CAMBRIDGE

VIA ELECTRONIC MAIL: pubcom@finra.org

April 27, 2018

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 18-08: FINRA Request for Comment on Proposed New Rule Governing Outside Business Activities and Private Securities Transactions

Dear Ms. Mitchell:

Cambridge Investment Research, Inc. ("Cambridge") appreciates the opportunity to comment on the proposed new rule presently offered as a replacement for FINRA Rules 3270 and 3280. Cambridge understands this new rule is intended to reduce the unnecessary burdens placed on member firms regarding supervision and review of the activities covered by these rules, while retaining the investor protections contained within them.

Cambridge commends FINRA for undertaking its review of Rules 3270 and 3280 and for seeking comments on the proposed rule to cover such activity. Cambridge is wholly in favor of the implementation of thoughtful, well-crafted, and clearly understandable rules; and fully supports FINRA's efforts to achieve that goal. Further, Cambridge agrees that reducing unnecessary supervisory and compliance burdens will allow members to focus more efficiently on important investor protections.

While Cambridge agrees with certain aspects of the proposed rule, absent further clarification and edits to the language, the proposed rule as drafted appears overly vague and ambiguous concerning certain operative provisions. Additionally, while Cambridge agrees that Registered Investment Advisers should be regulated separately, Cambridge does not support implementation of this proposed new rule in its present form.

BACKGROUND

Cambridge is a privately-controlled financial solutions firm focused on serving independent financial services professionals ("financial advisors") and their investing clients. Cambridge is an independent broker-dealer, member of FINRA and has an affiliate, Cambridge Investment Research Advisors, Inc. – a corporate Registered Investment Advisor ("RIA") federally registered with the Securities and Exchange Commission ("SEC"). Cambridge is among the largest privately-controlled independent broker-dealers/RIAs in the country supporting over 3,000 financial advisors nationwide who serve more than 700,000 of their clients as registered representatives and/or investment advisor representatives, choosing to use either Cambridge's RIA or their own RIA. Approximately 93% of Cambridge's registered representatives are dually licensed investment advisor representatives; about 92% of those dually licensed financial advisors are affiliated with Cambridge's corporate RIA and 8% are affiliated with an independent registered investment adviser.

The financial advisors of Cambridge are not employees, but rather are independent contractors and entrepreneurial business owners. They have the freedom to structure their business in a manner that best serves their investing clients. These financial advisors utilize Cambridge's broker-dealer to process investment business, provide marketing assistance, assist with practice management, and provide education.

Cambridge is proud that financial advisors who share its core values of integrity, commitment, flexibility, and kindness choose Cambridge as their financial solutions firm. Cambridge is located in Fairfield, Iowa, where it is the largest employer with over 700 associates in this Midwestern community of about 10,000 residents. Just over 50 percent of Cambridge's associates live in the immediate area and Cambridge draws most of the other half of its associates from six surrounding counties in southern Iowa. Similarly, the more than 3,000 financial advisors affiliated with Cambridge live and work in communities all across the country, servicing investing clients who reflect the unique demographics of their communities.

In brief, Cambridge and its associates live and work in a small community, and the Midwestern roots and main street connection are integral to the very personal ties Cambridge has with main street financial advisors; and the personal relationship these financial advisors have with their investing clients – many of whom also live and work in the same communities. Cambridge hopes this perspective will help FINRA better understand the following comments regarding FINRA's consideration of the proposed new rule.

DISCUSSION

As stated, Cambridge does not support implementation of the proposed rule as it is presently drafted.

While Cambridge believes simplification and consolidation will allow for more in-depth review of those activities which pose the greatest risk to the investing public, and at the same time possibly eliminate some of the unduly burdensome activities that have come about as a result of decades old interpretations of these rules, shifting the burden of supervision of some of these activities may not necessarily relieve a member firm of the duty to supervise its registered persons and thus could result in greater liability.

