation when a person files an arbitration claim with FINRA.

Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * * *

12206. Time Limits

(a) – (b) No change.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person.

However, [where permitted by applicable law,] when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.

(d) No change.

¹ 15 U.S.C. 78s(b)(1).

13206. Time Limits

(a) – (b) No change.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person.

However, [where permitted by applicable law,] when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.

(d) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on December 2, 2008, the FINRA Board of Governors authorized the filing of the rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

Questions regarding this rule filing may be directed to Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution at (202) 728-8151.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a) Purpose

Currently, Rule 12206, the “eligibility rule,” provides that, “no claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim.”² The eligibility rule does not extend applicable statutes of limitation, but Rule 12206(c) does provide that, “where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.”³ This means that, where permitted by applicable law, state statutes of limitation will be tolled (i.e., temporarily suspended) when a person files an arbitration claim with FINRA.

For many years, FINRA has interpreted the rule to mean that any applicable statutes of limitation would be tolled in all cases when a person files an arbitration claim with FINRA. In a court decision, Friedman v. Wheat First Securities, Inc., however, the court found that the phrase “where permitted by applicable law,” means that state law must permit tolling expressly, or the period will not be tolled.⁴ In light of the court’s interpretation of the phrase and the negative effect it could have on investors’ arbitration claims, FINRA is proposing to remove the phrase, “where permitted by applicable law,” from Rules 12206(c) and 13206(c) to make tolling automatic as part of the arbitration agreement.

² FINRA describes the eligibility rule using the rule number from the Customer Code for simplicity. However, the proposal also applies to the identical eligibility rule of the Industry Code. *See* Rule 13206.

³ *See* also Rule 13206(c) of the Industry Code.

⁴ 64 F. Supp. 2d 338 (S.D.N.Y. 1999). The case involved claims under Section 10(b) of the Securities Exchange Act of 1934.

In Friedman, the court granted the defendant's request to dismiss the plaintiff's complaint on statute of limitations grounds. In arguing against dismissal, the plaintiff sought to rely on old Rule 10307(a)⁵ of the Code of Arbitration Procedure, which was updated and is current Rule 12206(c), to support his position that filing an arbitration claim tolls the applicable statute of limitations.⁶ The court determined, however, that the language of old Rule 10307(a) does not toll the statute of limitations unless such tolling is "permitted by applicable law."⁷ After further analysis, the court found that no federal or state statute tolled the applicable statute of limitations and granted the defendant's dismissal request.⁸

Other courts also have reached the same conclusion when they have been required to interpret old Rule 10307(a) and the phrase "where permitted by law." In Individual Securities v. Ross,⁹ the plaintiff, in appealing a judgment of a New York district court which dismissed the complaint as time-barred, claimed that the statute of limitations was tolled while his matter was in arbitration with then-NASD. The court cited old Rule 10307(a) and noted that the "where permitted by law" language referred to the applicable law in New York, which prevented tolling of the limitations period.¹⁰ In another case, Rampersad v. Deutsche Bank Securities, Inc.,¹¹ the court, citing Friedman, determined

⁵ Rule 10307(a) (Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration) states in relevant part that:

Where permitted by applicable law, the time limitations which would otherwise run or accrue for the institution of legal proceedings shall be tolled where a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Association shall retain jurisdiction upon the matter submitted.

⁶ See note 4 supra, at 343.

⁷ Id.

⁸ Id. at 347.

⁹ 1998 U.S. App. Lexis 12618.

¹⁰ Id.

¹¹ 2004 U.S. Dist. Lexis 5031. The case also involved claims under Section 10(b) of the Securities Exchange Act of 1934.

that the phrase meant that federal law governs the availability of tolling the limitations period in a Section 10(b) cause of action, not state law.¹²

FINRA is concerned that courts may begin citing this interpretation to dismiss claims filed in court, as permitted under the eligibility rule.¹³ FINRA does not believe this outcome was the original intent of the tolling provision or of recent amendments to the eligibility rule that allow customers to take their claims to court if their claims are dismissed in arbitration on eligibility grounds.¹⁴ Rather, FINRA believes that, in such a situation, a firm or associated person has implicitly agreed to suspend any statute of limitations defense for the time period that the matter was in FINRA's jurisdiction. Amending the eligibility rule, as proposed, would make this clear.

