Comments by GVC Capital LLC regarding FINRA Regulatory Notice 25-05 ("Outside Activities") (Submitted March 13, 2025)

FINRA member GVC Capital LLC ("GVC") appreciates the opportunity to comment regarding this Regulatory Notice and respectfully submits the following comments and proposals.

Introduction:

GVC appreciates the efforts that FINRA personnel expended to issue Regulatory Notice 25-05 and draft proposed new FINRA Rule 3290 ("Outside Activities Requirements"). Obviously, these FINRA efforts took years, the subject matter is very important, and the rule drafting for these specific matters is complex.

Of course, GVC did not participate in these FINRA efforts. And in analyzing Regulatory Notice 25-05 and draft proposed new FINRA Rule 3290, GVC spent a small fraction of the time that FINRA personnel expended. Therefore, GVC may have missed important points, not read properly and/or not understand fully the fundamental intent, language and structure of proposed new FINRA Rule 3290. As such, we with GVC would be happy to consider additional materials and/or discuss these matters with FINRA personnel.

The Big Picture Problems that The Proposed Rule Seeks to Address:

In our view, these big picture problems are relatively straightforward and easy to describe. Even so and as noted above, it is not easy to draft a rule to carefully and properly address these big picture problems.

Outside Business Activities: The overarching principle in these regards, in our view, is that (unless the associated person is part time or other mutually agreed association arrangements are in place) an associated person of a FINRA member securities broker dealer (registered or unregistered) owes and is required to devote his/her full time, "regular business hours" efforts to the FINRA member with which he/she is associated. Any substantive business work away from the FINRA member that interferes or conflicts with the person's association with the FINRA member (the old term for this is "moonlighting") is authorized only if the FINRA member receives full details about it and approves the specific outside business activity. The FINRA member has the right to determine if the outside

business activity materially conflicts with the associated person's duties and responsibilities with the FINRA member, presents potential for conflicts of interest or potential customer harm or confusion, and/or otherwise is materially inconsistent with the associated person's duties and responsibilities with the FINRA member firm.

In these respects, and with due respect, it makes no sense, and it is entirely illogical, that current FINRA Rule 3270 applies only to **registered** associated persons. Indeed, in our experience many if not all FINRA members have internal "house rules" that expressly make FINRA Rule 3270 apply equally *mutatis mutandis* to both registered and unregistered associated persons.

Private Securities Transactions:

In our view, the overarching principle in these regards is clear: all associated persons of a FINRA member (registered and unregistered) must conduct and/or pursue all "securities" transactions and/or "securities" business for or related to third party customers/clients and/or the FINRA member firm's business as such ONLY through/via the FINRA member with which the associated person is associated. In long time industry parlance: "**no selling away**", and "**selling away is prohibited**".

"Securities" versus Non-"Securities" Business and/or Transactions":

In our view, any proposed FINRA Rule in these regards must incorporate and reflect clearly and logically certain key overarching points and principles, *inter alia*, that:

- FINRA's authority and jurisdiction over its member firms and associated persons is limited to "securities" and "securities"-related business/transactions.
- There is a critical legal and substantive distinction between an associated person's activities "away from" his/her FINRA member firm that involve or relate to "securities" and "securities"-related business/transactions -- and those do not. FINRA has valid self-regulatory interests only in the former.
- An associated person's PERSONAL and PASSIVE securities investments (including buying and selling "securities" for his/her own personal account) "away from" his/her FINRA member firm that do not present any conflicts of interest, do not involve or relate improperly to any customers of his/her FINRA member firm and/or do not present any confusion *vis a vis* his/her FINRA member firm -- do not present any investor protection and/or any other valid legal, regulatory and/or self-regulatory concerns and therefore should not be part of any FINRA rule(s) that prohibit or relate thereto.

If any of these comments or proposals reflect misunderstanding and/or fail to consider properly the draft proposed new Rule 3290, GVC personnel would be happy discuss these matters with FINRA personnel and/or consider any additional guidance or references related thereto.

Further and in addition to the above, our more specific comments and proposals are set forth below.

"Investment-Related Activity"

The proposed definition of "investment-related activity" in proposed new Rule 3290(f)(2) is too broad and overinclusive because it extends beyond FINRA's jurisdiction which, as noted above, is limited to "securities" and "securities"-related matters. Of course, all defined terms in proposed new Rule 3290 are critical in its meaning and application. And despite good intentions, defined terms can have adverse unintended consequences.

Proposed new Rule 3290(f)(2) states that "[i]nvestment-related activity means **pertaining to financial assets**, including securities, crypto assets, commodities, derivatives (such as futures and swaps), currency, banking, real estate or insurance." (emphasis added). Of course, there are a variety of "financial assets" including some related to the list in proposed new Rule 3290(f)(2) that are not "securities", are not "securities"-related and/or do not involve the "securities" business.

Proposed new Rule 3290(f)(2)(A) states *inter alia* that the term "investment-related activity" "includes, but is not limited to, acting as or bring associated with ... [an] insurance agent or company ...." And it lists entities that do not necessarily conduct "securities" business or "securities" transactions with customers.

This definitional flaw is not cured by the proposed rule's definition of "outside activity" in proposed new Rule 3290(a) because its proposed scope is for a registered person "who intends to participate in an investment-related activity outside the scope of such person's relationship with the member that is not in connection with a securities transaction ("outside activity") ...." (emphasis added). *Cf.* proposed new Rule 3290(b) (discussing an "associated person who intends to participate in an investment-related activity outside the scope of such person's relationship with the member that is in connection with a securities transaction ("outside securities transaction")...."). (emphasis added).

Similarly, this definitional flaw is not cured by the proposed rule's "Exclusions" in proposed new Rule 3290(g) (*see also* the discussion below regarding "Exclusions").

