Comments on Behalf of GVC Capital LLC regarding FINRA Regulatory Notice 25-06 (March 20, 2025)

(Submitted by GVC to FINRA on June 18, 2025)

Introduction:

FINRA Regulatory Notice 25-06 ("Supporting Capital Formation: FINRA Requests Comment on Modernizing FIRNA Rules, Guidance and Processes to Facilitate Capital Formation") (March 20, 2025) is a broad ask of FINRA member firms like GVC because "supporting" and "facilitating" capital formation in the United States are tremendously complex subjects.

Federal and state securities laws, SEC rules, state securities rules, and FINRA Rules relating to capital formation are lengthy, nuanced, complex and sometimes contradictory and/or inconsistent.

Various federal and state securities authorities, and self-regulatory authorities, are involved in these matters, often with different or inconsistent priorities and requirements.

FINRA stated that it "also welcomes comment on how its rules and programs relate to the broader regulatory framework for member firms and associated persons, and whether there are opportunities for FINRA to more closely align with the work of other regulators to promote capital formation and investor protection." FINRA Regulatory Notice 25-06 at page 3 and endnote 6.

GVC attempts in this comment document to be responsive to FINRA Regulatory Notice 25-06 by providing tailored discussion and specific proposals for improvements.

- **The SEC's Office of the Advocate for Small Business Capital Formation:**

The SEC's Office of the Advocate for Small Business Capital Formation (https://www.sec.gov/about/divisions-offices/office-advocate-small-business-capital-formation) gathers extensive information and publishes a glossy Annual Report that contains pretty pictures and graphs regarding small business capital formation and related matters. In relevant part, its Annual Report for Fiscal Year 2024 (https://www.sec.gov/files/2024-oasb-annual-report.pdf) (127 pages including 414 endnotes) reports about different "regulatory pathways" to raise capital. *E.g., id.* at pages 14-20.

These data underscore the tremendous complexity and different means of "capital formation" in the United States.

These data also underscore the importance and size of "exempt offerings" including SEC "Rule 506(b) Private Placements". *Id.* at page 14.

The SEC's Office of the Advocate for Small Business Capital Formation's Annual Report for Fiscal Year 2024 includes Policy Recommendations and proposed solutions. *Id.* at pages 75-91.

Query whether the considerable personnel and other resources of the SEC's Office of the Advocate for Small Business Capital Formation deliver/facilitate substantive and tangible improvements to facilitating capital formation in the United States: *i.e.,* do those considerable resources bear capital formation fruit?

- **Selected Long-Term Ongoing and/or Unresolved Macro Issues:**

These include *inter alia* whether federal securities laws, rules and regulations should broadly preempt state securities laws, rules and regulations. Broad federal preemption would simplify and reduce the complexity and costs of various securities offerings.

Another is whether various private investment securities and other private securities investment vehicles should be made more broadly available to "retail" investors. *See, e.g.,* Chris Cumming, "Individual Investors May Get More Access to Private Funds", *The Wall Street Journal*, June 9, 2025, p. B9. At present, certain securities laws, rules and regulations provide that only defined "accredited investors" and other "institutional" or "sophisticated" investors are permitted to invest in certain securities and securities transactions. SEC Commissioner Hester Peirce is quoted as saying that she "would like to see more meaningful expansions" of the accredited investor definition, "as would many retail investors who resent being cut off from an increasingly large segment of the market."

The current definitions and application nuances in these regards present inconsistencies and compliance challenges, some of which are discussed in this comment document. A broader pool of potential investors likely would help "facilitate capital formation", but what about investor protection considerations for those investors?

Also, there are ongoing discussions and debates about the specific types and qualifications of persons and entities who/that should be permitted by law to conduct securities-related business and transactions, including for securities transaction-based compensation. Often, persons and entities seek to avoid and/or seek exemptions from the securities registration and securities licensing requirements and the other laws, rules and regulations that are applicable to SEC registered securities broker dealers, securities licensed associated persons of SEC registered securities broker dealers and FINRA member firms. Such persons and entities also may seek "light" regulation and/or self-regulation, attempting to avoid the full panoply of laws, rules and regulations applicable to SEC registered securities broker dealers, securities licensed associated persons of SEC registered securities broker dealers and FINRA member firms.

GVC's Perspectives as a Small Firm FINRA Member:

Formed in 1995, GVC is a small introducing/correspondent SEC registered securities broker dealer and FINRA member that, among other business segments, actively is involved in the securities capital raising business ("capital formation"), mostly for small private and public companies. GVC especially is actively involved in helping small companies/issuers raise capital via private placement transactions.

GVC's issuer clients principally rely on the exemptions from registration provided by Section 4(a)(2) of the Securities Act of 1933 (and similar state private securities offering exemptions from registration) and/or SEC Regulation D Rule 506(b) (to date, GVC has not participated in a SEC Regulation D Rule 506(c) transaction).

This comment document discusses several specific areas regarding which GVC's senior management registered principals submit respectfully that the proposed improvements herein are appropriate and necessary to support and facilitate capital formation.

Although GVC personnel attempted to thoroughly research these matters, we recognize that there may be authorities, references and/or considerations of which GVC is not aware and/or misapprehended. GVC personnel would be happy to consider and account for any/all of same via discussions with FINRA personnel and/or via amendments or supplements to this comment document.

FINRA Regulatory Notice 25-06:

FINRA is correct that the capital-raising process "is ever-evolving". FINRA Regulatory Notice 25-06 page 2. For example, the speed and ubiquitous use of electronic communications, document drafting and document exchanges present challenges to FINRA members in conducting their business in consideration of existing FINRA and SEC rules.

FINRA also is correct that "FINRA members perform a critical role in the capital-raising process". *Id.* But as reported in numerous FINRA and other sources, some of which are cited herein, FINRA members are involved in a remarkably low percentage of private securities capital raising transactions.

In our view, both capital formation and investor protections would benefit materially if more securities capital transactions were to involve the professional efforts and services of duly SEC registered, FINRA member securities broker dealers and their duly securities registered and licensed associated persons.

FINRA states that it seeks "ways to increase efficiency and reduce unnecessary costs and burdens on the capital-raising process without compromising protections for investors and issuers." *Id.* at 3. These are worthy objectives, but as discussed herein they are easier said than done.

