



**VIA ELECTRONIC MAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

August 7, 2018

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Regulation Best Interest; Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation; Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles**

Dear Secretary Fields:

The U.S. Securities and Exchange Commission (“SEC”) on May 5, 2018 published its request for public comment on two proposed rules and certain interpretive guidance in Investment Adviser Regulation. The SEC has proposed a rule under the Exchange Act that would establish a best interest standard of conduct for broker-dealers, require broker-dealers and registered investment advisers to provide a brief relationship summary to retail investors to inform them about the relationships and services offered by the firm, place restrictions on certain names or titles, and provide clarity on the standard of conduct for investment advisers (“Proposed Rules” or the “Proposed Rulemaking Package”).

The Proposed Rules are intended to enhance the quality of recommendations and enhance the clarity regarding the nature of the broker-dealer relationship, facilitate more consistent regulation of similar activity while preserving investor choice and access to affordable investment advice and products investors use.

Cambridge Investment Research, Inc. and Cambridge Investment Research Advisors, Inc. (collectively “Cambridge”) welcomes the opportunity to comment on the SEC’s Rulemaking

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Package. Cambridge shares a strong and committed interest with the financial services industry and the SEC in enhancing investor protections. Cambridge has consistently supported the establishment of a thoughtful, well-crafted, and effective standard of care and meaningful disclosures applicable to financial services professionals providing investment advice to retail clients, enforced by the SEC as the appropriate jurisdictional agency. Cambridge believes such a standard of care should incorporate duties of care and loyalty with accompanying reasonable disclosures that are streamlined to provide retail customers with clear and effective communication on critical matters related to investment recommendations. As such, Cambridge generally supports the Rulemaking Package, and offers comments and suggested modifications below.

## **I. BACKGROUND ON CAMBRIDGE**

Cambridge is a privately-controlled financial solutions firm focused on serving independent financial services professionals and their investing clients. Cambridge Investment Research, Inc. is an independent broker-dealer, member of FINRA, which is affiliated with Cambridge Investment Research Advisors, Inc. – a corporate Registered Investment Adviser (“RIA”) federally registered with the SEC. Cambridge is among the largest privately-controlled independent broker-dealers/RIAs in the country supporting over 3,200 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 90% of Cambridge’s registered representatives are dually licensed investment advisor representatives; about 92% of those dually licensed financial advisers are affiliated with Cambridge’s corporate RIA and 8% are affiliated with other independent registered investment adviser firms.

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 and RIA to process investment business, provide marketing assistance, assist with practice management, and provide education.

Cambridge is proud that the 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 3,200 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 the SEC better understand the following comments on the Proposed Rulemaking Package.

## **II. CAMBRIDGE SUPPORTS THE PROPOSED RULE MAKING PACKAGE WITH CERTAIN MODIFICATIONS**

Cambridge welcomes the opportunity to comment on the Proposed Rulemaking Package. In previous comment letters to the Department of Labor (“DOL”), Cambridge has advocated for a clearly defined, well-crafted uniform best interest standard of care applicable to all financial services professionals. Moreover, Cambridge has consistently supported the promulgation of such a standard of care by the SEC, the agency delegated by Congress in Section 913 of the Dodd Frank Act to regulate the application of such a rule.

Cambridge has supported a uniform fiduciary standard of conduct in the past, and while the SEC has not proposed a uniform standard, Cambridge believes the SEC’s Proposed Rulemaking Package would provide significant benefits for retail investors including enhanced quality of recommendations, disclosures, more consistent regulation of similar activity, and better align broker-dealers and registered investment adviser’s obligations with investors’ expectations.

Cambridge believes retail investors must be able to retain their ability to choose both the relationships they have with financial professionals, as well as the products and investment services they choose to utilize to meet their financial goals. Thus, although Regulation Best Interest does not create a uniform standard of care, the SEC has proposed clear, understandable and consistent standards for recommendations for a brokerage relationship that borrows key attributes from the investment advisory fiduciary standard of care. Cambridge believes this approach will enhance and align the broker-dealer standard with investor protection while preserving investor choice and access to existing products, services, service providers and payment options.

While Cambridge has concerns related to the proposed best interest standard and Form CRS, and seeks clarity on certain issues, Cambridge generally believes the Proposed Rules provide a clear standard of care enhancing existing broker-dealer conduct obligations to act in the best interest of retail customers with well-defined guidelines for managing conflicts of interest while protecting investor access to a broad range of products and services.

Section 913 of the Dodd-Frank Act delegated the SEC to evaluate the effectiveness of a uniform standard of care for the financial industry. Cambridge recognizes the SEC has exercised extensive consideration of relevant issues related to the Proposed Rules and its subsequent determination to propose a standard of care obligation for broker-dealers. Cambridge supports the SEC’s efforts to enhance the obligations that apply when broker-dealers make recommendations to retail customers.

The Proposed Rules provide that the best interest obligation would be satisfied if the broker-dealer: 1) prior to or at the time of the recommendation, reasonably discloses material facts related to the scope and terms of the relationship; 2) in making the recommendation, exercises reasonable diligence, care, skill, and prudence to understand the product and has a reasonable basis to believe the product is in the best interest of the customer; and 3) establishes and maintains and enforces written policies and procedures reasonably designed to identify, disclose, and mitigate or eliminate conflicts of interest.

This principles based standard would allow firms to tailor their practices to their business models and retail clients. Cambridge agrees with the SEC that such an approach would enhance investor protection while preserving, to the extent possible, access and choice for investors who prefer the “pay as you go” model for advice from broker-dealers, as well as, preserve retail customer choice of the level and types of advice provided and the products available. Furthermore, Cambridge supports the SEC’s contention that conflicts will invariably exist, but must be managed appropriately.

