

Arbitration Time Limits

SEC Approves an Amendment to the Tolling Provision in the Arbitration Codes for Customer and Industry Disputes

Effective Date: August 10, 2009

Executive Summary

An amendment to the Arbitration Codes for Customer and Industry Disputes that clarifies that the rules toll—*i.e.*, temporarily suspend—the applicable statutes of limitation when a person files an arbitration claim with FINRA¹ becomes effective August 10, 2009, and will apply to claims filed on or after that date.

The text of the amendments is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

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July 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Arbitration
- Code of Arbitration Procedure
- Dispute Resolution
- Tolling

Referenced Rules & Notices

- Rules 12206(c)
- Rules 13206(c)

Background and Discussion

Currently, Rule 12206(a) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule 13206(a) of the Code of Arbitration Procedure for Industry Disputes (Industry Code) (referred to as the “eligibility rules”) provide 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.” The current eligibility rule does not extend applicable statutes of limitation, but 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.”² This means that, where permitted by applicable law, statutes of limitation will be tolled (*i.e.*, temporarily suspended) when a person files an arbitration claim with FINRA.

FINRA has interpreted the tolling provision of the current eligibility rule to mean that any applicable statutes of limitation would be tolled in all cases when a person files an arbitration claim with FINRA. However, one state court found that the phrase “where permitted by applicable law,” means that state law must permit tolling expressly, or the statutes of limitation period will not be tolled.³ In its analysis, the court determined that the eligibility rule did not toll the statute of limitations, unless applicable law permitted such tolling expressly.⁴ Further, the court also determined that there were no federal or state statutes that expressly permitted tolling of the applicable statute of limitations and, as a result, the customer’s case was dismissed.⁵

FINRA is concerned that courts may begin citing this interpretation as a reason to dismiss those customer claims that are filed in court because their arbitration claims were dismissed on eligibility grounds from FINRA’s arbitration forum.⁶ In these instances, FINRA believes that the court’s interpretation of the phrase “where permitted by applicable law” could limit or foreclose customers’ access to other judicial forums to address their disputes, which would be an unfair result. Therefore, FINRA is deleting the phrase “where permitted by applicable law” from Rules 12206(c) and 13206(c). The amendment 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, but applicable statutes of limitation would not run while the matter was in arbitration.

Effective Date Provisions

The amendment becomes effective on August 10, 2009, and will apply to claims filed on or after August 10, 2009.

Endnotes

- 1 Exchange Act Release No. 59906 (May 12, 2009), 74 Federal Register 23462 (May 19, 2009) (File No. SR-FINRA-2009-013).
- 2 See Rules 12206(c) and 13206(c) of the Codes.
- 3 See *Friedman v. Wheat First Securities, Inc.*, 64 F. Supp. 2d 338 (S.D.N.Y. 1999). See also *Individual Securities v. Ross*, 1998 U.S. App. Lexis 12618, and *Rampersad v. Deutsche Bank Securities, Inc.*, 2004 U.S. Dist. Lexis 5031 (finding the phrase “where permitted by law” did not toll the applicable statute to limitation, but deciding the case on other grounds).
- 4 *Id.*
- 5 *Id.*
- 6 Rules 12206(b) and 13206(b) of the Codes state 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.”

ATTACHMENT A

Deleted language is in brackets.

**Code of Arbitration Procedure for Customer Disputes
and
Code of Arbitration Procedure for Industry Disputes**

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Customer Code**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.

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Industry Code**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.

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