Cambridge believes that, as the proposed rule aims to shift certain investor protection activities to non-members, if this rule were to be implemented in its current form, some of the expected investor protections could either fail or be entirely absent. If those non-members charged with enforcing those investor protections were to fail, the burden of supervising those outside activities and transactions of registered persons could subsequently shift back to member firms via enforcement of other FINRA rules. This prospective outcome, while possibly unintended, would likely increase the ambiguities already present and underlying some of the interpretations of FINRA Rules 3270 and 3280, which frustrate registered representatives and member firms, and could potentially increase enforcement actions and member firms' liability as well.

Cambridge holds that a well-defined and narrowly tailored rule that allows member firms to determine the appropriate balance of due diligence activity required to assess risks related to registered persons outside activities with any prospective harms to which the investing public may be exposed as a result of engagement in those activities, would better align with the purposes giving rise to this proposal of a new consolidated rule and would enable member firms to continue protecting the investing public.

Thus, if FINRA intends to implement the proposed rule, Cambridge requests that FINRA add greater clarification and definition of the key terms expressed in the proposed rule, provide clear and distinct guidance to member firms regarding a member firm's duties and responsibilities, and add a safe harbor provision for regulatory liability and express limitations of liability upon which member firms may rely.

I. What are the alternative approaches, other than the proposal, that FINRA should consider?

The rule as proposed would require a registered person to inform the member firm of any and all business activity outside the scope of their relationship with that person's member firm. As such, non-investment-related business activities must be supervised by the member firm to some degree as member firms would be required to undertake some review and analysis to verify the registered person's activity truly is not "investment-related" because member firms would still have regulatory responsibility in this regard. This seems contrary to the stated objectives of this proposal.

Alternatively, a better measure for FINRA to achieve its proposed goals would be for FINRA to provide with greater clarity and specificity a definition regarding the term "investment-related" and eliminate the requirement of registered persons to notify the member of any activities, which even to a casual observer, would clearly not be investment-related. This alteration to the proposed rule would allow member firms to focus attention on investment-related activities, and eliminate time and expense devoted to those activities unlikely to pose any risk to the investing public.

II. How would consolidation of the rules governing outside business activities and private securities transactions in this proposal simplify compliance? What impact would it have on the cost of compliance?

In the proposed rule, consolidation of the rules governing outside business activities and private securities transactions could save time and simplify compliance by narrowing the scope of outside activities member firms are required to review, by decreasing the amount of CRD reporting presently required with respect to associated person's outside activities, and by decreasing the universe of individuals to whom the rule currently applies by focusing on the relevant class of persons – registered representatives.

Also, eliminating the separate classifications would allow member firms to focus due diligence efforts on the activity itself, that is whether the activity is "investment-related" and whether the activity warrants further action. This should decrease some of the confusion about how an activity should be reported because it removes the significance, for purposes of how an activity will be reported, of whether the reporting requirement turns on a registered representative's promotion of a security or compensation somewhere in the chain of distribution to whether it is related to an investment.

Regarding how this proposed change impacts the cost of compliance is difficult to determine. Again, considering the breadth over which the term "investment-related" could apply to various activities, the cost of compliance could increase if a more concrete definition is not established.

For instance, though all may agree that a person working as a waiter is not dealing in commodities because he delivers corn to a table, not all distinctions are that easy to make. Would a registered person who also holds a part-time job as a bank teller be engaged in an "investment-related" activity because the term "banking" is included in the definition? Would a registered person's supplemental casualty insurance sales need to be supervised because those transactions are "insurance" and now possibly within the definition? Would a registered person's occasional real estate appraisal services be considered "investment-related" transactions? The possibilities of additional activities which could require supervision under this proposal may rise and increase the costs of compliance for those member firms who accommodate outside activities.

III. Unlike Rule 3280, the proposed rule would apply to registered persons, rather than to associated persons. Should the proposed rule be expanded to apply to all associated persons? If so, why?

Cambridge agrees that the proposed rule should not be expanded to apply to all associated persons. Cambridge believes associated persons who are not registered persons pose little risk to investors through the activities covered by the proposed rule. Further, the main focus of the proposed rule is investor protection and this goal is achieved by limiting the rule to registered persons who may have a direct impact on dealing with customer investments and sales activities.

