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VIA E-MAIL TO RULE-COMMENTS@SEC.GOV

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE.
Washington, D.C. 20549-1090

RE: File No. SR-FINRA-2009-013

Dear Ms. Murphy:

On behalf of the Public Investors Arbitration Bar Association (PIABA), I am pleased to comment on the above-referenced proposed changes to the tolling provisions of Rules 12206 and 13206 of FINRA's Code of Arbitration Procedure. PIABA is a bar association comprised of attorneys who represent investors in securities arbitrations. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums. Our members and their clients have a strong interest in FINRA rules which govern the arbitration process.

PIABA applauds FINRA's proposals. The amendments would clarify rules to make plain the intent that applicable statutes of limitation are tolled when a person files a FINRA arbitration. We concur with FINRA's identification of the issues and the legal support for the amendments. While this letter will focus on Rule 12206 of the Customer Code, we have no objection to the identical changes proposed to Ruled 13206 of the Industry Code. Accordingly, we submit that the SEC should approve the proposed rule changes without delay.

Provided below is a brief summary of some important points raised by FINRA. They include the well supported facts that (1) these proposals reflect necessary clarifications to the Code provisions; and (2) the proposals are eminently consistent with the purposes of investor protection mandated by Section 15A(b)(6) of the Securities Exchange Act of 1034 ("Act").¹

¹ 15 U.S.C. 78s(b)(1).

I. THE AMENDMENTS REFLECT APPROPRIATE AND NECESSARY CLARIFICATIONS TO THE TOLLING PROVISIONS OF THE ARBITRATION CODE

Rule 12206(c) of the Code of Arbitration Procedure for Customer Disputes is FINRA's eligibility section of the Code. FINRA aptly explains that the intent of existing Rule 12206(c) has been to allow for tolling of statutes of limitations upon the filing of a FINRA arbitration, even when those disputes might subsequently be found ineligible for FINRA arbitration. Accordingly, when claims are dismissed as ineligible for arbitration, **"FINRA believes that...the rule should be read to provide that a firm...has implicitly agreed to suspend any statute of limitations defense for the time period that the matter was in FINRA's jurisdiction."** *See, File No. SR-FINRA-2009-13, Section II A (1), page 15.*

Despite the intent that applicable limitations periods be tolled for all arbitrations when filed, a few courts opined that the language of FINRA's older eligibility rules, similar in pertinent part to the current rule, was unclear as to this intent. A thorough and accurate review of these decisions is set forth in FINRA's filing of proposed rule changes. We agree with FINRA that any apparent confusion concerning the tolling question is sufficient reason to now clarify that tolling will occur in all cases filed in its forum. In addition, we agree that the simple changes proposed should eliminate any doubt concerning the tolling issue within the eligibility rule.

Moreover, the amendment should proactively curb expensive and unnecessary litigation of the tolling issue. For example, if an arbitration is dismissed as ineligible, and the parties proceed to court as permitted by Rule 12206(b), the new rule would make clear that the time to file in court has been tolled while the matter was on the FINRA docket. Without the amendment, there could be a wholly unintended proliferation of court litigation as to whether the limitations had been tolled during that time frame.

II. THE PROPOSED AMENDMENTS PROMOTE INVESTOR PROTECTION AND EQUITABLE PRINCIPLES OF TRADE

The investor who files an arbitration claim ought not be penalized for doing so if FINRA jurisdiction is ultimately denied. Even though a customer might be subject to a contract with a mandatory arbitration clause, it is possible for FINRA to deny jurisdiction of his or her claim against a broker-dealer. For example, under FINRA Rule 12203, the Director of Dispute Resolution is authorized to deny use of the forum if he determines that "the subject matter of the dispute is inappropriate." In addition, Rule 12205 provides that shareholder derivative actions may not be arbitrated. As we submit this comment, one broker-dealer which is involved in hundreds of arbitration claims concerning the failure of its junk bond funds is asking arbitrators to dismiss the claims against it on the dubious ground that they are derivative claims against the funds and are therefore barred by Rule 12205. The clarifications proposed to Rule 12206 would mitigate the injustice of an investor filing a claim with FINRA, having it dismissed on jurisdictional grounds and losing the right to sue in court due to the passage of limitations periods. Under the proposed rule, filing in arbitration would serve as the functional equivalent of filing a complaint in court, for statute of limitations purposes.

The failure to toll limitations periods would erode already precarious investor perceptions of the mandatory arbitration system. Many investors are aware that their securities claims are subject to mandatory arbitration. For those who may file in arbitration with that understanding, and who are told potentially much later that their claims are ineligible and that too much time has passed to file in court, the resulting distrust could be palpable.

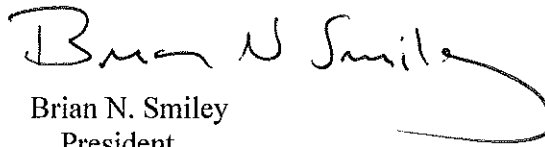
Certainly, simple fairness concerns favor the tolling clarifications set forth now by FINRA. The proposed rule advances investor protection by helping to ensure that when the investor must file in court after a finding of ineligibility, he will be treated as if he had filed originally in court.

CONCLUSION

FINRA has proposed equitable amendments and should be commended for its thoughtful treatment of the tolling issues. PIABA submits that the Commission should approve the amendments as written and without delay.

Respectfully,

PUBLIC INVESTORS ARBITRATION
BAR ASSOCIATION



Brian N. Smiley

Brian N. Smiley
President