Comments by GVC Capital LLC regarding FINRA Regulatory Notice 25-04 ("Rule Modernization") (Submitted June 11, 2025)

Introduction:

FINRA small firm member GVC Capital LLC ("GVC") appreciates the opportunity to comment in response to this Regulatory Notice and respectfully submits the following comments and specific proposals for improvements.

The broad scope of Regulatory Notice 25-04 invites sweeping responses by all FINRA member firms. GVC's limited resources as a small broker dealer firm do not permit such a sweeping response by GVC. Reserving its rights to make additional or revised comments and proposals in the future, GVC will focus in this comment document only on three important areas adversely impacting GVC and other member firms that urgently require FINRA's attention, improvements and the specific reforms described herein.

GVC's comments and **specific easily actionable** proposals/suggestions for improvements herein **would not harm investor protection or market integrity**.

GVC endeavors herein to be responsive to FINRA's request for member feedback in scope from "specific rules to broad thematic groups of requirements." FINRA Regulatory Notice 25-04, page 4 and footnote 5. Also, GVC appreciates FINRA's welcoming of "comment on where FINRA's oversight of its member firms interacts with other non-FINRA regulatory requirements such that it should be a focus for this [FINRA] review." *Id.* page 4.

FINRA stated: "For example, there may be areas where FINRA should consider whether its rules create unintended confusion, impose unnecessary or duplicative burdens, or are insufficiently tailored to the broader regulatory and business environment of its member firms." *Id.* (underlining and yellow highlighting emphasis added).

FINRA stated also: "Comments are welcome regardless of whether the requirements are related to or derived from a statutory or other non-FINRA source." *Id.* at footnote 5. This is important especially in respect of the SEC's requirements on FINRA member firms.

Although GVC personnel have endeavored to research thoroughly the matters discussed herein, GVC acknowledges its personnel may have missed materials and/or references that

may be important and relevant. GVC also acknowledges the difficulty of drafting rules, including *inter alia* the "ripple effects" of amending complex and/or interrelated rules. GVC stands open, ready, willing and able to consider any such other materials and/or references. And we with GVC would be happy to discuss these matters with FINRA personnel.

Three Big Problems (Pain Points for FINRA Member Firms) that Require FINRA's Urgent Attention:

Discussed in more detail below, these are:

1. Drastically Improve and Reform FINRA Arbitration
2. Improve and Reform FINRA Rule 2210 ("Communications with the Public") and Related Guidance; Amend, Harmonize and Coordinate Definitions of "Institutional Investor"
3. Work with the SEC to Repeal in its Entirety Regulation Best Interest ("Reg BI") and Instead Enforce and Interpret *Mutatis Mutandis* FINRA Rule 2111 Suitability and Related Laws, Rules and Regulations in Place Before Reg BI

1. Drastically Improve and Reform FINRA Arbitration:

For several years and at various times, GVC personnel have attempted in good faith to "go through/use proper FINRA channels" to explain the overarching fundamental defects and unfairness of current FINRA arbitration and to propose specific, easily implementable fixes.

These "proper FINRA channels" pursued by GVC included *inter alia* GVC's specific oral and written outreach to FINRA attorneys whom we were advised are responsible for these matters (FINRA attorneys Todd Salzman and Victoria Crane); the FINRA Small Firm Advisory Committee (via its member Mr. Bob Hammon); and FINRA's former Small Firm Member of the FINRA Board of Governors Ms. Page Pierce. GVC's Kent Lund, a current member of FINRA's West Region Committee, also endeavored use that resource in these regards.

GVC also raised these issues and specific proposals with FINRA's Office of the Ombuds, specifically via communications with Ombuds and Vice President Sarah Gill and Associate Director Christopher Cook.

GVC's specific analysis and requests for improvements are discussed, explained, researched and supported in detail in the attached PDF of a July 26, 2021, twenty-three-page Memorandum and Formal Written Request that GVC's Kent Lund sent to FINRA attorneys Todd Salzman and Victoria Crane.

These extensive and proactive efforts went nowhere/bore no fruit. GVC received NO substantive responses and/or rebuttals to our July 26, 2021, Memorandum and we were told nothing would be done. We asked for any additional relevant materials and/or references that we may have missed. We received none from FINRA.

As detailed and explained in our July 26, 2021, Memorandum to FINRA, our specific proposed, fully researched and supported fixes can be summarized as follows:

> As detailed our July 26, 2021, formal written request to FINRA, it is critical that FINRA implement especially the following three overarching specific urgent actions in and for its Arbitration Regime:
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> 1. **Mandate that FINRA's six-year arbitration eligibility rule is a statute of repose and not a statute of limitations**. As such, all securities transactions and/or other allegedly wrongful events or conduct that took place/occurred prior to six years from the filing of a FINRA arbitration claim are not eligible for FINRA arbitration. Period, end of story.
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> 2. **Mandate in the FINRA arbitrators' oath that each FINRA arbitrator is required to**: (a) ascertain fairly all relevant facts of the dispute; and (b) ascertain and apply fairly to those relevant facts of the dispute all applicable FINRA Arbitration and other Rules and all applicable laws, rules, and regulations. Make crystal clear that FINRA arbitrators are not permitted to: fail to consider and/or disregard the applicable facts and/or law; operate in a vacuum untethered to the applicable facts and law; and/or simply do what they think is "equitable." Delete all FINRA arbitration materials and staff guidance that state or imply, directly or indirectly, that FINRA arbitrators are permitted to render awards that they think are "equitable" and/or that are untethered to the applicable facts and law of the case.
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> 3. **Explained Written Decisions must be Mandatory in and for All FINRA Arbitration Cases**, including discussion in a reasonable manner the factual and legal basis/rationale for the award. This means including, *inter alia*: (a) citations to applicable legal authorities explaining and/or supporting the award; and (b) itemized damage calculations (as applicable) warranted by and supported by the applicable facts and law. The explained written decisions need not be overly lengthy or "legalistic". Awards that merely state, *e.g.,* Party A wins and Party B loses, Party B pays Party A X U.S. Dollars are *per se* unfair and deny due process to the parties. Mandating reasonably detailed explained written decisions in every FINRA Arbitration case forces the arbitrators to properly engage in careful deliberations based on the applicable facts and law of each case (instead of pulling out of the air what they think is "equitable") and reduces the chances of arbitrary, baseless and/or thoughtless decision-making.