Moreover, FINRA is concerned that the Freidman interpretation could limit or foreclose customers' access to other judicial forums to address their disputes, which would be an unfair result. Most brokerage firms require customers to arbitrate their disputes, a process that can take more than a year. Customers may be disadvantaged in a subsequent court proceeding if the panel dismisses the arbitration case on eligibility grounds and the statute of limitations is not tolled for the period of time that the customers were in arbitration. In addition to being an unfair result, FINRA believes this

¹² Id. In this case, the plaintiff filed an arbitration claim against the defendants at the New York Stock Exchange, Inc. ("NYSE"). The plaintiff argued that the limitations period should have been tolled under New York law for the period during which the arbitration was pending, and cited NYSE Rule 606(a), which is similar to old Rule 10307(a), and states in pertinent part:

Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceedings, shall be tolled when a duly executed Submission Agreement is filed by the claimants.

¹³ The rule states that "dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court." *See also* Rule 13206(b).

¹⁴ *See* Securities Exchange Act Rel. No. 50714 (Nov. 22, 2004), 69 Fed. Reg. 69971 (Dec. 1, 2004) (File No. SR-NASD-2001-101).

would undermine the intent of the eligibility rule, which gives customers the option of taking their claims to court when a case is dismissed on eligibility grounds.

Therefore, FINRA is proposing to delete the phrase “where permitted by applicable law” from Rules 12206(c) and 13206(c). FINRA notes that the Friedman interpretation suggests that, but for the phrase, the rule would be read as an explicit agreement between the parties to toll the statute of limitations period.¹⁵ FINRA believes that the proposed rule change would leave the parties in the same position in court as they were at the start of the arbitration with regard to any statutes of limitation: the time period before the claim was filed in arbitration would not be extended by the proposed changes, but applicable statutes of limitation would not run while the matter was in arbitration.

b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA’s statutory obligations under the Act to protect investors and the public interest because the proposal would preserve fairness in the arbitration process by ensuring that investors maintain their right

¹⁵ Friedman, 64 F. Supp. 2d 338, 343 n.4 (1999). The court indicates that courts likely would accept the amended language as representing an agreement of the parties:

The precise meaning of Rule 10307(a) is not entirely clear. If the phrase “where permitted by applicable law” did not precede the remainder of the paragraph, the rule would simply be read as an explicit agreement between the parties to toll the limitations period, regardless of what the applicable state or federal tolling principles provide. However, by including the phrase the drafters seemed to limit tolling to situations in which tolling is expressly permitted by applicable law, thereby making an explicit agreement between the parties unnecessary.

¹⁶ 15 U.S.C. 78o-3(b)(6).

to have their claims heard in court by tolling the applicable statutes of limitation while the dispute is in arbitration.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received by FINRA.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-_____; File No. SR-FINRA-2009-013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Tolling Provisions in Rules 12206 and 13206 of the Code of Arbitration Procedure for Customer and Industry Disputes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) on March 11, 2009, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA Dispute Resolution is proposing to amend the tolling provisions in Rules 12206 and 13206 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and for Industry Disputes (“Industry Code”), respectively, to clarify that the rules toll the applicable statutes of limitation when a person files an arbitration claim with FINRA.

Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * * *

12206. Time Limits

(a) – (b) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, [where permitted by applicable law,] when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.

(d) No change.

* * * * *

13206. Time Limits

(a) – (b) No change.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, [where permitted by applicable law,] when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Rule 12206, the “eligibility rule,” provides that, “no claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim.”³ The eligibility rule does not extend applicable statutes of limitation, but Rule 12206(c) does provide that, “where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.”⁴ This means that, where permitted by applicable law, state statutes of limitation will be tolled (i.e., temporarily suspended) when a person files an arbitration claim with FINRA.

For many years, FINRA has interpreted the rule to mean that any applicable statutes of limitation would be tolled in all cases when a person files an arbitration claim with FINRA. In a court decision, Friedman v. Wheat First Securities, Inc., however, the court found that the phrase “where permitted by applicable law,” means that state law must permit tolling expressly, or the period will not be tolled.⁵ In light of the court’s interpretation of the phrase and the negative effect it could have on investors’ arbitration claims, FINRA is

³ FINRA describes the eligibility rule using the rule number from the Customer Code for simplicity. However, the proposal also applies to the identical eligibility rule of the Industry Code. *See* Rule 13206.

⁴ *See* also Rule 13206(c) of the Industry Code.

⁵ 64 F. Supp. 2d 338 (S.D.N.Y. 1999). The case involved claims under Section 10(b) of the Securities Exchange Act of 1934.

proposing to remove the phrase, “where permitted by applicable law,” from Rules 12206(c) and 13206(c) to make tolling automatic as part of the arbitration agreement.

