CAMBRIDGE

VIA ELECTRONIC MAIL: pubcom@finra.org

October 8, 2019

Ms. Jennifer Piorko Mitchell
Office of the Corporate Secretary
The Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 19-27: Request for Comment on Rules and Issues Relating to Senior Investors.

Dear Ms. Mitchell,

Cambridge Investment Research, Inc. ("Cambridge") appreciates the opportunity to comment on Regulatory Notice 19-27: FINRA Request for Comment on Rules and Issues Relating to Senior Investors. Cambridge shares FINRA's view that protection of senior investors from financial exploitation is a top priority.

While many aspects of FINRA Rule 2165 (Financial Exploitation of Specified Adults) have been well received by member firms, and are effective, it is appropriate to revisit the Rule and consider changes to better align the Rule with the day-to-day realities confronted by member firms. In this regard, Cambridge urges FINRA to make the following modifications to the Rule:

- Extend the temporary hold period under 2165(b), paragraphs (2) and (3), from a total of 25 days to at least 60 days in order to provide the relevant state agencies time to respond to possible financial exploitation matters.

- Expand the definition of "financial exploitation" in 2165(a)(4) to allow member firms to respond under the Rule when a member firm has a reasonable belief that (1) the investor has an impairment, such as diminished capacity, which has rendered the individual unable to protect his or her own interests, or (2) the investor is acting in response to a deception, or a form of intimidation or undue influence, and desires to relinquish control over his or her money, assets, or property.

- Develop a dedicated Rule 2165 problem code(s) to give member firms a means to clearly differentiate complaints received by those member firms as a consequence of compliance with the Rule, and to assure member firms that compliance with the Rule will not result in a negative impact to the member firm.

- Add Safe Harbor provisions to the Rule to address U4/U5 complaint reporting by creating a mechanism to identify complaints specifically related to actions taken in reliance on or in compliance with the Rule.

Additionally, Cambridge believes a change proposed in Regulatory Notice 19-27 is neither necessary nor constructive at this stage. Specifically:

- The complexities and potential ramifications of permitting the imposition of transaction restrictions, in addition to disbursement restrictions, militates against the imposition of such a change in the Rule.

I. PROPOSED REVISIONS

A. EXTENDED HOLD PERIOD

Cambridge believes FINRA Rule 2165 could be amended to extend the length of time member firms could employ temporary holds to address potential financial exploitation issues. Cambridge recommends FINRA consider extending the temporary hold period allowed under Rule 2165(b), paragraphs (2) and (3), from a total of 25 business days to a total of 60 business days by extending the 15 day hold period to 30 days and the 10 day extension to an additional 30 days.

This alteration would afford member firms a substantive window of opportunity to obtain information, whether by oral or written correspondence with the parties involved; to assess the scope, nature, and gravity of the potential exploitation; to determine proper remedial action; and to give state regulatory agencies a sufficient amount of time to either make a determination or to take action.

In support of this proposed extension, Cambridge notes a number of occasions where Cambridge has taken steps to notify state agencies of suspected financial exploitation of specified adults in compliance with Rule 2165, only to have the agency table the issue or decline to respond entirely. The justification for this response is that these agencies often lack manpower or sufficient time to effectively address the issue.

B. EXPANDED DEFINITION OF FINANCIAL EXPLOITATION

Cambridge believes it would be valuable to extend Rule 2165's scope to circumstances where there is a reasonable belief the investor has an impairment rendering the individual unable to protect his or her own interests (e.g., a cognitive impairment or diminished capacity), irrespective of whether there is evidence that the investor may be the victim of financial exploitation by a third party.

Unfortunately, Cambridge has observed circumstances where customers have instructed their financial professional to withdraw or wire funds due to deception, such as customers who believe they have won the lottery or inherited funds from foreign countries. In such circumstances, if Cambridge and its financial professionals are unable to convince the customer to reconsider a request potentially motivated by deception, fraud or an illegitimate scheme, or if a trusted contact does not intervene, the only recourse is to comply immediately with the instructions of the customer.

FINRA could consider expanding the temporary hold provision in the Rule to permit a temporary hold under these exigent circumstances. This would afford member firms time to take such steps as necessary to contact other agencies in order to protect such vulnerable investors.

However, Cambridge does not believe that FINRA should require a member firm to make a determination regarding whether an impairment exists or whether the investor suffers from diminished capacity. Member firms are neither qualified to make such determinations nor in a position to sufficiently assess and determine the nature and extent of any such impairment. Imposing an obligation of this type on a member firm would be too complex and imprecise.

C. SAFE HARBOR

Cambridge believes a safe harbor from customer complaints when taking actions pursuant to this Rule would further the Rule's intent. FINRA could create additional mechanisms to eliminate the negative impacts member firms encounter when complying with these rules.