The proposed rule focuses on those activities most impactful to the investing public and to member firms, specifically activities that could bear the imprimatur of a member firm, or could confuse or endanger the investing public. It is more meaningful to allow member firms to focus attention on whether the person associated with a member firm could mislead customers or prospective customers into believing the transaction or activity was sponsored by the member firm. Therefore, the focus should remain on the investment-related activities of registered persons, which is of greatest concern when assessing potential risks to the investing public. Importantly, some member firms may choose to extend additional restrictions on outside business activities to associated persons not covered by the proposed rule should they determine this would provide appropriate protection for the customers of the member firm.

IV. Is the proposed scope of the notice requirement appropriately tailored to balance the interest of members to receive information regarding their registered persons' outside activities and any investor protection concerns?

Cambridge does not believe the proposed scope of the notice requirement is appropriately tailored as it is predicated on whether the activity is "investment-related." Essentially, the proposed rule is not tailored because it imputes the same burden on registered persons and member firms that is in place today, which is to determine whether an activity constitutes an outside business activity or a private securities transaction, and potentially broadens the scope of that determination by an unknown amount by interjecting the ambiguous standard of whether the activity is "investment-related".

A more clearly and explicitly defined meaning of "investment-related" would more appropriately tailor the proposed rule to balance the interest of receiving information with the responsibility of distinguishing the risks of the outside activity and protecting the investing public. Additionally, as stated below, notice should only be required for activities that meet the definition of "investment-related".

a) Should the proposal be modified to require registered persons to provide notice with respect to a narrower set of activities? If so, should notice be required only with respect to investment-related or some other categorization of activities?

As stated above, in order to support a modification of the proposed rule to require a notice requirement with respect to a narrower set of activities, the proposed rule should be modified to provide a more clearly stated definition of "investment-related" to enable registered persons and member firms to reasonably understand what is required of them to comply with the proposed rule. A simple, more comprehensive definition would impart clarity and give member firms greater flexibility to develop more defined risk-based assessment models.

Given greater definition and clarity, Cambridge would support a notice requirement that applied to investment-related activities only. This could simplify reporting requirements, eliminate waste and frustration, relieve confusion, reduce costs, and allow member firms to implement directly impactful investor protection procedures.

Additionally, Cambridge suggests FINRA include a provision in the proposed rule providing safe harbor from regulatory liability and express limitations of liability for member firms if a registered person fails to properly disclose the activity to the member firm.

b) Would narrowing the scope of the proposal impose any additional risks to investors?

Cambridge does not believe narrowing the scope of activities contemplated by the proposed rule would create additional risks to the investing public as long as FINRA clearly defines the term "investment-related." Without more guidance, registered persons and member firms are likely to incorrectly identify activities as non-investment-related only to face regulatory scrutiny or enforcement for their subjective interpretation where FINRA may subsequently consider such activity to be investment-related and pose a risk to investors. Alternatively, registered persons and member firms may broadly interpret "investment-related", wasting time and resources in an attempt to avoid regulatory scrutiny or enforcement. A registered person's activity as taxi driver, for instance, does not touch on the real risks contemplated by the requirements of this rule. Therefore, narrowing the scope of activities registered persons are required to report to just those that are "investment-related" will create a more efficient and effective rule.

V. A member's obligation to conduct a risk assessment is only triggered under the proposal with respect to investment-related activities.

a) Does limiting the required risk assessment to activities that are "investment-related" properly balance the interest of allowing members to focus compliance efforts on activities that pose the greatest concerns and any potential harm to investors?

Cambridge agrees that limiting the required risk assessment to activities that are "investment-related" properly balances the interest of allowing members to focus compliance efforts on activities that pose the greatest concerns and any potential harm to investors; however, absent a more narrowly proscribed definition, this change may have very little actual effect. As noted above, without more guidance, registered persons and member firms may broadly interpret "investment-related", wasting time and resources in an attempt to avoid regulatory scrutiny or enforcement. Alternatively, registered persons and member firms are likely to incorrectly identify activities as non-investment-related only to face regulatory scrutiny or enforcement for their subjective interpretation where FINRA may consider such activity to be investment-related and pose a risk to investors.

b) Is the definition of "investment-related," which is based on the definition used by the Form U4, appropriate given the regulatory objectives of the proposal, or should other activities be included in or excluded from the definition? If so, why?

