



VIA ELECTRONIC MAIL: pubcom@finra.org

January 10, 2020

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 19-36: Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer

Dear Ms. Mitchell,

Cambridge Investment Research, Inc. ("Cambridge") appreciates the opportunity to comment on Regulatory Notice 19-36 and proposed Rule 3241: Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer. Cambridge acknowledges the potential conflicts that may arise when a registered person holds a position of trust or beneficial interest relative to a customer's account and supports enacting a rule to address such conflicts.

Cambridge supports policies requiring a registered person to notify the member firm when that registered person, or an immediate family member of that registered person, is named a beneficiary or nominated as a fiduciary (i.e. as Attorney-in-Fact under a POA, as Trustee under a Revocable Trust, or as the Personal Representative) of the estate of a customer. Such a notice requirement should include whether an account is held by a relative of a registered person or not. Each instance should be reviewed on a case-by-case basis and the facts and circumstances surrounding the nomination considered within the broader context of the registered person's relationship with the customer, as well as the customer's express wishes.

While Cambridge agrees with many aspects of the proposed rule, and in fact requires its registered persons to notify the Firm if the registered person is nominated as a beneficiary of a customer's estate or to receive a bequest from the customer's estate, Cambridge believes that a few modifications would better align the proposed rule with its intent to protect investors.

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Specifically, Cambridge proposes the following modifications:

- Amend the “Obligations of the Registered Person”;
- Exclude executorships from the Proposed Rule’s intended scope; and
- Amend the definition of “Customer.”

1. **PROPOSED MODIFICATIONS**

a. **Modifications to the “Obligations of the Registered Person”**

With respect to the nomination of a registered person as a beneficiary or recipient of a bequest, a situation could arise where the registered person did not have sufficient time to obtain approval of the member firm prior to the customer’s death. A mandatory rejection of the customer’s nomination under such circumstances, could result in a scenario where the customer’s intended designation would fail in its entirety. Such a result could have significant, adverse consequences for the customer’s estate.

In order to address this potential scenario, Cambridge proposes adoption of a presumption in favor of the validity of the nomination unless and until, based on a subsequent review, the member firm determines that the nomination should not be honored. Such a presumption would give member firms the degree of flexibility necessary to determine reasonable compliance with the proposed rule while honoring a customer’s valid wishes.

b. **Exclude Executorships**

As executorships are typically subject to judicial review, and often pertain to the customer’s posthumous estate, Cambridge respectfully suggests that the inclusion of Executorships in the proposed rule is unnecessary.

c. **Amendment to the Definition of “Customer”**

Cambridge requests FINRA eliminate the phrase “or in the previous six months” from the definition of “customer” under .01 of the Supplementary Material. Inclusion of this language denies the member any flexibility in accommodating fact-specific circumstances when applying the proposed rule. For example, in an effort to remove a potential conflict of interest, a member might reassign the customer’s account to another advisor, thereby eliminating a potential conflict of interest while still honoring the customer’s intention to nominate the registered person as a beneficiary or to a position of trust. The proposed definition of “Customer” as written effectively precludes such an accommodation, and instead acts as an outright prohibition of a registered person from acting in such a capacity.

Cambridge believes no proscribed period of time should be included here. It should be for a member firm to make a reasonable determination of whether the facts and circumstances surrounding the registered person's conduct or the relationship between the registered person and the customer should allow a registered person, or that person's family member, to occupy such a position.

2. FURTHER GUIDANCE

Cambridge supports the requirement of a reasonableness determination and believes additional scrutiny of such appointments or nomination requests is appropriate. However, Cambridge believes certain factors proposed in this Notice, which FINRA states are to be considered by a member firm when assessing and determining the measure of reasonableness of a registered person's assumption of a position of trust, are overly broad, ambiguous, and generally prohibitive.

Cambridge asks that FINRA clarify its guidance so as to not mandate all of the criteria which FINRA expressed that member firms consider when evaluating the nomination or appointment of a registered person to a position of trust or to a beneficial interest. Such a comprehensive review may not be proper in all circumstances. Cambridge requests that these factors be more narrowly tailored and reflective of a member firm's business role. For example, it is neither appropriate nor reasonable to obligate a member to determine whether a customer suffers from some impairment that would compel rejection of the customer's express nomination. Such assessment is properly left to a qualified medical professional.

Similarly, compelling a member to determine the existence of "**any** indicia of customer vulnerability or undue influence" (emphasis added), creates a new standard beyond that which a member firm already employs in effort to protect vulnerable clients. Such a standard would create an enormous burden, requiring the member to engage in a subjective analysis of the facts and circumstances supplied to it, as well as to engage in an independent investigation of that information, in order to render a finding on the validity of the customer's actions. Member firms do not have the staff, experience, or frame of reference to fulfill such an investigatory role and should not be held to a greater standard than that which is already in place under other FINRA rules.

In contrast to the current proposal, these criteria should be characterized as *among those* that might evidence the reasonableness of the member's review, as opposed to being deemed mandatory. Instead of creating new standards of conduct and review, Cambridge recommends FINRA rely on those that already exist, such as Rule 2010 which mandates a high standard of commercial honor as well as just and equitable trade principles. Observance of the standards already in place allow member firms to determine for themselves whether the conduct of their registered persons rises to a level of misconduct or whether a conflict of interest exists.

In closing, Cambridge encourages FINRA to consider the opinions noted above, and asks that FINRA amend this proposed rule to actually place more of the authority to determine whether a registered persons engagement in any of the activities contemplated by this proposed new rule would be reasonable, appropriate, or otherwise in the hands of member firms.

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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