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Securities Arbitration Clinic

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VIA E-MAIL
Elizabeth M. Murphy
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Proposed Revisions to Rules 12206(c) and 13206(c) of the FINRA Code of Arbitration Procedure—Amendment of Tolling Provisions
SR-FINRA-2009-013

Dear Ms. Murphy,

The Securities Arbitration Clinic at St. John's University School of Law is very pleased to accept this opportunity to comment on the proposed rule changes to amend the tolling provisions in Rules 12206 and 13206 of the Code of Arbitration Procedure for Customer and Industry Disputes. The Clinic supports the proposed rule changes because we believe that an automatic tolling of applicable statutes of limitation while an arbitration is pending will protect the public interest and preserve fairness in the arbitration process by ensuring that the intent of the rule is respected. The proposed rule changes will eliminate any confusion regarding the legislative intent of the tolling of statutes of limitation under Rules 12206 and 13206, and thus, allow these rules to be interpreted consistently.

The Clinic recognizes that if there is not an automatic tolling of statutes of limitation while a claim is pending in arbitration, in many cases, investors may have to simultaneously file claims in arbitration and court. This practice would result in the unnecessary congestion of court dockets, the spending of an excessive amount of money by both the investor and the brokerage firm, the needless use of court resources, and a major waste of time.

More significantly, the Clinic supports these rule changes because investors who file arbitration must be protected in the event that their claim is deemed to be inappropriately in arbitration and must subsequently be heard in court. The customer

does not elect to engage in arbitration. Rather, it is the forum chosen by the brokerage firm in virtually every contractual agreement. Therefore, the Clinic believes that a customer should not be forced to waive his rights when participating in arbitration, and have their claims time-barred in a court of law if arbitration is deemed inappropriate. Although arbitration is usually a faster alternative to litigation, the arbitration process can take a long time, even in excess of one year. As a result, if the statutes of limitation are not tolled, investors may lose their only opportunity to seek retribution in court, and hence, be penalized for pursuing their claims in the forum that the brokerage firms generally mandate.

The Clinic is very sensitive to the needs of *pro se* clients. The clients we are able to represent are generally unable to find representation and would otherwise be *pro se* participants in the FINRA forum. The Clinic recognizes that investors may already be disadvantaged by not understanding the law, and if they are not protected by these rule changes and the Friedman interpretation remains dominant in courts, then investors will continue to face unjust and inequitable decisions.

Without the rule changes, the Clinic believes that there is also a greater burden on the investor to arbitrate in a hurried manner when there is a question of arbitrability, and possibly forgo a complete examination of their account, the broker, or the brokerage firm. As a result, the investor's case may not be as compelling against the broker or brokerage firm, due to lack of time for investigation. Since the length of arbitration is unknown, investors will be forced to bring a claim extremely early for fear of the running of the statutes of limitation and losing the opportunity to litigate.

Most importantly, the proposed changes capture FINRA's intent. FINRA states that the rule should be read to provide that a firm or associated person has implicitly agreed to suspend any statutes of limitation defense for the time period that the matter was pending in arbitration at FINRA. However, the Clinic recognizes that the current wording of Rules 12206 and 13206 is confusing due to the inclusion of the phrase "where permitted by applicable law." The decisions in Friedman, Individual Securities, and Rampersad clearly exemplify this confusion. This ambiguity is advantageous to the broker or brokerage firm because, without the rule changes, they have a greater advantage if there is any delay in the process. FINRA rightly expresses its concern for courts interpreting the rules as interpreted in Friedman, and improperly dismissing cases. Moreover, with an automatic tolling of the statutes of limitation, there will be no need to decipher between federal and state law, as was the case in Rampersad.

Thank you for the opportunity to comment on this proposed rule change. We believe that the proposed changes to Rules 12206(c) and 13206(c) are necessary to clarify an inconsistent interpretation of the tolling of statutes of limitation pursuant to FINRA's Code of Arbitration Procedure. We ask that the SEC approve these changes on an accelerated basis, and that FINRA continue to consider other changes that may be made to FINRA's Code of Arbitration Procedure to address the protection of the public investors. Thank you for your consideration of this important matter.

Respectfully,

/s/ Joseph M. Licare

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