Cambridge does not believe the definition of "investment-related" used by the Form U4 is appropriate due to its overly broad and vague definition. Greater definition and clarity regarding the activities contemplated by the terms expressed in the proposed rule are needed to more accurately interpret the requirements of the proposal. As stated above, the breadth of the proposed definition raises far too many questions regarding whether activities that fall within the banking, insurance, and real estate industries are "investment-related" even though a lay person would not view those activities as having anything to do with investments. For example, does a registered person's activity as a real estate agent amount to investment-related activity? Does the answer depend on the intent of each buyer as to whether they want to purchase the property for an investment versus a personal residence or a business need? Does the answer change if the agent sells commercial property, multi-residential complexes, or agricultural property that will likely generate income to the buyer? There are simply too many ways to interpret the term "investment-related" based on the definition used on the Form U4.

c) The proposed rule's focus is on assessing the risks created by the registered person's engagement in the outside investment-related activity, rather than the underlying activity itself. Is this an appropriate focus?

Cambridge believes that focusing on assessing the risks created by the registered person's engagement in the outside investment-related activity is the appropriate focus as it allows member firms to establish and follow their own risk assessment guidelines. In conducting this assessment, however, the member firm would still engage in some determination of whether the risks of the underlying activity are in and of themselves unacceptable as they relate to the overall engagement in the activity. Thus, the core element of protecting the investing public remains present.

Should the risk assessment include a requirement for the member to perform due diligence of the underlying outside activity?

The risk assessment should not include a requirement for the member firm to perform due diligence of the underlying outside activity. A better method would be to allow each member to tailor that determination within the context of the registered person's activity as it relates to the member firm's business. Retaining an inherent level of flexibility in this regard would more appropriately result in a member firm's ability to balance the regulatory requirements contemplated by the proposed rule change and the risks attendant the registered person's outside activity within the scope of the member firm's business.

d) The member would be required in the risk assessment to evaluate whether the proposed activity will: (i) interfere with or otherwise compromise the registered person's responsibilities to the member's customers; or (ii) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Are these appropriate criteria to evaluate conflicts of interests and other potential areas of harm to investors?

Assuming all Registered Investment Advisors fulfill their regulatory obligations and supervise the outside activities of their advisors, then Cambridge believes the criteria set forth by FINRA would be the appropriate criteria to evaluate conflicts of interest and other investor protection concerns.

VI. The proposal has several exclusions, including for registered persons' personal investments and activities conducted on behalf of an affiliate of a member, unless those activities would require registration as a broker or dealer if not for the person's association with a member. Are the proposed exclusions appropriate?

The proposed exclusions are appropriate if FINRA provides assurances that member firms are not required to maintain records of all the registered person's activities that fall into these categories.

a) Should any other activities be excluded from the rule? If so, why?

As the proposed rule would focus solely on those activities of a member firm's registered persons, no other activities need to be excluded from the rule.

b) Should the proposed exclusions, including the exclusion for activities on behalf of affiliates, be limited in any manner? For example, should the exclusion be limited to activities on behalf of affiliates that are subject to federal or state financial registration or licensing requirements, such as registered investment advisers, banks and insurance companies?

Cambridge does not believe the proposed exclusion for activities on behalf of affiliates should be limited in any manner.

VII. Unlike current Rule 3280 and related guidance, the proposed rule would not impose a general supervisory obligation over IA activities and would not require the member to record on its books and records transactions resulting from such IA activities. Does the treatment of IA activities under the proposed rule appropriately address investor protection concerns while recognizing that separate obligations exist under the IA regulatory regime?

Cambridge is concerned that the treatment of IA activities under the proposed rule does not appropriately address investor protection concerns as the language of the proposed rule does not clearly identify those activities which would be excluded from review. While recognizing that separate obligations exist under the IA regulatory regime, this provision contemplates an active recognition of these investor protection responsibilities by investment advisory firms. Given the potential for broad enforcement following implementation of the proposed rule, it would be beneficial for FINRA to provide member firms with greater definition and clarity of those activities constituting "IA activity."

