VIA ELECTRONIC MAIL: pubcom@finra.org

February 16, 2021

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 20-42: Retrospective Rule Review

Dear Ms. Mitchell,

Cambridge Investment Research, Inc. ("Cambridge") appreciates the opportunity to comment on Regulatory Notice 20-42: Retrospective Rule Review regarding the Lessons From the COVID-19 Pandemic ("Notice"). Cambridge understands that, through this Notice, FINRA is gathering input from member firms regarding the impact the COVID-19 pandemic had on member firms' operations and is open to suggestions regarding possible changes to its rules, operations, or administrative processes as a result. Cambridge appreciates the opportunity to opine on these prospective enhancements and requests FINRA consider:

- Permanently amending the FINRA rules pertaining to branch office inspections to allow for virtual inspections;

- Permanently amending the FINRA rules to redefine "Office of Supervisory Jurisdiction";

- Providing mechanisms to more readily allow for notice of temporary locations that may be needed as a result of the effects of pandemics, social disruptions, natural disasters and the like; and

- Developing and publishing FINRA's own "Business Continuity Plan" and administrative procedures to provide member firms with clarity and understanding of how FINRA will alter its activities and requirements during times of pandemics, social disruptions, natural disasters and the like.

Branch Office Inspections – Virtual Inspections

As the COVID-19 pandemic developed, and remote working arrangements became more prevalent, Cambridge, like all other member firms, was faced with the challenge of meeting its inspection and audit obligations within the framework of travel restrictions, social distancing requirements, health and safety concerns, and various governmental responses which encumbered Cambridge's ability to efficiently conduct its oversight activities. While Cambridge has appreciated FINRA's extension of the deadline for the completion of calendar year 2020 inspections and permission to conduct remote inspections in 2020 and 2021, Cambridge respectfully requests that FINRA amend Rule 3110 to permanently allow member firms to fulfill their branch office inspection obligations through remote or "virtual" audits.

Cambridge understands and acknowledges the historical importance of on-site inspections; however, the advent of new and developing technology has enhanced the effectiveness of member firm's monitoring programs and remote supervisory capabilities. Prior to the prevalence of modern technology, including laptops, mobile devices, video conferencing capabilities, electronic storage and surveillance, etc., on-site inspections were the only way member firms could see and review activities occurring in branch offices and non-branch locations. Presently, most member firms conduct a majority of their branch office inspection reviews electronically prior to any on-site visit. As a result, physical on-site office and records inspections are of diminishing value or utility in most circumstances.

Cambridge believes it would be more valuable to allow member firms to utilize a risk-based approach to determine which offices should receive an on-site inspection. As FINRA observed in Regulatory Notice 20-16 that member firms were planning on completing on-site inspections in the future and were prioritizing "high-risk" branch office inspections over others, FINRA could permanently allow member firms to employ a risk-based approach to determine which branch offices would receive an inspection on-site. In this way, member firms could themselves reasonably determine which branch offices warrant an on-site visit, based on risk profile, and which branch offices would be subject to a virtual audit in any given year.

The outbreak of COVID-19 highlighted the need for relief from the on-site inspection requirement, as well as the possible need for similar relief in the years ahead when other potential situations in which the health and welfare of individuals are of concern or when unforeseen circumstances may prevent a member firm from completing an on-site inspection. Cambridge believes that it is now necessary for each member firm to have the ability to conduct virtual audits and remote inspections, and that on-site inspections may now be of lesser value in today's digital environment.

Cambridge is in favor of performing on-site inspections by utilizing a risk-based approach to determine which branch offices should be visited in person versus those that could be audited remotely or virtually. In this way, member firms could meet their branch office inspection obligations despite the effects of present or future "shelter in place" orders, health and safety concerns, travel and accommodation curtailments, and other more specifically localized responses to pandemics, social disruptions, natural disasters and the like. Further, permanently allowing member firms to complete remote inspections would prevent disruption in the future if and when public health and safety considerations, or other matters, lead to government imposed travel restrictions or business closures.

The technology available to firms today, including but not limited to electronic correspondence capabilities and the ability to conduct electronic visual meetings, allows firms to fulfill their inspection obligations under FINRA Rule 3110 without the requirement to be physically present on-site. Cambridge believes that FINRA should consider such advances in the technological capabilities of member firms, coupled with the fact that a considerable amount of the day-to-day activities of financial professionals are conducted by means of systems through which the member firm has oversight, and allow member firms to utilize these technological capabilities and systems to facilitate completion of such member firm's inspection obligations through virtual means. For this reason, Cambridge respectfully requests FINRA amend Rule 3110 to permanently allow member firms to regularly conduct remote inspections and virtual audits.

Office of Supervisory Jurisdiction – Redefine the Scope and Inspection Requirements

In addition to asking FINRA to consider permanently allowing member firms to remotely conduct branch office inspections as required under FINRA Rule 3110 through virtual means, Cambridge asks FINRA to redefine "Office of Supervisory Jurisdiction" and eliminate the annual inspection requirement for certain "back office" employees.

FINRA Rule 3110(f)(1) defines an "Office of Supervisory Jurisdiction" as any office of a member at which any one or more of the following functions take place: (1) order execution or market making; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds or securities; (4) final acceptance (approval) of new accounts on behalf of the member; (5) review and endorsement of customer orders; (6) final approval of retail communications for use by persons associated with the member (except for an office that solely conducts final approval of research reports); or (7) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

Cambridge requests that FINRA expressly exclude from such definition those personnel who do not buy/sell securities for customers, are not employed or managed by any associated person who buys/sells securities for customers, and who, by means of internal business systems and technology, perform strictly "back office" type functions, which are performed, controlled, and documented in systems directly controlled by the member firm. Cambridge, like many firms, has allowed its back office employees to use remote offices or alternative work arrangements during the pandemic and believes such arrangements are likely in the future. Each of these back office employees works on a computer and virtual network managed and controlled by Cambridge. In their roles, they are not buying or selling securities for customers or working for or managed by an associated person who buys or sells securities for customers. Many of these back office employees rotate between their home office and work office on a frequent basis.