GVC's Specific Comments and Proposals for Improvement:

I. Take All Appropriate and Reasonable Actions to Make Sure that Only Duly SEC Registered, FINRA Member Securities Broker Dealers and their Duly Securities Registered and Licensed Associated Persons Provide Professional Assistance with Securities Capital-Raising and Other Securities-Related Transactions.

Instead of lessening, loosening, exempting and/or eliminating securities registration and licensing requirements for persons and entities involved in securities capital-raising activities, FINRA and the SEC should tighten and enforce them.

Specifically, FINRA and the SEC should require all intermediaries (persons and entities) conducting securities capital raising and/or other securities-related business activities to be subject to all federal and state securities laws, SEC rules and FINRA Rules that apply to "regular"/"full service" securities broker dealers and all registered associated persons of "regular"/"full service" securities broker dealers.

At present (indeed forever), numerous persons and entities have conducted or attempted to conduct securities businesses and transactions without being duly and properly registered and/or licensed to do so. Many such persons and entities are wholly unqualified, shady, or worse.

Investor protection is fostered if securities capital-raising and other securities-related transactions involve only the professional services and participation of duly SEC registered securities broker dealers and their duly securities licensed and registered associated persons.

For example, and more specifically:

- FINRA and the SEC should not permit unregistered "finders" to receive transaction-based compensation for securities capital raising and/or other securities transactions. Period, end of story. All such "finders" who/that seek to receive transaction-based compensation for securities capital raising and/or other securities transactions should be duly registered securities broker dealers or duly securities registered and licensed associated persons. It is high time for FINRA and the SEC to clear up this long muddied and debated area of the law. Far too many unregistered persons and entities try to conduct securities business for transaction-based compensation outside the jurisdiction and radar of securities authorities (federal and state) and self-regulatory authorities like FINRA.

- The same is true for unregistered "M&A Brokers". It makes sense for "M&A Brokers" that are not duly registered as securities broker dealers to engage in "regular"/ "plain vanilla" specifically delineated M&A transactions (*see, e.g.,* subsection 15(b)(13) of the Exchange Act, effective on March 29, 2023), but IT MAKES NO SENSE FOR UNREGISTERED M&A Brokers to be directly or indirectly engaged in securities capital raising and/or other securities transactions in return for any securities transaction-based compensation.

- The same also is true for Capital Acquisition Brokers ("CABs"). FINRA and the SEC should prohibit CABs from engaging in any securities capital raising activities.

II. Prohibit Securities Clearing Firms from Imposing Arbitrary Minimum Share Prices on Securities Before They Will Accept Deposits of and/or Permit Transactions (*e.g.*, Purchases and Sales) in Any Securities.

Professionals in the securities business recognize that a material portion of the low-priced ("micro-cap") securities business is fraudulent. The "typical" fraudulent practices in these regards are for low-priced (micro-cap) securities that are not validly issued and/or owned to be deposited in large volumes into one or more securities brokerage account(s), then sell them quickly, and then quickly transfer out/withdraw the sales proceeds to and/or for "bad actors". Among others, such circumstances and transactions trigger obligations for the applicable/involved broker dealers to file SARs and/or take other compliance and/or legal actions.

- No proper FINRA member advocates for or tolerates any such fraud or wrongdoing.

- We in the securities business all know also that certain "dubious" (to put it politely) clearing firms' business models expressly include willingness to accept for deposit and transact business in millions of shares of low-priced (micro-cap) securities of questionable or unknown origin, legitimacy and/or ownership.

    - The SEC and FINRA have brought numerous enforcement actions against these types of clearing firms which resulted in large fines and other sanctions.

        - Some such enforcement cases seek/have sought expulsion from the securities industry.

    - All proper FINRA members agree with those enforcement actions.

- Some affected shareholders also consider opening securities brokerage accounts outside the United States, such as in Canada, with securities firms that are willing to accept deposits of and transact business in low-priced (micro-cap) securities.

- It appears as if concerns about being lumped into the same category of "dubious"/questionable securities clearing firms have frightened legitimate clearing firms in good standing away from conducting standard and ordinary business in respect of legitimate low-priced (microcap) securities.

Just because a security is low-priced (microcap) doesn't mean it is fraudulent. *See, for example*, the December 4, 2023, *Wall Street Journal*, page B10, that includes an article titled "Hundreds of Nasdaq Stocks Have Fallen Below $1".

Many small FINRA member firms in good standing engage in the LEGITIMATE AND LAWFUL private placement business, including PIPEs. Frequently, this results in the

LEGITIMATE AND LAWFUL issuance of low-priced (micro-cap) publicly traded securities that need to be deposited into securities brokerage accounts for subsequent maintenance and transactions.

Legitimate shareholders should not be "orphaned" with no way to lawfully transact business in respect of the securities they obtained lawfully.

The SEC's express three-part mission includes "facilitate capital formation". FINRA claims to be in the same boat.

The "fix"/ "solution" is straightforward and easy to implement.

- End all arbitrary, blanket rules and procedures of securities clearing firms that prohibit deposits of or transactions in securities that have a current market value of less than a minimum dollar amount (*e.g.,* less than $1/share, $2.50/share or $5.00/share).

- Instead of arbitrary blanket rules, each circumstance must be reviewed and analyzed individually.

- Require the introducing securities broker dealer to assume sole responsibility and liability for certifying to the clearing firm the legal/valid issuance and/or ownership of the securities (in certificated form or otherwise).

    - The securities clearing firm legally can rely on the introducing broker dealer's representations and certifications regarding same.

- FINRA and/or the SEC can and should make clear that, absent any red flags, the securities clearing firm is not liable for accepting for deposit and/or conducting ordinary and routine business in respect of any security (regardless of price) if/when the introducing broker dealer documents and certifies the legitimate nature, origin, and/or ownership of the securities.

- For example, if a FINRA member broker dealer conducted a legitimate and lawful private placement (*e.g.,* a PIPE), the purchasers of the securities in such transaction must be permitted to deposit those securities into a securities brokerage account and, when the securities become freely tradable, engage in ordinary and routine buy/sell and other transactions in respect of those securities.