Further, this exclusion raises concerns regarding the application of this proposed rule in respect to other FINRA supervisory rules, particularly FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 2060 (Use of Information Obtained in Fiduciary Capacity), 2210 (Communications with the Public), 3110 (Supervision), 3210 (Accounts At Other Broker-Dealers and Financial Institutions) and 3240 (Borrowing From or Lending to Customers) for example; and whether these rules may be imputed to a registered person's activity at the member firm in the event the investment adviser fails to supervise. Cambridge questions whether the proposed rule actually changes much of its supervisory obligations if FINRA expects member firms to continue to review all of the same investment activities of registered persons and their clients that are transacted through a Registered Investment Advisor to ensure compliance with the FINRA rules noted above.

Presently, regulatory oversight of investment advisory activity does not appear to be as robust and recurrent as in the broker-dealer space, which could create the potential for investor harm if activities and transactions member firms have been supervising are no longer being monitored and supervised. This proposed shifting of supervisory responsibilities raises concerns that investors will seek redress from FINRA or a state securities regulator in those situations where a registered representative's affiliated investment adviser fails to comply with a rule and the investor is harmed.

VIII. Under paragraph (b)(4), if a member approves a person's participation in a proposed activity that would require, if not for the person's association with a member, registration as a broker or dealer under the Exchange Act, the activity is deemed to be the member's business and the member must supervise accordingly.

a) Is registration under the Exchange Act the appropriate trigger for this provision?

It is possible that Exchange Act registration could be an appropriate trigger for this review.

Underlying this provision is the understanding that the Exchange Act triggers registration where a person is publically and regularly effecting securities transactions for the accounts of others or is participating in a securities transaction at key points in the chain of distribution. Does implementation of this provision mean that a recommendation made by a registered person to purchase or sell a security, under the auspices of a fully disclosed and approved Investment Advisory outside activity, is subject to supervision and is required to be recorded on the books of the member firm?

This requirement seems in conflict with the description in the Regulatory Notice regarding how the rule will function and raises additional questions regarding how this proposal will differ from present interpretations. For instance, a review of recent enforcement actions has highlighted "promotion" of a security as a key aspect of that which constitutes a private securities transaction under the current rule. Given that interpretation, this proposal raises the question of how a member firm would not be responsible for supervising a registered person's promotion of a security merely because it fell within the scope of that person's investment advisory outside activity.

b) Should paragraph (b)(4) be expanded to require a member to supervise a registered person's sale of securities through an entity that is not required to register under the Exchange Act?

If the proposed rule were to give member firms greater confidence that a registered person's sale of securities through an entity that is not required to register under the

Exchange Act (due to a safe harbor or an express exclusion contained in the Exchange Act or Securities Act) would be outside the scope of that member's liability, and that such activity would be specifically named in the rule as one a member firm would not be required to supervise, then no, the paragraph need not be altered.

c) When the registered person is associated with more than one member, the proposed rule allows members to develop a formal allocation arrangement whereby at least one member has the regulatory responsibility, including the supervision and recordkeeping of the proposed outside business activity. Are there any competitive effects of such allocation arrangements? Does this flexibility potentially create a disadvantage for some firms regarding how the costs are allocated? Should FINRA consider any other approaches?

While some member firms may be advantaged by this rule, the competitive effects of the allocation arrangements contemplated by the proposed rule seem minimal. As member firms are given the flexibility to develop their own formal allocation arrangements concerning their respective regulatory obligations, the proposed rule would not inherently create a disadvantage for a member firm as the terms and conditions of these formal allocation arrangements would be negotiated. The approach proffered by FINRA in this proposal is sound, no other approaches need be considered.

IX. Are there any material economic impacts, including costs and benefits, to investors, issuers and firms that are associated specifically with the proposal? If so:

a) What are these economic impacts and what are their primary sources?

The proposed rule could result in material impacts, including reduced costs and other benefits or increased costs and restrictions. Supervision of independent registered investment advisers is costly. Member firms could possibly reallocate resources devoted to supervision of independent registered investment advisers if such requirements were eliminated, freeing staff and capital for other risk mitigation efforts. This, as noted above however, may be muted by the effect of other rules and regulations requiring member firms to supervise their registered persons. Additionally, without further clarity regarding how certain activities will be treated under the rule, the positive effects may be deteriorated by unintended burdens as a result of broad interpretations of the defined terms. Thus, though this proposed rule may eliminate some supervisory requirements regarding outside activities, those activities may remain within the scope of this rule or other rules, and would still be supervised.

b) To what extent would these economic impacts differ by business attributes, such as size of firm or differences in business models?

