December 18, 2024

Andrew B. Kay
Venable LLP
600 Massachusetts Avenue, NW
Washington, D.C. 20001

Re: Petition for Rulemaking, File No. 4-781

Dear Mr. Kay:

This letter responds to the petition for rulemaking that you filed on behalf of Thrivent Financial for Lutherans and Thrivent Investment Management, Inc., on December 29, 2021. The petition requests that the Commission invoke its authority under Section 19(c) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(c), to abrogate or amend Financial Industry Regulatory Authority (FINRA) Rules 2268(d), 12200, and 12204(d). Those rules concern FINRA's requirements for using predispute arbitration agreements for customer accounts as well as arbitration procedures for customer disputes.

The Commission denies the petition. As the Supreme Court has "repeated time and again, an agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities." *Massachusetts v. EPA*, 549 U.S. 497, 527 (2007). This means that the Commission "has discretion to determine the timing and priorities of its regulatory agenda." *WildEarth Guardians v. EPA*, 751 F.3d 649, 651 (D.C. Cir. 2014); *accord Humane Soc'y of the US v. USDA*, 41 F.4th 564, 580 (D.C. Cir. 2022) ("We have rejected calls to micromanage an agency's regulatory agenda by forcing it to move forward with any particular regulatory proposal.") (Rao, J., dissenting).

Self-regulatory organizations (SROs), including registered securities associations like FINRA and its predecessor, the National Association of Securities Dealers, and exchanges like the New York Stock Exchange, have maintained arbitration forums, in various forms, for more than a century, predating the federal securities laws. Revision or reexamination of FINRA's arbitration forum has not been placed on the unified agenda for the Commission. *See* Fall 2024 SEC RegFlex agenda.[1] Resources and personnel are being used for other matters related to protecting investors, facilitating capital formation, and enhancing market efficiency. Additionally, Section 19(c) of the Exchange Act authorizes, but does not require, the Commission to take action regarding existing SRO rules, including FINRA Rules. Section 19(c) states that the "Commission, by rule, *may* abrogate, add to, and delete from" SRO rules "as *the Commission deems necessary or appropriate*" to "insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this chapter and the rules and regulations thereunder applicable to such organization, or

[1]https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=048287ECF40D06D73757ADF6334A069323A07D45FD5B2749860C69F2CC5B1A140E3ADC4E3D0AA443E72F18FA3FB23F6C0F0A.

otherwise in furtherance of the purposes of this chapter." 15 U.S.C. 78s(c) (emphasis added); *see Biden v. Texas*, 597 U.S. 785, 802 (2022) ("This Court has repeatedly observed that the word "may" *clearly* connotes discretion.") (cleaned up, emphasis in original). At this time, the Commission declines to exercise its discretion under Section 19(c) to revisit the three arbitration-related provisions addressed in the petition. To the extent that future circumstances warrant, the Commission may undertake further consideration of issues raised in the petition.

By the Commission.

J. Matthew DeLesDernier,
Deputy Secretary.