- Legitimate and lawful capital formation must be encouraged and facilitated by the SEC and FINRA, and by NYSE and/or FINRA member securities clearing firms.

- It is wholly unreasonable and unfair for any shareholder who/that acquired shares in a legitimate and lawful transaction to be orphaned with no ready means of liquidity.

III. Amend, Harmonize and Improve FINRA Rule 5123:

Revise FINRA Rule 5123(b) to expand exemptions to its filing requirements and clarify and limit its requirements to file "any retail communication (as defined in Rule 2210) that promotes or recommends the private placement…."

Revise FINRA Rule 2210 to: delete the last sentence of Rule 2210(a)(4); and revise the definition of "institutional investor" therein to make it consistent with other FINRA Rules, including recently proposed (FINRA Regulatory Notice 24-17) amendments to FINRA Rule 5123, and reduce the financial threshold in FINRA Rule 4512(c)(3) from $50,000,000 to $5,000,000.

FINRA Regulatory Notice 24-17 ("Capital Formation: FINRA Requests Comment on Proposed Changes to Corporate Financing Rules") (December 20, 2024) page 8 ("Proposed Amendments to Rule 5123") and endnotes 4, 16 and 17 is helpful but not sufficient.

It makes good sense in certain clearly defined circumstances to require a FINRA member to file "a copy of any private placement memorandum, term sheet or other offering document… [for a clearly defined and not exempted private placement]."

But the Rule 5123 filing requirements for "<u>any retail communication</u> (as defined in Rule 2210) <u>that promotes or recommends the private placement</u>, <u>including any materially amended versions thereof, used in connection with such sale</u>…" (underlining added) are at best unclear and unwieldly given the current investment-related electronic communications environment, presenting difficult interpretation and compliance challenges for FINRA members.

Existing FINRA and SEC authority provides guidance regarding what constitutes a securities-related "recommendation" (*see, e.g.,* FINRA Regulatory Notice 23-08 ("Private Placements: FINRA Reminds Members of their Obligations When Selling Private Placements") (May 9, 2023), endnote 17) but we are not aware of any such guidance regarding what constitutes "promotion" in this context.

FINRA's suitability Rule 2111 and the SEC's Reg BI each applies/is triggered only if a securities "recommendation" is made within the specific context and scope of those respective rules.

The concepts of "promotes" or "promotion" should be deleted in FINRA Rule 5123 because a securities "recommendation" is the only applicable and proper predicate/trigger in this context.

Overall, in respect of "facilitating capital formation", it makes good sense to consider and focus on the types of investors who/that "possess a level of sophistication and expertise that is similar to the institutional accredited investors" and who/that "generally do not need the additional protections and oversight provided through the [Rule 5123] filing requirements." FINRA Regulatory Notice 24-17 at page 8. FINRA noted that a threshold of owned investments of not less than $5,000,000 for natural persons or entities "indicates an equivalently high level of sophistication to justify exemption from Rule 5123." *Id.* That basic reasoning also applies more broadly.

Also, delete all legal requirements or references, direct or indirect, that an entity "with total assets in excess of $5 million" must not be "formed for the specific purpose of acquiring the securities offered". In today's business and securities environment, it is common for knowledgeable and sophisticated investors to form special purpose and/or single purpose entities to invest in single assets and/or in discreet types of assets. So what if an entity is "formed for the specific purpose of acquiring the securities offered"? What legitimate concerns are present for such entities?

In the entirety of the federal and state securities laws, rules and regulations, and in respect of FINRA's and the SEC's securities capital formation self-regulatory and regulatory regimes, "an equivalently high level of sophistication" is a principle that should permeate all laws, rules, regulations and requirements regarding securities capital formation.

IV. Provide Specific Clarity and Guidance Regarding AML Requirements for Legal Entity Investors and Their Beneficial Owners in Securities Transactions, Including Private Placements:

For example, acknowledge the validity of reasonable risk-based methods for KYC and related analyses of legal entity investors in securities.

Today, there are a vast variety of legal entity investors in securities (*e.g.,* hedge funds, private equity funds, LLCs, general and limited partnerships, special purpose entities, and single purpose entities). A U.S. special purpose entity with only U.S. beneficial owners has a much different risk profile than a non-U.S. special purpose entity and/or an entity that includes non-U.S. beneficial owners.

Clarify and specify the responsibilities in these regards of issuers and the legal and accounting firms that establish, organize, and maintain such legal entities.

AML burdens should not fall solely or disproportionally on FINRA member securities broker dealers engaged in capital formation, notwithstanding the fact that securities broker dealers are included in the definition of "financial institutions" subject to the Bank Secrecy Act.

V. Improve the Securities Capital Formation Environment to Increase the Percentage of Transactions that Involve Duly SEC Registered Securities Broker Dealers that are FINRA Members.

Further to and consistent with Part I above, make it easier for issuers to raise capital with the professional assistance and services of duly SEC registered securities broker dealers that are FINRA members.

At present, the percentage of capital raising transactions (especially for small entities and issuers) involving the professional assistance and services of duly SEC registered securities broker dealers that are FINRA members is remarkably low. In our experience, that low percentage is not driven only by cost.

For example, FINRA noted in Regulatory Notice 23-08 ("Private Placements; FINRA Reminds Members of Their Obligations When Selling Private Placements") (May 9, 2023) on page 3 (endnote reference omitted) that:

> The majority of Regulation D offerings are sold directly by issuers without any broker-dealer involvement. Approximately 20 percent of Regulation D offerings involve "intermediaries," such as broker-dealers. Thus, only a small percentage of investors in private placements are afforded the protections of FINRA rules and other relevant broker-dealer regulations that apply when a Regulation D offering involves a [FINRA] member.

Accord FINRA Regulatory Notice 23-09 page 6 and endnotes 10-12.

Obviously, low percentage of private securities capital raising transactions involving SEC registered and FINRA member securities broker dealers raises a variety of serious investor protection concerns.