Our July 26, 2021, formal written request to FINRA details how effecting these actions are simple and straightforward fixes, easily implementable by FINRA, and are based on and supported fully by applicable law, history, equity, and common sense.

All FINRA member firms of any size, especially small firms, are vulnerable to unfair FINRA arbitration awards untethered to the facts and the law of the case that literally can put them out of business. At present, it is not commercially or legally reasonable for any FINRA member firm to subject itself to FINRA Arbitration.

2. **Improve and Reform FINRA Rule 2210 (Communications with the Public" and Related Guidance; Amend, Harmonize and Coordinate Definitions of "Institutional Investor":**

At least two specific improvements and reforms are needed:

First, delete the following sentence at the end of FINRA Rule 2210(a)(4):

> No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.

Most FINRA member communications today are made via email that the intended recipient easily may - without any control of and/or influence by the FINRA member firm - "forward" or "make available" to others. The above sentence guts the ability of a FINRA member to send an "institutional communication" to an "institutional investor" and thus rely on FINRA's principles and rules in these regards.

Second, amend, harmonize and make consistent all FINRA definitions of and relating to "institutional investor" in FINRA Rules 2210 and 4512, and otherwise.

For example, FINRA should revise the definition of "institutional investor" in FINRA Rule 2210(a)(4)(A) to read:

> (A) person or entity described in Rule 4512(c) or FINRA Rule 5123(b), regardless of whether the person or entity has an account with a member;

FINRA Rule 4512(c) currently provides:

> (c) For purposes of this Rule, the term "institutional account" shall mean the account of:
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> (1) a bank, savings and loan association, insurance company or registered investment company;

(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or

(3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

With total assets "of at least $50 million" is too high a minimum threshold to be considered an "institutional investor" and should be reduced to "with total assets of at least $5 million." In support, *see, e.g.,* FINRA Regulatory Notice 24-17 ("Capital Formation") (December 20, 2024).

In relevant part, FINRA Regulatory Notice 24-17 (page 8) proposed amendments to FINRA Rule 5123 to expand that rule's filing exemptions to add persons and entities included in the SEC's August 2020 amendments to the definition of "accredited investor" under SEC Rule 501 "to more effectively identify institutional and individual investors that have the knowledge and expertise to participate in private capital markets....:"

FINRA stated (page 8, yellow highlighting emphasis added):

> The investors described above under Rule 501(a)(9) and (12) possess a level of sophistication and expertise that is similar to the institutional accredited investors currently exempted under Rule 5123 and generally do not need the additional protections and oversight provided through the filing requirements.

FINRA concluded (page 8, yellow highlighting emphasis added):

> The proposal amends Rule 5123 to expand its exemptions consistent with the SEC's treatment of the accredited investor definition. Adding these two types of entities to the existing exemption establishes consistency and is appropriate for the purpose of Rule 5123.

FINRA reasoned (page 8) that "natural persons or companies that own not less than $5,000,000 in investments ... [have a] financial threshold, which indicates an equivalently high level of sophistication [and expertise] to justify an exemption from Rule 5123."

GVC understands that different definitions of terms in various rules or contexts may have made some sort of sense when drafted and put into place, but inconsistent definitions of important terms like "accredited investor", "retail investor" and "institutional investor" present material compliance and implementation challenges to FINRA member firms like GVC.

3. **Work with the SEC to Repeal Regulation Best Interest and Instead Enforce and Interpret *Mutatis Mutandis* FINRA Rule 2111 Suitability and Related Laws, Rules and Regulations that Preceded Reg BI:**

To put it mildly, we recognize this is a very big ask. But with a new SEC in place and given FINRA's stated willingness to review and improve all aspects of its self-regulatory business, it is worth serious consideration.

The SEC's Reg BI and Form CRS requirements **are an enormous burden** (*e.g.,* financial and time) on FINRA members and are wholly unnecessary for investor protection if FINRA Rule 2111 ("Suitabliity") and previously in place applicable laws, rules and regulations properly are implemented by FINRA members and FINRA associated persons.

FINRA Rule 2111, along with other existing applicable laws, rules and regulations including the catchall FINRA Rule 2210 ("Standards of Commercial Honor and Principles of Trade"), fully cover the investor protection waterfront.

Reg BI and Form CRS merely pile on. They are confusing, duplicative, expensive, unnecessary and wasteful regulatory overreach.

Conclusion:

If FINRA truly "is committed to continuous improvement that draws on deep engagement with its member firms" (*e.g.,* Regulatory Notice 25-04, page 1) it will accept and implement, in form and/or in substance, GVC's proposals in this document.

Note: GVC is not complaining about these matters without offering specific and actionable fixes as fully described herein.

Thank you for your consideration, and we with GVC would be happy to discuss this document and related matters with FINRA personnel.