The proposed safe harbor could be accomplished through the development of specific problem codes for use in reporting pursuant to FINRA Rule 4530 (Reporting Requirements). The current problem code framework may penalize a member firm's effort to reasonably protect those investors who may have fallen or will fall subject to wrongful financial exploitation. Specifically, the lack of a unique problem code precludes a distinction between complaints based on compliance with Rule 2165 and other conduct. It is the inability to distinguish among these types of complaints that potentially creates a disincentive to placing a Rule 2165 hold on a customer account. FINRA could incorporate new problem codes, and language defining those problem codes, which would create a safe harbor for Rule 2165 reporting.

Of great concern are those required disclosures associated with the reporting of allegations involving theft or misappropriation of funds or securities under FINRA Rule 4530(a)(1)(B). In past experiences, when placing a hold on a customer account under Rule 2165(b)(2) in response to an alleged financial exploitation issue, Cambridge has received complaints from both customers and third party agents of those customers alleging theft and/or misappropriation of the customer's property by Cambridge or Cambridge's registered person(s). Reporting this matter within the current code framework mischaracterizes the scope and nature of these Rule 2165 compliance events.

Cambridge believes that providing a mechanism to appropriately characterize Rule 2165 compliance events be an appropriate step for FINRA to take as the current reporting codes lack sufficient detail to truly categorize these types of events. Cambridge feels this is appropriate for two reasons. First, in administering a hold upon the customer's account in an attempt to protect a vulnerable person from financial exploitation, neither Cambridge nor its registered person are acting with the malfeasance, misfeasance, or nonfeasance which a Rule 4530(a)(1)(B) disclosure implies. Second, the lack of a problem code to differentiate 2165 activity from other activity is confusing.

While Rule 2165(b)(1)(A) does not mandate a member firm place a hold on the investor's account, it does create a reasonable mechanism for a member firm to employ in pursuit of fair and equitable business practices. However, the use of that mechanism is shrouded under a veil of a prospective penalty. Member firms contemplating placing a hold on the account of a vulnerable person may be disinclined to do so if the investor or investor's agent seems inclined to file a complaint alleging theft or misappropriation of that investor's funds that must be reported. This potential for mischaracterization needs to be removed.

Further, FINRA could eliminate another barrier to Rule 2165 activity by excluding from Form U4 and Form U5 reporting requirements any disclosures made under those 2165 problem codes. By excluding complaints attendant to those problem codes from disclosure on Forms U4 and U5, FINRA will eliminate another negative incentive present when member firms are contemplating placing a Rule 2165 hold on an investor account. Addition of appropriate problem codes would correct this deficiency and would promote greater deference to investor protection efforts under Rule 2165 because the member firm would not face the prospect of a Rule 4530 disclosure penalty when reporting complaints received in response to Rule 2165 compliance efforts.

II. TRADING RESTRICTIONS WOULD BE PROBLEMATIC

Cambridge respectfully disagrees with the proposal to extend the hold protections of the Rule to cover transactions in addition to disbursements, and agrees with FINRA that extending Rule 2165's scope to include transactions raises complicated issues.

First, per Rule 3260(b), member firms are not allowed to exercise any discretionary power over customer funds without prior written authorization. A targeted hold, specific to the investor, the investor's account, or the investor's agent would amount to a form of discretion, the degree of which member firms do not have authority to exert at this time. Cambridge believes FINRA would need to amend Rule 3260, creating an exception under 3260(d) and additional safe harbors in Rules 2165, 3260 and others, in order to give member firms actual authority to effectuate such a hold and to engage in such proposed protective activities. Absent these changes, FINRA would merely be creating a mechanism without a means.

Second, the potential ramifications member firms would face after imposing transaction restrictions weigh heavily against exercising such an option. As FINRA aptly points out, "the possibility of changes in a security's pricing during the hold" and the obligations member firms have regarding best execution, in addition to others, are serious concerns. Cambridge believes implementation of such a change would place a member firm on the horns of a dilemma. Essentially, giving member firms the option to employ transaction restrictions opens a member firm to regulatory scrutiny if the member chooses not to restrict an account under these circumstances, but also subjects that member firm to complaints and other possible actions, including arbitration or civil actions, from investors, their heirs or agents if that member firm were to implement such a transaction hold and the security were to move adversely to the investor's interests. Thus, even if such a mechanism were put in place, member firms would only face an additional degree of liability not present today.

III. ADDITIONAL CONSIDERATIONS

Cambridge encourages FINRA to continue to engage the North American Securities Administrators Association to encourage state regulatory agencies to take on a greater role supporting investor protection in this area. Cambridge has noted some difficulty obtaining responses from state agencies when delivering notices of potential financial exploitation of elder clients located within those certain states. If state agencies were more willing to take action at the state level, those steps would assist in this area a great deal.

Cambridge would be happy to further discuss any of the comments or recommendations in this letter with FINRA.

Respectfully submitted,

// Seth A. Miller

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