VI. Two Key FINRA Regulatory Notices Regarding Private Placements are Substantively Helpful but Also are Concerning and/or Overreaching in Some Important Respects:

These are: (1) FINRA Regulatory Notice 10-22 ("Regulation D Offerings: Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings") (April 2010); and (2) FINRA Regulatory Notice 23-08 ("Private Placements: FINRA Reminds Members of Their Obligations When Selling Private Placements") (May 9, 2023) (among other things, Regulatory Notice 23-08 includes discussions regarding the implications of the SEC's Regulation Best Interest).

FINRA stated in Regulatory Notice 23-08 page 10: "Members are subject to important obligations even in the absence of a recommendation." This may be true in certain respects such as overall supervision/ "minding the store", communications with the public, and FINRA Rule 5123, but caution is advised is to prevent overreach "in the absence of a recommendation."

VII. $5,000 Minimum Net Capital FINRA Member Broker Dealers Should be Permitted to Participate on a "Best Efforts Basis" as Selling Group Members in Securities Capital Raising Transactions Underwritten by Other Broker Dealers on a "Firm Commitment" Basis:

As a matter of law, a FINRA member acting as a selling group member in this agent (not principal) capacity on a "best efforts" basis would not incur any capital commitment or charge.

Any FINRA member acting as a selling group member on a "best efforts" basis helps facilitate securities capital formation and distribution.

We recognize that the Net Capital Rule is a SEC rule and, therefore, GVC reached out to designated SEC personnel responsible for the broker dealer net capital rules to discuss these matters and advocate for this position.

On May 6, 2021, and after conferring with FINRA personnel in these regards, we emailed to the SEC a fully researched Memorandum that, in our considered view, fully and legally justifies this position.

GVC personnel communicated multiple times with SEC personnel, principally with Mr. Timothy C. Fox, Branch Chief of the SEC's Division of Trading and Markets.

More specifically, GVC submitted to the SEC a formal written Request for No-Action, Interpretive and/or Exemptive Letter from the SEC's Division of Trading and Markets. *See* the attached copy of GVC's ten-page May 6, 2021, Memorandum to the SEC's Division of Trading and Markets.

The SEC, without any explanation and/or rebuttal to GVC's May 6, 2021, Memorandum, stated it would do nothing in these regards.

VIII. Harmonize and Rationalize all Definitions of "Accredited Investor", "Retail Investor", "Institutional Investor", "Institutional Account" *et al.*

For example, and as discussed above, amend FINRA Rule 4512(c)(3)'s definition of "institutional account" to lower the financial threshold to having at least $5,000,000 of total assets instead of at least $50,000,000 of total assets.

CAB Rule 016(i) defines "institutional investor" as follows (emphasis added):

> **(i) "Institutional Investor"**
>
> The term "institutional investor" means any:
>
> (1) bank, savings and loan association, insurance company or registered investment company;
>
> (2) governmental entity or subdivision thereof;
>
> (3) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans;
>
> (4) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans;
>
> (5) other person (whether a natural person, corporation, partnership, trust, family office or otherwise) with total assets of at least $50 million;

(6) person meeting the definition of "qualified purchaser" as that term is defined in defined in Section 2(a)(51) of the Investment Company Act of 1940; and

(7) any person acting solely on behalf of any such institutional investor.

Section 2(a)(51) of the Investment Company Act of 1940 (15 U.S.C. § 80a-2(a)(51)) defines "Qualified Purchaser" as follows (emphasis added):

(51)(A) "Qualified purchaser" means—

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a–3(c)(7) of this title with that person's qualified purchaser spouse) who owns not less than $5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(C) The term "qualified purchaser" does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 80a–3(c) of this title, would be an investment company (hereafter in this paragraph referred to as an "excepted investment company"), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 80a–3(c)(1)(A) of this title, that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as "pre-amendment beneficial owners"), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

GVC understands that different definitions of terms in various laws, rules, regulations or contexts may have made some sort of sense in isolation 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.

IX. Expressly Recognize and Acknowledge that It is Common for Investors, Especially "Accredited Investors" and "Institutional Investors" et al. to Decide/Elect to Invest in Private Placements (and/or Engage in Other Securities Transactions) Based Solely on Their Own Independent Analysis and Due Diligence and Not Based in Whole or in Part on any Securities Investment "Recommendation" from a FINRA Member or its Registered Associated Persons:

Many repeat and accredited/professional/"sophisticated" investors of all types and stripes (however defined or slotted in securities laws, rules, and regulations) simply request and/or desire to be informed by FINRA members of potential securities investing opportunities and then make their own independent decisions.

FINRA members play an important role in these regards by helping issuers make contact with potential investors who/that may be interested in reviewing specific or broad types of investment opportunities.

X. Evaluate Private Placements Fairly and Individually, on a Case-by-Base Basis. Do Not Assume or Presume that All Private Placements are Fraudulent:

In our experience, FINRA personnel sometimes, and even frequently, assume or presume that all private placements are fraudulent. This attitude is contrary to FINRA's stated intentions to support and facilitate capital formation.

For example, private placements that are transacted without general solicitation or general advertising and only with non-"retail" investors are very different than private placements that are transacted with general solicitation or general advertising available or targeted to "retail" investors.

FINRA members, like GVC, that have long and deep experience with private placements of all types and stripes, and that have not experienced legal, regulatory or self-regulatory concerns or issues regarding such business, do not warrant hostile review or treatment out of the box.

Conclusion:

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

May 6, 2021

To: Division of Trading and Markets

From: GVC Capital LLC (CRD # 38923)

Introduction:

GVC Capital LLC ("GVC") (CRD # 38923), member FINRA and SIPC, respectfully submits this request to the Securities and Exchange Commission ("SEC" or "Commission") Division of Trading and Markets for written No-Action, Interpretive and/or Exemptive guidance regarding the SEC's securities broker dealer ("B/D") net capital rule 15c3-1 in respect of GVC's particular business as discussed herein.

GVC is a small B/D that engages in certain investment banking and other securities businesses within the scope of its 2008 FINRA Membership Agreement. GVC currently has a minimum net capital requirement of $5,000 pursuant to SEC Rule 15c3-1(a)(2)(vi). GVC is a fully disclosed introducing B/D pursuant to a written securities clearing agreement with Hilltop Securities, Inc.