Smaller member firms would likely be most advantaged by the proposed rule because they have more limited resources to carry out their supervisory obligations.

c) What would be the magnitude of these impacts, including costs and benefits?

The proposed rule could impact the day to day review of outside business activities and what today constitutes a private securities transaction. Prospectively, a member's review of these activities could consist of surveilling the initial notices of registered persons and performing more in-depth reviews for those classified as "investment-related."

The relief contemplated by the rule change could allow member firms to more effectively concentrate risk analysis to those activities which are more likely to interfere with the member's business, bear the imprimatur of the member, or those which could potentially pose more risk to the investing public. The benefit of freeing compliance staff, while possibly not resulting in a reduction in compliance costs, could be noticeable.

X. Are there any expected economic impacts associated with the proposal not discussed in this Notice? What are they and what are the estimates of those impacts?

There are expected economic impacts associated with the proposal that are not discussed in this Notice. The proposed requirement for a member firm to receive prior written notice of a "material change" to a registered person's outside activity contained in proposed Rule 3290(a) may impose extreme costs of compliance depending on the definition of the term "material change." For member firms currently automating outside business activity request processing, the potential for a dramatic increase in volume of notices related to business activity changes is very high without some defining guidance regarding what constitutes a "material change." Would, for example, a registered person's outside business activity consisting of the ownership of a retail store undergo a material change if that registered person desires to sell additional goods or provide non-investment-related services not originally contemplated in the initial notice? Would a material change occur when a registered person's authorized outside business activity, whether investment-related or not, undertakes to change its name or address?

Absent guidance regarding what constitutes a "material change", the proposed rule would force member firms to approach defining "material change" broadly, likely beyond what is contemplated by the drafters, in an effort to catch all changes. This practice could result in a review by the member firm to determine whether a "material change" occurred, thus creating an additional step that potentially was not required in the context of the initial consideration of the outside activity itself.

Operationalizing and implementing a system designed to capture notices, then isolate those affected by a material change, would be difficult to quantify costs as the inputs necessary to carry out such functions are unknown; however, at first glance, the impact to the cost of compliance may be extremely high.

It would be more preferable if the proposed rule eliminated review of non-investment related activities, and required submission of all "investment-related" activities where that term is clearly and comprehensively defined.

CONCLUSION

Cambridge appreciates the opportunity to comment on this proposed rule and the attendant changes, and believes this is a solid first step in a useful and effective process. Cambridge encourages FINRA to proceed with a retrospective rule review process for the proposed rule that is thoughtful, well-crafted, and clearly defined. Further, Cambridge is hopeful FINRA will find constructive guidance in the commentary above and that received from other member firms.

Like FINRA, Cambridge wants to ensure that all necessary and important investor protections remain. However, it is Cambridge's belief that as drafted, the proposed rule creates more questions and more areas of concern than were intended. For this reason, Cambridge requests FINRA provide greater definition to the terms "investment-related" and "material change" as noted above, expressly exclude supervision of any investment advisory activities that occur within the confines of a state or SEC registered IA entity, and provide safe harbor for regulatory liability and express limitations of liability for member firms if those entities fail to protect investors or if registered representatives fail to disclose investment-related activities. These changes would render this proposed rule stronger, clearer, and more effective as member firm's resources could be devoted to much more in-depth and well informed reviews of those activities most likely to create risk. Further, these clear lines of separation will allow member firms and investment advisory firms to understand their respective responsibilities.

In short, Cambridge supports FINRA's underlying intent with the proposed rule, but cannot support the rule as written. Cambridge requests that FINRA add greater clarification and definition of the key terms expressed in the proposed rule, provide clear and distinct guidance to member firms regarding a member firm's duties and responsibilities, and add a safe harbor provision or specific exclusions of liability upon which member firms may rely.

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
Senior Vice President, Chief Risk Officer