In Friedman, the court granted the defendant’s request to dismiss the plaintiff’s complaint on statute of limitations grounds. In arguing against dismissal, the plaintiff sought to rely on old Rule 10307(a)⁶ of the Code of Arbitration Procedure, which was updated and is current Rule 12206(c), to support his position that filing an arbitration claim tolls the applicable statute of limitations.⁷ The court determined, however, that the language of old Rule 10307(a) does not toll the statute of limitations unless such tolling is “permitted by applicable law.”⁸ After further analysis, the court found that no federal or state statute tolled the applicable statute of limitations and granted the defendant’s dismissal request.⁹

Other courts also have reached the same conclusion when they have been required to interpret old Rule 10307(a) and the phrase “where permitted by law.” In Individual Securities v. Ross,¹⁰ the plaintiff, in appealing a judgment of a New York district court which dismissed the complaint as time-barred, claimed that the statute of limitations was tolled while his matter was in arbitration with then-NASD. The court cited old Rule 10307(a) and noted that the “where permitted by law” language referred to the applicable law in New York, which prevented tolling of the limitations period.¹¹ In another case, Rampersad v.

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Where permitted by applicable law, the time limitations which would otherwise run or accrue for the institution of legal proceedings shall be tolled where a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Association shall retain jurisdiction upon the matter submitted.

⁷ See note 4 supra, at 343.

⁸ Id.

⁹ Id. at 347.

¹⁰ 1998 U.S. App. Lexis 12618.

¹¹ Id.

Deutsche Bank Securities, Inc.,¹² the court, citing Friedman, determined that the phrase meant that federal law governs the availability of tolling the limitations period in a Section 10(b) cause of action, not state law.¹³

FINRA is concerned that courts may begin citing this interpretation to dismiss claims filed in court, as permitted under the eligibility rule.¹⁴ FINRA does not believe this outcome was the original intent of the tolling provision or of recent amendments to the eligibility rule that allow customers to take their claims to court if their claims are dismissed in arbitration on eligibility grounds.¹⁵ Rather, FINRA believes that, in such a situation, a firm or associated person has implicitly agreed to suspend any statute of limitations defense for the time period that the matter was in FINRA's jurisdiction. Amending the eligibility rule, as proposed, would make this clear.

Moreover, FINRA is concerned that the Freidman interpretation could limit or foreclose customers' access to other judicial forums to address their disputes, which would be an unfair result. Most brokerage firms require customers to arbitrate their disputes, a process that can take more than a year. Customers may be disadvantaged in a subsequent court proceeding if the panel dismisses the arbitration case on eligibility grounds and the

¹² 2004 U.S. Dist. Lexis 5031. The case also involved claims under Section 10(b) of the Securities Exchange Act of 1934.

¹³ Id. In this case, the plaintiff filed an arbitration claim against the defendants at the New York Stock Exchange, Inc. ("NYSE"). The plaintiff argued that the limitations period should have been tolled under New York law for the period during which the arbitration was pending, and cited NYSE Rule 606(a), which is similar to old Rule 10307(a), and states in pertinent part:

Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceedings, shall be tolled when a duly executed Submission Agreement is filed by the claimants.

¹⁴ The rule states that "dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court." *See also* Rule 13206(b).

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statute of limitations is not tolled for the period of time that the customers were in arbitration. In addition to being an unfair result, FINRA believes this would undermine the intent of the eligibility rule, which gives customers the option of taking their claims to court when a case is dismissed on eligibility grounds.

Therefore, FINRA is proposing to delete the phrase “where permitted by applicable law” from Rules 12206(c) and 13206(c). FINRA notes that the Friedman interpretation suggests that, but for the phrase, the rule would be read as an explicit agreement between the parties to toll the statute of limitations period.¹⁶ FINRA believes that the proposed rule change would leave the parties in the same position in court as they were at the start of the arbitration with regard to any statutes of limitation: the time period before the claim was filed in arbitration would not be extended by the proposed changes, but applicable statutes of limitation would not run while the matter was in arbitration.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ which requires, among other things, that the Association’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA’s statutory obligations under the Act to protect investors and the public interest because the proposal would preserve

¹⁶ Friedman, 64 F. Supp. 2d 338, 343 n.4 (1999). The court indicates that courts likely would accept the amended language as representing an agreement of the parties:

The precise meaning of Rule 10307(a) is not entirely clear. If the phrase “where permitted by applicable law” did not precede the remainder of the paragraph, the rule would simply be read as an explicit agreement between the parties to toll the limitations period, regardless of what the applicable state or federal tolling principles provide. However, by including the phrase the drafters seemed to limit tolling to situations in which tolling is expressly permitted by applicable law, thereby making an explicit agreement between the parties unnecessary.

¹⁷ 15 U.S.C. 78o-3(b)(6).

fairness in the arbitration process by ensuring that investors maintain their right to have their claims heard in court by tolling the applicable statutes of limitation while the dispute is in arbitration.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received by FINRA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-013 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-FINRA-2009-013 and should be submitted on or before [insert date 21 days from

publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).