One of GVC's principal business lines is to help small companies (public and private) raise capital. For a variety of reasons big and small, GVC believes that it is very important to support small business capital formation in ways that are professional and legal.

Over the last several weeks, GVC representatives communicated with FINRA representatives (in FINRA's Denver and Kansas City offices) regarding whether or not GVC is permitted to participate as a selling group member on a best efforts basis in firm commitment underwritings for which one or more other B/Ds is/are engaged by the issuer as underwriter(s) with the legal obligation to purchase the securities offered in such firm commitment underwritings. Of course, a selling group member acting on a best efforts basis has no legal obligation to purchase any such securities.

In these regards, we with GVC have had productive, friendly and detailed substantive communications with such FINRA representatives. When both the FINRA representatives and we with GVC concluded that we have different ultimate opinions about these matters, GVC concluded based on suggestions from such FINRA representatives that the next logical step is to seek written guidance from the SEC. Thus this formal request.

Separately and in parallel fashion to this request to the SEC, GVC also is seeking written guidance from FINRA's Office of General Counsel. However, of course, the SEC's judgment is dispositive because Rule 15c3-1 is a SEC Rule.

We with GVC do not purport to be experts about Rule 15c3-1 (which in our view is in various respects complicated and nuanced), but we tried hard to locate and analyze what appear to be the most relevant legal authorities and references about it, including specific references on which we and FINRA both have

relied in evaluating these matters. **If we have failed to consider any important relevant authorities and reference(s), please direct our attention to it/them for our additional consideration and analysis.**

We request your prompt attention and prompt response to this request. We would be happy to discuss these matters with SEC personnel and/or provide additional information.

The Specific Question Presented to the SEC:

Is GVC as a $5,000 minimum net capital B/D under SEC Rule 15c3-1(a)(2)(vi) permitted to act as a selling group member/participant (i.e., as an agent and NOT as an underwriter/dealer/principal) on a best efforts basis in a firm commitment underwriting that is undertaken by one or more other B/D(s) that is/are acting as principal(s) in an underwriting capacity with the legal obligation to purchase from the issuer all of the securities offered in the underwriting?

Based on its discussions with FINRA and in consideration of the references and analyses discussed below, GVC submits respectfully and requests confirmation from the SEC that the answer to this question is "YES".

Background, Discussion and References:

Purpose of and Rationale for the Net Capital Rule:

The SEC explained in Release No. 34-31511, 57 Fed. Reg. 56973, 56974 (Dec. 2, 1992) that Rule 15c3-1 "requires registered broker-dealers to maintain sufficient liquid assets to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding." The SEC noted that the then current Rule 15c3-1 "prescribes different minimum levels of net capital for firms based on categories of business activity." Id.

"These [prescribed minimum net capital] levels were designed to address the risks perceived in the different types of businesses engaged in by broker-dealers." Id. at 56974-56975. For example, the SEC stated that "it is appropriate to require the highest minimum level of net capital for broker-dealers that are entrusted with the money and securities of customers, who are, in most instances, incapable of assessing the financial condition of custodian firms." Id. at 56975.

Critical to the SEC for determining particular net capital requirements for individual B/Ds is whether, and if so to what extent, or not, a B/D "receives" customer funds and/or securities.

"A broker-dealer shall not be deemed to receive funds from customers if it receives checks, drafts, or other evidences of indebtedness made payable to an entity other than itself (such as another broker-dealer, escrow agent, etc.) and the receiving broker-dealer promptly forwards such funds to the other broker-dealer or escrow agent." Id. at 56977. "With regard to securities, a broker-dealer shall be deemed to hold securities if it does not promptly forward such securities received by the firm to a clearing firm, escrow agent or other appropriate entity." Id.

"The term 'promptly forward' is defined in the net capital rule to mean when 'such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities.' Rule 15c3-l(c)(9)." Id. at footnote 11.

"For the purposes of determining whether a person is subject to the higher net capital requirements applicable to dealers, the term 'dealer' for that purpose would include those persons that endorse or write over-the-counter options, and any broker-dealer that effects more than ten transactions in any one year for its own investment account, but would exclude firms that underwrite securities on a best efforts or all or none basis, those that engage in certain kinds of riskless principal trading, and certain firms engaged in the sale of redeemable shares of registered investment companies." Id. (emphasis added).

The SEC explained the meanings of an "introducing" B/D firm (like GVC) and "carrying or clearing" B/D firms (like GVC's third party securities clearing, execution and custody firm Hilltop Securities, Inc.). Id. at 56978. The SEC stressed: "Under paragraph (a)(2) of the net capital rule, introducing firms are prohibited from holding finds or securities for customers. Id. at footnote 17. "They [introducing firms] are required to promptly forward all funds and securities they receive to their carrying firm." Id.

"The receipt of customer funds or securities by inadequately capitalized introducing firms is a major concern of both the Commission and SIPC." Id. at 56978.

The standard imposed by the SEC in 1992 specified: "An introducing broker-dealer that receives no securities and only receives customer checks made payable to appropriate third parties would be subject to a $5,000 minimum net capital requirement." Id. at 56981. The SEC explained further (id. at footnote 25):

> Under the new rule [adopted by the SEC in 1992], introducing firms will-be prohibited from-receiving-customer securities and funds (other than checks payable to third parties). It will be necessary for these firms to develop procedures to insure that they do not receive customer securities or checks made payable to themselves.

Especially noteworthy is the following (id. at 56981, emphasis added):

> The final component of the original proposal with regard to introducing firms was an amendment that would allow firms to participate in underwritings in which other members of the dealer group have firm commitments (an activity not allowed the current $5,000 broker-dealer) so long as the introducing firm is not the statutory underwriter, but a marketing agent with no commitment to purchase any of the securities. The rule amendments make it clear that this is a dealer activity (that would ordinarily subject the firm to a minimum requirement of $100,000), but permit introducing firms that maintain minimum net capital of at least $50,000 to engage in this activity.

But how can acting as "a marketing agent with no commitment to purchase any of the securities" be "dealer activity"? A "dealer" acts as a principal, not as an agent. Moreover, if the marketing agent does not receive any customer funds or securities, none of the dangers outlined by the SEC are present.