"Buying Away"

Proposed new Rule 3290(f)(2)(B) addresses an associated person's (and his/her family and/or other related persons) possible personal securities transaction(s) away from the associated person's FINRA member firm.

Provided that the associated person's "participation in any manner in a personal investment involving a securities transaction" (a) is passive, (b) does not involve receipt of any "selling compensation", (c) does not improperly implicate or involve any customer(s) of the FINRA member, (d) does not present any interference or conflict with the associated person's duties or responsiblities with his/her FINRA member firm and (e) does not present any concerns, confusion or risks that the personal investment is somehow part of the FINRA member's business, the proposed rule's provisions regarding "buying away" do not serve any valid purpose, do not provide any investor protection and should be deleted in their entirety.

Footnote 4 of Regulatory Notice 25-05 states that "a personal securities investment away from the" associated person's FINRA member firm not otherwise covered by FINRA Rule 3210 is considered "buying away" subject to FINRA Rule 3280. Footnote 4 states also that the "most common 'buying away' transactions are personal [securities, presumably] investments in private placements."

Proposed new Rule 3290(g)(3) ("**Exclusions**") includes "the following personal investments" to which the proposed new Rule 3290 do not apply:

(A) securities transactions subject to or delineated in Rule 3210;
(B) personal investments in non-securities; and
(C) the purchase, sale rental or lease of a main home or dwelling unit or personal-use rental property, as defined for purposes of the Internal Revenue Code.

These are all well and good, but do not go far enough.

At the very least, a new (D) to Rule 3290 part (g)(3) **Exclusions** should be added, reading substantially and with effect follows:

(D) personal investments in securities of any kind that are passive (*i.e.,* the associated person plays no active operational or management role in respect of the investment), do not involve the associated person's receipt of any "selling compensation", do not improperly implicate or involve any customer(s) of the FINRA member, do not present any interference or conflict with the associated person's duties and responsibilities with his/her FINRA member firm and do not involve or present any concerns or risks that the personal investment somehow is part of the FINRA member's business.

Coordination and Consistency with Form U4

Footnote 11 of Regulatory Notice 25-05 states that the "Proposal does not impact reporting on Form U4 [Question 13 ("Other Business")]." This presents ongoing frustration and implementation issues for FINRA member firms.

FINRA should work with the SEC to make proposed Rule 3290 consistent and coordinated in all respects with Form U4.

Attachment C to Regulatory Notice 25-05:

This Attachment C is very helpful for understanding how proposed Rule 3290 would, in FINRA's view, apply in the listed scenarios versus application of current Rules 3270 and 3280. (Note: GVC is not registered as an investment adviser, is not currently affiliated with any registered investment adviser and is not currently associated with any registered associated persons who are affiliated with any registered investment advisers. Therefore, GVC makes no substantive comment about the FINRA answers in the investment adviser scenarios and/or in respect of the investment adviser provisions of proposed Rule 3290.)

For the reasons and based on its discussion above, GVC respectfully disagrees with FINRA's conclusions and rationales regarding the following Scenarios:

- **Scenario 1**.
- **Scenario 3**.

GVC agrees with the essential outcome of **Scenario 2** because the registered person **recommended** a securities transaction private placement and substantially participated in the private securities transaction away from the member firm. GVC would not permit its associated persons to engage such activities, and based on its industry experience GVC believes that most if not all FINRA member firms would do the same.

GVC agrees with the basic outcome of **Scenario 4** but, as discussed above, GVC has concerns about the proposed definition and application of the term "investment-related activity."

Because they relate to investment adviser situations, GVC makes no outcome related comments about **Scenarios 5, 6, and 7**. However, GVC notes it is very important in **Scenario 5** that the registered associated person made securities recommendations to a client; however, the discussion (with citations) in **Scenario 5** regarding providing "more than mere securities advice" (what does that mean?) in relation to effecting or placing a securities order muddies the waters.

GVC believes that **Scenario 7** is confusing because it states that the dually registered person "only provides advice and does not place any securities orders ...." Did the dually registered person make any securities "recommendations"? The incorporation of facts from Scenario 6, which in turn incorporates the facts from Scenario 5, along with the language of Scenario 7 itself ("only provides advice"), leaves the reader to wonder about securities "recommendation" considerations. Of course, a securities "recommendation" must be made to trigger application of Reg BI and FINRA suitability Rule 2111 – and whether a securities "recommendation" is made also is critical for consideration and scope of an investment adviser's fiduciary obligations.

Subject to its comments and discussions above, GVC agrees with the basic outcomes of **Scenarios 8, 9 and 10.**

Some Additional Scenarios of How Any Final FINRA Rule Regarding Outside Activities Should Work:

1. A registered associated person who is a licensed insurance agent should be permitted to conduct any insurance-related business away from his/her FINRA member firm as an "outside activity" "not in connection with a securities transaction" within the scope of proposed (or similar successor rule) FINRA Rule 3290(a).
2. A registered associated person who is a licensed real estate agent should be permitted to conduct any real estate-related business away from his/her FINRA member firm as an "outside activity" "not in connection with a securities transaction" within the scope of proposed (or similar successor rule) FINRA Rule 3290(a).
3. Subject to the above comments, conditions and discussions regarding private personal investments away from the associated person's FINRA member firm:
    a. An associated person should be permitted to make a passive personal investment in a private equity firm and/or hedge fund that may or may not invest in "securities".
    b. An associated person should be permitted to make a passive personal investment in a private real estate partnership that may or may not invest in "securities".
    c. An associated person should be permitted to make a passive personal investment in a private placement that may or may not involve "securities".

Conclusion:

Respectfully, the proposed new FINRA Rule 3290 should be revised to address and incorporate fully and properly the important matters discussed herein.

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