Cambridge does not see the need to conduct annual examinations of each back office employee conducting work for Cambridge from home or from an alternative work location simply because they are approving new accounts, reviewing customer orders submitted by associated persons, approving retail communications or supervising associated persons. This is a drain on resources with limited value when such resources could be refocused on other risk-based priorities. Thus, in light of the comments above, Cambridge requests FINRA amend Rule 3110 to redefine "Office of Supervisory Jurisdiction" and carve out and exclude certain functions from the annual inspection requirement, unless the member firm reasonably determines that the branch office warrants more frequent oversight by means of an on-site visit due to a risk-based analysis conducted by the member firm.

Enhanced Mechanisms for FINRA Notifications

Per FINRA rules, member firms are tasked with giving notice to FINRA regarding a variety of topics on a regular basis or when a particular event occurs. One of the most prevalent difficulties noted during the COVID-19 outbreak was the absence of the ability to provide additional relevant details to FINRA when giving these notices. By way of example, when an associated person was forced to operate from a temporary location, member firms had to create and develop new processes to capture and track that associated person's temporary location, the date on which the associated person began operating from that temporary location, and the prospective "return to office" date. Additionally, when fingerprinting facilities were shut down, associated persons who had yet to complete their fingerprint cards or who were in transition from one member to another were placed under a great deal of unwarranted stress because there was no means to delineate those affected by pandemic responses from those simply in non-compliance. These and other examples highlight the need for FINRA to implement meaningful changes. Cambridge encourages FINRA to review the mechanisms used by member firms to provide the required FINRA notifications with an eye to potential enhancements to the notice fields. That way, member firms would have the ability to transmit additional relevant explanatory information in addition to the required notice.

Also, Cambridge encourages FINRA to include additional mechanisms, as alternative means of compliance, to give options to member firms adversely affected by governmental responses to pandemics, social disruptions, natural disasters and the like. For example, FINRA could provide clearer guidance regarding alternative ways FINRA would accept compliance from member firms whose business activities are constrained by such curtailments. Also, to the fingerprinting example above, FINRA could give persons seeking to complete the requirements of their FINRA registration a mechanism through which to provide FINRA alternative documentation or information in order to keep working until such a time as physical fingerprints could be obtained.

FINRA Business Continuity Planning and Automatic Rule Changes

Just as member firms must have Business Continuity Plans in place reasonably designed to enable such member firm to meet its existing obligations, Cambridge encourages FINRA to publish its business continuity plan to address instances where FINRA staff may be affected by pandemics, social disruptions, natural disasters and the like. While Cambridge understands that due to the COVID-19 pandemic most FINRA staff worked remotely and relied on technology to carry out their responsibilities, it wasn't technology which caused the most difficulty. Throughout the COVID-19 pandemic member firms struggled with FINRA's responsiveness regarding issues of pressing concern. It fast came to light that FINRA could not immediately handle the variety and complexity of some of the issues presented by the COVID-19 pandemic and the various localized and rapidly evolving responses to it. Cambridge was grateful for the diligent and responsive engagement of FINRA staff in seeking answers, but the answers took a long time to come and, in some instances, the answers fell short.

FINRA also could create contingency plans with automatic triggers within certain rules. Like trading halts, these automatic triggers would provide member firms with an understanding of how rules will be applied in a modified manner following the triggering event. For example, if associated persons cannot enter a particular location due to governmental restrictions, there should be a mechanism to allow for operations from a temporary location for certain lengths of time depending on the severity of the event and whether an "all clear" is forthcoming; there should be a mechanism for associated persons to give notice to FINRA, which would flow to the member firm, that the associated person is so effected; there should be a means whereby that associated person could receive mail, client checks, and perform all such duties in the normal course of business from such new temporary location, based on clearly laid out FINRA guidance. By creating such rule modifications, FINRA would have already addressed some of these issues within the rules themselves, thus relieving the responsive burden of FINRA staff to address those known issues, allowing FINRA staff to focus on issues more unique in nature.

In such challenging times, member firms are going to seek to mirror FINRA guidance. Thus, it is of the utmost importance that FINRA provide clear and comprehensive guidance. FINRA can do this by publishing its own Business Continuity Plan and by creating automatic triggers within certain rules, as FINRA may determine appropriate, to modify FINRA requirements when impacted by or during times of pandemics, social disruptions, natural disasters and the like.

Member firms need flexibility to shape their own business models and levels of sophistication, and to grow and adapt with modern technology. The COVID-19 pandemic taught us that things can change quickly and, therefore, we all need to be agile and flexible in how we conduct business. Customers demanded alternative ways to conduct business and to communicate with their financial professionals, which was not easy given the proscriptive and confined nature of most FINRA rules. This left customers and associated persons frustrated and overwhelmed. Cambridge encourages FINRA to take action to more easily allow member firms to utilize modern methods of doing business so member firms can better shape the way they service customers and facilitate their compliance. Specifically, FINRA should foster a regulatory regime which affords member firms the ability to reasonably tailor their modes of supervision and compliance to the modern methods of doing business. FINRA can do this, by providing clear and comprehensive guidance, as well as a regulatory structure sufficiently flexible to adjust in response to customer needs, modern technology, and adverse circumstances such as pandemics, social disruptions, and natural disasters.

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

Respectfully submitted,

// Seth A. Miller

Seth A. Miller
General Counsel
Executive Vice President, Chief Risk Officer