The SEC concluded as follows (id. at 56981, emphasis added):

> In conclusion, the Commission believes it is appropriate to raise the minimum net capital requirements for introducing firms in the amounts indicated. The Commission believes the increases are justified because of the large amounts of customer assets handled by introducing

firms, and the impact such firms' failures can have on customers and the SIPC fund. Permitting undercapitalized introducing firms to handle, even for a short period of time, the assets of investors has proven to be a regulatory problem that the Commission believes will be alleviated by requiring a greater cushion of net capital to insulate customers from loss. Finally, the Commission notes that it is taking today's action at the request of the NASD, which is the primary supervisory entity for the majority of the firms affected by the increases, and SIPC, which serves as the investor's last resort for recovery in broker-dealer failures.

GVC's October 30, 2008, FINRA Membership Agreement states as follows, in relevant part:

- Paragraph B. (1) states: "Maintain a minimum net capital requirement of $5,000 pursuant to SEC Rule 15c3-1(a)(2)(vi) (the Net Capital Rule)."
- Paragraph B. (3) C. states that GVC is permitted to engage in the business of: "Underwriting or selling group participant in best efforts offerings."

A selling group participant acts as an agent, and by definition and industry practice when that participation is on a best efforts basis the selling group participant does not legally commit or agree to purchase any of the securities that may be allocated to it by the underwriter(s) of the transaction.

Given these facts and circumstances (and as specified in Paragraph B. (1) of GVC's FINRA Membership Agreement cited above, notwithstanding lack of clarity or precision in exact wording in Paragraph B. (3) C.), **GVC falls within 15c-1(a)(2)(vi) ("OTHER BROKERS OR DEALERS")** and **NOT** within 15c-1(a)(2)(iv) ("BROKERS OR DEALERS THAT INTRODUCE CUSTOMER ACCOUNTS AND RECEIVE SECURITIES") (which requires $50,000 minimum net capital).

Key Primary References:

GVC's discussions with FINRA focused mostly on FINRA's written document entitled **"NET CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS, SEA Rule 15c3-1."** A copy of that document is attached for easy reference, and is referred to herein as the "**FINRA Reference**".

Another important reference is **NASD Notice to Members 92-72** (available on finra.org) ("SEC Adopts Significant Amendments to the Net Capital Rule, Proposes Others for Public Comment"), which notice discusses the SEC's 1992 and 1993 amendments to Rule 15c3-1. Attached to NASD NTM 92-72 are copies of Securities Exchange Release No. 34-31511 and its "companion" Release 34-31512. These references also are cited in the FINRA Reference. Below are discussions of what appear to be the most relevant key provisions from these references (Release No. 34-31511 also is discussed above).

Based on our discussions with FINRA representatives about this situation, the critical overarching question is whether, if GVC were to act as a selling group member/participant on a best efforts basis in a firm commitment underwriting for which one or more other B/Ds agreed to act as underwriter(s) and purchase from the issuer all securities in that underwriting, for net capital purposes GVC falls within:

- **(a)(2)(iv)** ("BROKERS OR DEALERS THAT INTRODUCE CUSTOMER ACCOUNTS AND RECEIVE SECURITIES"). See FINRA Reference, pg. 25.

- NASD NTM 92-72 states in the first bullet of part "III. PROPOSALS NOT ADOPTED": "The proposed $100,000 minimum requirement for introducing firms that *routinely* receive customer funds and securities has been reduced to $50,000." (italics in original)

    - Important Note: GVC does NOT "*routinely* receive customer funds and securities…."

    - NASD NTM 92-72, footnote 2 states as follows (italics in original): "*Receives or holds securities* is defined in the Rule [SEA Rule 15c3-1] as occurring when the broker or dealer 'does not promptly forward or promptly deliver all of the securities of customers or of other brokers or dealers received by the firm in connection with its activities as a broker or dealer.'"

        - Important Note: GVC does NOT "receive or hold" securities in this context because, if GVC ever were to receive any such securities in error, GVC must and would promptly forward or promptly deliver all such securities to its third-party securities clearing firm, the applicable escrow agent or applicable issuer.

OR INSTEAD:

· **(a)(2)(vi)** ("OTHER BROKERS OR DEALERS"). See FINRA Reference, pg. 41.

The first sentence in section **(a)(2)(iv)** states (emphasis added): "A broker or dealer shall maintain net capital of not less than $50,000 if it introduces transactions and accounts of customers or other brokers or dealers to another registered broker or dealer that carries such accounts on a fully disclosed basis, **and if the broker or dealer receives but does not hold customer or other broker or dealer securities**." FINRA Reference, pg. 25. In its particular business, GVC neither receives nor holds customer or other broker or dealer securities as a routine or regular part of its business.

It appears that important especially for this analysis is subpart/commentary /01 to (a)(2)(iv) that is entitled "Requirements for Broker-Dealers Who Introduce Accounts on a Fully Disclosed Basis" (FINRA Reference, pg. 25) and how that subpart/commentary /01 is referenced later in (a)(2)(vi) explanation "/02".

Subpart/commentary /01 to (a)(2)(iv) (FINRA Reference, pg. 25) reads as follows (emphasis added):

/01 Requirements for Broker-Dealers Who Introduce Accounts on a Fully Disclosed Basis

Firms who introduce their accounts on a fully disclosed basis and wish to maintain their minimum Net Capital requirement pursuant to this paragraph (a)(2)(iv), must meet the following requirements:

1. The introducing firm must maintain a written clearing agreement (signed by the clearing broker-dealer) which states that for purposes of SIPA and SEA Rules 15c3-3, and 15c3-1, the customers are customers of the clearing firm and not the introducing firm;
2. The clearing firm must issue all account statements directly to customers;
3. Account statements must disclose the fact that all customer funds and/or securities are located at the clearing broker-dealer; and

4. Account statements must provide a contact person or department at the clearing firm who can address customer inquiries regarding their account(s).

If the introducing firm fails to meet any of the above requirements, it would be required to comply with the greater minimum net capital requirements of a broker-dealer that carries customer accounts [i.e., $250,000 minimum net capital].

