



**VIA ELECTRONIC MAIL: [pubcom@finra.org](mailto:pubcom@finra.org)**

December 03, 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 20-34: Senior Investors – Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report.**

Dear Ms. Mitchell,

Cambridge Investment Research, Inc. (“Cambridge”) appreciates the opportunity to comment on Regulatory Notice 20-34 regarding Senior Investors and the Proposed Amendments to FINRA Rule 2165. In Cambridge’s response to Regulatory Notice 19-27, Cambridge agreed with FINRA’s view that the protection of senior investors from financial exploitation is a top priority and that many aspects of FINRA Rule 2165 Financial Exploitation of Specified Adults (the “Rule”) are effective.

Cambridge believes FINRA’s proposed changes will enhance senior investor protection, but requests FINRA further consider certain recommendations provided by Cambridge in its response to Regulatory Notice 19-27 and include additional modifications to FINRA’s rules. Specifically, Cambridge asks that FINRA:

1. develop a mechanism to give member firms a means to clearly identify and differentiate complaints received as a consequence of compliance with the Rule; and
2. add safe harbor provisions specifically related to actions taken by member firms pursuant to the Rule.

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## Reporting Mechanism

Cambridge believes the holds authorized by Rule 2165(b) could be mischaracterized under the current rule framework and that additional steps should be taken at this time. Cambridge anticipates that persons negatively impacted by, or those whose malicious efforts may be thwarted by, a member firm's steps to prevent possible financial exploitation may complain about such holds, thus triggering a reportable event. As stated in Cambridge's earlier response, the required disclosure framework, specifically those associated with reporting allegations of theft or misappropriation, may mischaracterize complaints relating to Rule 2165(b) holds. To avoid any mischaracterization of complaints following such holds, Cambridge believes FINRA should include additional mechanisms to accurately convey the purpose of the member firm's actions because a hold on a customer's account in an effort to protect that vulnerable person from financial exploitation is neither theft nor misappropriation.

Further, increasing the length of the hold period permitted under Rule 2165 may lead to an increase in the number of complaints. Such reported complaints resulting from Rule 2165 compliance measures will be indistinguishable from complaints alleging theft or misappropriation as a result of other circumstances. Cambridge believes that the threat of such complaints may have a chilling effect on a member firm's use of such measures under the Rule.

Cambridge is not asking for a mechanism to stifle complaint reporting, but rather a mechanism to accurately depict complaints received in a manner which clearly denotes the context of the situation. Again, Cambridge believes the current problem code framework may penalize a member firm's efforts 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. Cambridge believes that the addition of new problem codes, and language defining those problem codes, would greatly bolster Rule 2165 and encourage its use.

## Safe Harbor

Cambridge believes a safe harbor protecting member firms and registered representatives from customer actions as a result of steps taken by a member firm pursuant to this Rule furthers the Rule's intent. FINRA could accordingly amend other rules to eliminate the negative impacts member firms and/or registered representatives may encounter when complying with the Rule.

As stated before, per Rule 3260(b), member firms and registered representatives may not exercise any discretionary power over customer funds without first obtaining the prior written authorization of that customer specifically granting that power to a stated individual or individuals. A targeted hold, specific to the customer, the customer's account, or the customer's agent may appear as a form of discretion, which neither member firms nor registered representatives seemingly have authority under FINRA rules to exercise at this time. Cambridge recommends FINRA consider amending Rule 3260, creating an exception under 3260(d), providing member

firms and registered representatives actual authority to effectuate such a hold and to engage in such proposed protective activities.

Cambridge believes that the potential ramifications member firms and/or registered representatives could face after imposing transaction restrictions may weigh against exercising such an option. The possibility of changes in a security's pricing during the hold and the obligations member firms and registered representatives have regarding best execution, in addition to others, are serious concerns. Cambridge still believes implementation of such a transaction hold without a safe harbor would place member firms and registered representatives on the horns of a dilemma. Essentially, member firms and/or registered representatives would have to decide whether to employ the transaction restriction and possibly face complaints, arbitration or even civil actions from customers, their heirs or agents, or to refrain from employing the transaction restriction and possibly face regulatory scrutiny and the fallout from customer loss for not blocking the transaction under these circumstances. Cambridge believes it would greatly foster the use of such protective transaction restrictions under Rule 2165 to have such a safe harbor to rely upon.

Cambridge is happy to discuss any of the comments or recommendations in this letter.

Respectfully submitted,

*// Seth A. Miller*

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