(A) By order approve the 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–BX–2009–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–021. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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 File Number SR–BX–2009–021 and should be submitted on or before June 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11609 Filed 5–18–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59906; File No. SR–FINRA–2009–013]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Amend the Tolling Provisions in Rules 12206 and 13206 of the Codes of Arbitration Procedure for Customer and Industry Disputes

May 12, 2009.

On March 11, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on April 7, 2009.[3] The Commission received five comments on the proposed rule change.[4] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

FINRA proposed 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.

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.'' [5] 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.'' [6] 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 *Friedman* v. *Wheat First Securities, Inc.,* however, the court found that the phrase ''where permitted by applicable law,'' means that state or federal law, as applicable, must permit tolling expressly, or the period will not be tolled.[7] In light of the court's interpretation of the phrase and the negative effect it could have on investors' arbitration claims, FINRA proposed 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.

The *Friedman* 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)[8] of the Code of Arbitration Procedure, which was updated and is currently designated as Rules 12206(c) and 13206(c) of the Customer Code and Industry Code, respectively, to support his position that

---

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59672 (April 1, 2009), 74 FR 15806 (April 7, 2009).

[4] *See* letters from: (1) Seth E. Lipner, Professor of Law, Zicklin School of Business, Baruch College, dated April 3, 2009 (''Lipner letter''); (2) Joseph M. Licare, St. John's University School of Law, Securities Arbitration Clinic, to Elizabeth M. Murphy, Secretary, Commission, dated April 28, 2009 (''Securities Arbitration Clinic letter''); (3) Brian N. Smiley, Esquire, President, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated April 28, 2009 (''PIABA letter''); (4) Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated April 29, 2009 (''Caruso letter''); and 5) Scot Bernstein, dated May 1, 2009 (''Bernstein letter'').

[5] 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.

[6] *See* also Rule 13206(c) of the Industry Code.

[7] 64 F. Supp. 2d 338 (S.D.N.Y. 1999). The case involved claims under Section 10(b) of the Act.

[8] 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.

filing an arbitration claim tolls the applicable statute of limitations.[9] 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.'' [10] 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.[11]

Other courts have reached the same conclusion in interpreting old Rule 10307(a) and the phrase ''where permitted by law.'' In *Individual Securities* v. *Ross,*[12] the plaintiff, in appealing a judgment of a New York district court that dismissed the complaint as time-barred, claimed that the statute of limitations was tolled while his matter was in arbitration with then-NASD.[13] 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.[14] In *Rampersad* v. *Deutsche Bank Securities, Inc.,*[15] the court, citing *Friedman,* determined that, used in a similar context, the phrase meant that federal law, not state law, governs the availability of tolling the limitations period in a Section 10(b) cause of action.[16]

FINRA is concerned that courts may begin citing this interpretation to dismiss claims that would otherwise be permitted under the eligibility rule.[17] FINRA does not believe this outcome would be consistent with the original intent of the tolling provision or of amendments to the eligibility rule that allow customers to take their claims to court if their claims are dismissed in arbitration on eligibility grounds.[18] Rather, FINRA believes that, in such a situation, the rule should be read to provide that 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 is intended to make this clear.

Moreover, FINRA is concerned that the *Friedman* 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 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 proposed to delete the phrase ''where permitted by applicable law'' from Rules 12206(c) and 13206(c). FINRA noted 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.[19] FINRA stated that it 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.

II. Summary of Comments

The Commission received five comments in response to the proposed rule change, all of which supported the proposal.[20] One commenter stated that FINRA has proposed equitable amendments and should be commended for its thoughtful treatment of the tolling issues, and that the Commission should approve the amendments as written and without delay.[21] Another commenter noted that an automatic tolling of the applicable statute of limitations, if any, will protect the public interest and preserve fairness in the arbitration process.[22]

III. Discussion and Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the rules and regulations thereunder that are applicable to a national securities association [23] and in particular, with Section 15A(b)(6) of the Act,[24] in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Commission believes that the proposal is consistent with Section

[9] 64 F. Supp. 2d at 343.

[10] *Id.*

[11] *Id.* at 347.

[12] 1998 U.S. App. Lexis 12618.

[13] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to FINRA in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

[14] *Id.*

[15] 2004 U.S. Dist. Lexis 5031. The case also involved claims under Section 10(b) of the Securities Exchange Act of 1934.

[16] *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.

[17] 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).

[18] *See* Securities Exchange Act Release No. 50714 (November 22, 2004), 69 FR 69971 (December 1, 2004) (SR–NASD–2001–101).

[19] *Friedman,* 64 F. Supp. 2d 338, 343 n.4 (1999). The court indicates that it 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.

[20] *Supra* note 4.