The introducing firm should also maintain procedures to prevent their customers from transmitting funds (other than checks made out to appropriate third parties) to the firm (except by error). Procedures should address the actions the broker-dealer will take to advise its customers (in writing) should they send funds to the firm by error.

(SEC Release No. 34-31511) (No. 93-6, November 1993)

Subpart/commentary /02 to (a)(2)(iv) (FINRA Reference, pg. 26) reads as follows (emphasis added):

/02 Introducing Brokers - Receiving Funds

Any introducing broker that receives customer funds (checks made payable to itself and or cash), except by error, will be subject to the minimum net capital requirements of a broker-dealer that carries customer accounts (See SEA Rule 15c3-1(a)(2)(i).)

(SEC Release No. 34-31511, December 2, 1992) (No. 93-6, November 1993)

Very important: Subpart/commentary /02 to **(a)(2)(vi)** (FINRA Reference, pg. 41) reads as follows (underlining in original; bold emphasis added):

/02 Requirements for Broker-Dealers Who Introduce Accounts on a Fully Disclosed Basis and Do Not Receive Securities

To be subject to the minimum requirements of paragraph (a)(2)(vi) [i.e., $5,000 minimum net capital], introducing brokers must meet the requirements outlined in interpretation 15c3-1(a)(2)(iv)/01 [quoted in full above; GVC submits respectfully that it meets all such requirements].

Introducing brokers should also maintain procedures to prevent their customers from transmitting securities and/or funds (other than checks made out to appropriate third parties) to the firm (except by error). Procedures should address the actions the broker will take to advise the customer (in writing) should they send securities and/or funds to the firm by error.

(SEC Release No. 34-31511, December 2, 1992) (SEC Staff to NYSE) (No. 93-6, November 1993)

These references demonstrate, *inter alia*, why 15c3-1**(a)(2)(vi)** ($5,000 minimum net capital) **applies to GVC** (especially, e.g., as to GVC's desire to participate as a selling group member on a best efforts basis even in firm commitment underwritings undertaken by other B/D(s) acting as the underwriter(s) for the

transaction and, as such, agreeing to purchase from the issuer all securities offered in the transaction) -- **AND NOT (a)(2)(iv**) ($50,000 minimum net capital).

The SEC's Release No. 34-31511, which is referenced in and attached to NASD NTM 92-72, confirms these conclusions. The "SUMMARY" section states, in relevant part (emphasis added): "Broker-dealers that introduce customer accounts to other broker dealers will be required to maintain $50,000 or $5,000 in minimum net capital, **depending on whether or not they receive securities**." Release No. 34-31511 states in Part C. (iv), 57 Fed. Reg. 56973, 56981 (Dec. 2, 1992) (emphasis added):

> Therefore, the Commission is adopting the proposal that would increase the minimum net capital requirement of introducing firms that receive securities to $50,000. The Commission is also adopting, on a temporary basis, the proposed $5,000 minimum requirement. Under the approach adopted by the Commission, an introducing broker-dealer that receives customer chunks [sic, must mean "checks" instead] made payable to itself would be subject to a $250,000 minimum net capital requirement. An introducing broker-dealer that receives securities as well as customer checks made payable to its clearing firm or other appropriate third party (e.g., escrow agent) that it promptly forwards to such third party would be subject to a minimum net capital requirement of $50,000. An introducing broker-dealer that receives no securities and only receives customer checks made payable to appropriate third parties would he [sic, must mean "be" instead] subject to a $5,000 minimum net capital requirement.

The SEC's Release No. 34-31512, also which is attached to NASD NTM 92-72, further confirms these conclusions. See Release No. 34-31512, 57 Fed. Reg. 57027 (Dec. 2, 1992).

For example, in Release No. 34-31512, Part III A. (Introducing Firms) (i) (Introduction), the SEC stated (emphasis added): "**In order to operate under the new $5,000 minimum [net capital] requirement, introducing firms must not receive securities in any form (except by customer error).**" 57 Fed. Reg. at 57028. **This is exactly how GVC operates**. In Release No. 34-31512, the SEC proposed to increase the minimum net capital requirement for introducing firms to greater than $5,000, but to GVC's knowledge no such increase(s) has/have been implemented by the SEC.

The SEC noted further (id. at 57030) (emphasis added):

> The Commission therefore is proposing for comment an amendment to paragraph (a)(2)(vi) of the net capital rule that would raise the minimum requirement for all categories of broker-dealers that do not receive customer funds or securities (including mutual fund firms that operate other than on a wire order basis) to $10,000. **The Commission wishes to emphasize that any receipt of funds or securities by firms operating under this category (except by customer error) will cause its minimum net capital requirement to increase from $10,000 to $25,000**. It will become incumbent on these firms, therefore, to develop procedures to prevent their customers from transmitting funds or securities to the firm.

Added to this mix is Subpart/commentary (c)(2)(viii)(C) /04 ("Selling Group Participations") (FINRA Reference, pg. 653), which states as follows (emphasis added):

> Haircuts need not be applied **to best efforts selling group participations in firm commitment underwritings** to the extent that the selling group member has an unconditional right evidenced by a written agreement with the underwriting participants to return any unsold securities.

> Once the issue trades regular way, haircuts do not apply to unsold shares returned to the underwriter or participant no later than the settlement date of the issue.
>
> $5,000 broker-dealers may not participate in firm commitment underwritings even on a best efforts basis.
>
> (SEC Letter to NASD, December 15, 1976) (No. 83-2, April 1983)

Based on all the above, GVC submits respectfully that TWO Key considerations determine minimum net capital requirements for introducing firms like GVC:

First, the legal CAPACITY in which a FINRA member firm acts in any particular securities transaction. If a FINRA member firm acts as an underwriter (i.e., as a principal, as a dealer), it has materially different legal and regulatory responsibilities than if it acts as a member of/participant in the selling group (i.e., as an agent, as a broker).

As stated in (c)(2)(viii)(C) /04 ("Selling Group Participations") (FINRA Reference, pg. 653) (quoted above) a $5,000 broker dealer may not participate in firm commitment underwritings (**meaning participation as an underwriter**), even on a best efforts basis. GVC agrees with his principle.

Importantly, the first paragraph in /04 ("Selling Group Participations") quoted and highlighted above **is crystal clear that a $5,000 broker dealer IS allowed to participate in firm commitment underwritings as a member of the selling group on a best efforts basis**. The difference is the legal CAPACITY in which the FINRA member firm acts.

Second, whether or not an introducing firm "receives" any customer funds or securities "except by customer error." For an introducing firm that does NOT receive any customer funds or securities except by customer error, its minimum net capital is $5,000.

Given all of these considerations, is it permissible under SEC net capital rules for a $5,000 minimum net capital introducing firm like GVC, which does NOT receive any customer funds or securities except by customer error, to participate as a selling group member/participant on a best efforts basis (i.e., with no legal obligation or commitment to purchase any of the securities in the underwriting) in a firm commitment underwriting in which one or more other B/Ds are acting as underwriters and has/have agreed to purchase the securities in the underwriting? **Respectfully, the answer is "YES".**

Further: This pronouncement in (c)(2)(viii)(C) /04 ("Selling Group Participations") (FINRA Reference, pg. 653) provides the clear answer to the important issue that GVC representatives discussed FINRA representatives (e.g., in a telephone call on February 18, 2021), namely whether or not GVC is entitled to participate as a selling group member on a best efforts basis in a firm commitment underwriting handled by other B/Ds acting as underwriters. Based on this clear pronouncement, the answer is "YES". And, **fairly read**, this is consistent with GVC's FINRA Membership Agreement Paragraph B. (3) C. that expressly allows GVC to engage in the business of: "Underwriting or selling group participant in best efforts offerings."

Note: GVC agrees wholeheartedly that GVC is NOT permitted to act as an underwriter on a firm commitment basis, and it does not seek to do so.

In 2008, GVC worked with FINRA regarding changes in GVC's business, most notably that GVC no longer would act as a market maker. At that time and based on changes to GVC's business, FINRA reduced GVC's minimum net capital requirement from $100,000 to $5,000. Had FINRA believed then that GVC fell within (a)(2)(iv), it would have required GVC to maintain minimum net capital of $50,000 and not $5,000.

FINRA representatives highlighted (correctly in our view) the language quoted above regarding the requirement that "the selling group member has an unconditional right evidenced by a written agreement with the underwriting participants to return any unsold securities." In GVC's experience, this is how it works as part of regular and customary securities industry practice for selling group members/participants that act on a best efforts basis.

In GVC's view, all of this makes perfect sense when all of these references are considered carefully in their coordinated totality and applied to the facts of actual broker participation as a selling group member on a best efforts basis. By definition, law and securities industry practice, a selling group member is NOT part of the underwriting group and is NOT acting as a dealer (principal). Instead, a selling group member is acting in the capacity as an agent (broker) to assist the underwriter (or the underwriting group) with a transaction on a limited basis, and when the selling group member acts on a best efforts basis it has no financial responsibility or other obligation as an underwriter (principal (dealer)) to purchase any securities.

Mechanics of Acting as a Selling Group Member/Participant on a Best Efforts Basis:

GVC representatives discussed with FINRA representatives (e.g., in a telephone call on February 18, 2021) the basic mechanics of how a selling group member transacts business on a best efforts basis when the selling group member is an introducing broker dealer that operates on a fully disclosed contractual basis with a third party securities clearing firm. These basic mechanics are as follows:

The lead underwriter and the selling group member engage in communications in which the selling group member advises the lead underwriter of the number of securities for which the selling group member received indications of interest from the selling group member's clients. The lead underwriter, in its sole discretion, allocates a certain number of securities in the underwriting to the selling group member to sell as an agent on a best efforts basis; for any such sales that are made, the selling group member receives a specified concession. The lead underwriter may allocate to the selling group member all, part of none of the number of securities of which the selling group member indicates interest for its client or clients.

Once the specific allocation is determined and communicated by the lead underwriter, the selling group member contacts its clients to confirm their indications of interest and provide them with a specific allocation of the securities in the transaction underwritten by the B/D underwriter(s). When the client's or clients' purchase(s) is/are confirmed the selling group member's third party securities clearing firm, the selling group member advises the lead underwriter that the securities are "all sold".

Because these transactions are handled and effected electronically (i.e., NOT via the physical exchange of any paper securities and/or paper-based payments), current securities industry back office clearing, custody, execution and settlement operations make it virtually impossible for the

introducing B/D in the selling group acting on a best efforts basis to "receive" and/or have access to any securities or funds in respect of these transactions.

The selling group member's third party securities clearing firm electronically receives the allocated securities directly from the underwriter: these securities are received electronically directly into a firm account (perhaps referred to as a "selling agent" account or some other account designation) of the selling group member that is held, maintained and custodied by the third party securities clearing firm. Then, based on instructions from the selling group member, the third party securities clearing firm effects/executes the transaction(s) whereby the selling group member's client(s) purchase(s) all of the allocated securities. This happens in a virtually instantaneous manner. The selling group member does not purchase, own and/or take title to the allocated securities as principal/as a dealer/for its own account.

If for any reason the selling group member's client(s) decide(s) not to (or fail(s) to) purchase all or any part of the allocated securities, the securities are returned to the underwriter. Any such return of securities to the underwriter is effected electronically by the third party securities clearing firm and also happens in a virtually instantaneous manner.

Conclusion and Requests:

We ask respectfully for your response regarding these important matters as soon as possible.

Specifically, we request respectfully that you confirm expressly that GVC, as a $5,000 minimum net capital B/D under SEC Rule 15c3-1(a)(2)(vi), is permitted to act as a selling group member/participant (i.e., as an agent and NOT as an underwriter/dealer/principal) on a best efforts basis in firm commitment underwritings that are undertaken by one or more other B/D(s) that is/are acting as principal(s) in an underwriting capacity with the independent legal obligation to purchase from the issuer all of the securities offered in such firm commitment underwritings.

GVC submits respectfully that these specific business activities, as discussed in detail above, are congruous with the purposes of and rationale for SEC Rule 15c3-1.

We would be happy have further discussions with you and/or other appropriate SEC personnel.

Thank you sincerely, GVC Capital LLC

By: Kent J. Lund, Interim CEO, Co-Head of Investment Banking and Co-CCO