[21] *See* PIABA letter. One commenter, while supporting the proposed rule change, suggested that the words ''and for thirty days thereafter'' should be added to the proposed rule amendment so that the final sentence of Rule 13206(c) would read: ''* * * any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim *and for thirty days thereafter.'' See* Bernstein letter. FINRA declined to make that change, stating that it believes the suggested amendment to the proposed rule change would contradict the rule, as currently drafted, by extending applicable statutes of limitations by 30 days. The proposed rule change was intended to clarify FINRA's interpretation of Rule 12206(c) that any applicable statute of limitations would be tolled in all cases when a person files an arbitration claim with FINRA. However, FINRA did not intend to extend the tolling protection beyond the completion of the arbitration case. For these reasons, FINRA declines to amend the proposal as suggested. Email from Mignon McLemore, FINRA (May 12, 2009).

[22] *See* Caruso letter. *See also* the Securities Arbitration Clinic letter (the proposed changes will ensure that the intent of the rule is respected), and the Lipner letter (investors who submit to arbitration should benefit for the tolling of the statute of limitations in the event that the claim is non-arbitrable and must later be heard in court).

[23] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 17c(f).

[24] 15 U.S.C. 78*o*-3(b)(6).

15A(b)(6) of the Act because the proposed rule change will preserve fairness in the arbitration process by ensuring that investors maintain their right to have their claims heard in court if their arbitration cases are dismissed on eligibility grounds by tolling the applicable statutes of limitation while their disputes are in arbitration.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2009–013) be, and hereby is, approved.[25]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11608 Filed 5–18–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6620]

Waiver of Restriction on Assistance to the Central Government of Lebanon

Pursuant to section 7088(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7088(c)(1) of the Act with respect to the Government of Lebanon, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register.**

Dated: May 7, 2009.

Jacob L. Lew,

Deputy Secretary of State, Department of State.

[FR Doc. E9–11641 Filed 5–18–09; 8:45 am]

BILLING CODE 4710–31–P

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2008–0371]

Agency Information Collection Activity for OMB Review: Foreign Air Carrier Application for Statement of Authorization, ICR–2106–0036

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, PublicLaw 104–13, this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of approval of currently approved ICR–2106–0036, Foreign Air Carrier Application for Statement of Authorization. Earlier, a **Federal Register** Notice with a 60-day comment period was published (73 FR 74223, December 5, 2008). The agency did not receive any comments to its previous notice.

DATES: Written comments should be submitted by June 18, 2009.

FOR FURTHER INFORMATION CONTACT: George Wellington, (202) 366–2391, Office of International Aviation, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W86–125, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Comments: Comments should be sent to OMB: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or *oira_submission@omb.eop.gov* and should identify the associated OMB Approval Number 2106–0035 and Docket DOT–OST–2008–0374.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2106–0035.

Title: Foreign Air Carrier Application for Statement of Authorization.

Form No.: Form OST 4540.

Type of Review: Extension of a currently approved collection.

Respondents: Foreign Air Carriers.

Number of Respondents: approximately 100.

Estimated Time per Response: 2.25 hours per application.

Total Annual Burden: 1,000 hours.

Abstract: Applicants use Form OST 4540 to request statements of authorization to conduct numerous types of operations authorized under Title 14, CFR Part 212. The form requires basic information regarding the carrier(s) conducting the operation, the party filing the form, the operations being conducted, the number of third- and fourth-freedom flights conducted in the last twelve-month period, and certification of reciprocity from the carrier's homeland government. DOT analysts will use the information collected to determine if applications for fifth-freedom operations meet the public interest requirements necessary to authorize such applications.

Burden Statement: We estimate that the industry-wide total hour burden for this collection to be approximately 1,000 hours or approximately 2.25 hours per application. Conservatively, we estimate the compilation of background information will require 1.75 hours, and the completion and submission of OST Form 4540 will require thirty (30) minutes.

Reporting the number of third- and fourth-freedom operations conducted by an applicant carrier will require collection of flight data, and detailed analysis to determine which flights conducted by the carrier are third- and fourth-freedom. Applicants should be able to use data collected for the Department's T–100 program to provide this information (under this program, carriers are required periodically to compile and report certain traffic data to the Department, as more fully described in the Docket referenced in footnote 1 below). The Bureau of Transportation Statistics (BTS) provide carriers with a computer program that allows them to compile and monitor, among other things, flight origin and destination data, to be used in making the carriers' T–100 submissions.[1] We estimated that carriers will require 1.25 hours per application [2] to compile and analyze the data necessary to disclose the number of third- and fourth-freedom flights conducted within the twelve-month period preceding the filing of an application.

Foreign carriers will also have to provide evidence that their homeland

[1] The rule-making associated with the T–100 program can be found on the Federal Docket Management System (FDMS) at *http://www.regulations.gov,* in Docket DOT–OST–1998–4043. Information regarding burden hours is on file in the Office of Aviation Analysis (X–50).

[2] The Office of Aviation Analysis (X–50) estimated that small carriers would require 1 burden hour per report, and large carriers would require 3 burden hours per report to analyze and report T–100 program data. Considering that the data required in this information collection can be derived from data already collected, we have taken an average of the estimated time required, and conservatively shortened the time by 45 minutes because no new data entry will be required.