Cambridge has consistently supported the SEC’s efforts to improve investor protection. Cambridge concurs with the SEC that enhancing the professional standards of conduct that currently applies to broker-dealers will heighten the quality of recommendations, establish obligations under the Exchange Act beyond disclosure alone, and improve certain disclosures regarding the scope and terms of the client relationship. Cambridge supports the SEC’s effort to integrate the proposed standard of care into investor protections provided by the existing regulatory framework. Regulation Best Interest is intended to build upon existing suitability obligations, but also enhances those obligations by requiring broker-dealers to have a reasonable basis to believe that a recommendation is in the best interest of the retail customer. Moreover, in drawing from underlying principles of obligations that apply to investment advice in other contexts, as opposed to adopting identical or uniform obligations, the Proposed Rules support principles across a spectrum of investment advice, and thereby enhances investor protection while preserving investor choice.

Cambridge also supports the Customer Relationship Summary (“Form CRS”) and the establishment of a thoughtful, well-crafted, and effective two-tier client disclosure format. Cambridge believes the initial disclosure should be no more than four pages, and be delivered at the time of formal engagement between the advisor and the retail investor. The initial disclosure would then be supplemented by a set of more detailed disclosures maintained on a firm’s website or available in other formats. Cambridge believes a two-tiered approach would be compatible with the SEC’s proposed Form CRS, reflect common goals, and would accomplish objectives sought in the proposed disclosure obligations under Regulation Best Interest. While Cambridge supports the Form CRS, Cambridge believes the currently proposed double disclosure requirements – Regulation Best Interest Rule disclosures and Form CRS, serve a similar purpose and provide duplicative information. Instead, Cambridge believes that providing the Form CRS should fulfill the broker-dealer’s Disclosure Obligation under Regulation Best Interest. Cambridge believes

Form CRS is duplicative of the Disclosure Obligation under Regulation Best Interest, and therefore urges the SEC to eliminate the proposed Disclosure Obligation requirement.

Cambridge does not support proposed restrictions on the use of certain names or titles. While Cambridge supports the SEC's goals to help retail investors clearly understand roles and services, Cambridge believes the most effective approach would be through the proposed disclosure regime.

Cambridge does support the SEC's efforts to reaffirm, and in some cases clarify certain aspects of the fiduciary duty that an investment adviser owes to its clients. Cambridge believes clarity on all aspects of an investment adviser's fiduciary duty will improve the ability to craft effective policies and procedures, as well as, eliminate confusion for retail customers and investment professionals.

Additionally, Cambridge supports continuing education requirements for investment advisor representatives provided such requirements adhere to existing continuing education practices, and so long as exemptions exist for certain industry designations. Cambridge believes any federal investment adviser licensing efforts should be coordinated with states and the North American Securities Administrators Association. Cambridge does not see the need for additional requirements for investment adviser account statements or subjecting investment advisers to certain capital requirements, although a fidelity bond or insurance bond requirement may make sense. Lastly, Cambridge agrees with the SEC that there are areas in which harmonization of certain regulations for broker-dealers and investment advisers would create greater efficiencies and enhance clarity for retail clients and investment professionals. Cambridge offers detailed comments and recommendations below on the Proposed Rulemaking Package.

### **III. BEST INTEREST STANDARD OF CARE**

#### **A. Introduction**

Cambridge supports the proposed Regulation Best Interest standard of care obligations for broker-dealers when making recommendations to retail customers, with certain modifications to the Care Obligation. The general requirement would be satisfied through compliance with clearly defined requirements of care, loyalty and disclosure obligations. Additionally, the proposed best interest standard would impose conflict of interest obligations on broker-dealers that are intended to avoid conflicts of interest when possible, and manage the potential impact that unavoidable conflicts of interest may have on their recommendations. Cambridge agrees with the SEC's contention that the best interest obligations should be built upon, and tailored to existing broker-dealer relationships and regulatory obligations rather than creating a completely new standard or adopting obligations and duties that have been developed under a separate regime.

Cambridge also believes that the existing rules of various SROs should form the basis and provide the essential foundation in any proposed rulemaking related to a broker-dealer best interest

obligations. Cambridge accepts the SEC's contention that the unique characteristics of the broker-dealer model require a care obligation distinct and separate from the fiduciary duty developed under the Advisors Act. Furthermore, Cambridge commends the SEC for stating it does not believe the proposed Regulation Best Interest would create any new private right of action, nor intends such a result. Cambridge strongly encourages the SEC to clearly state this position in any final Proposed Rules language.

### **B. Act in the Best Interest of the Retail Customer**

The Proposed Rules would require that when making a recommendation to a retail customer, a broker dealer has a duty to act in the best interest of the retail customer at the time of a recommendation without putting the financial interest or other interest of the broker-dealer ahead of the retail customer. Cambridge believes that this standard makes clear that the needs of the customer cannot be subordinate to those of the broker-dealer, while acknowledging that a broker-dealer's financial interests will, by necessity exist, but such interests cannot be the predominant factor behind the recommendation.

The SEC makes clear it is not proposing to define "best interest" in the Rule Making Package, and states that the best interest of a specific retail customer is a facts and circumstances test which draws upon an adviser's duties of care and loyalty. Cambridge believes this approach, setting forth minimum professional standards that encompass fiduciary principles, is appropriate.

Certain commentators have criticized the lack of a specific definition of "best interest." However, given the multiple potential variables that could impact on what would be in a retail customer's best interest at a particular point in time, Cambridge agrees with the SEC's contention that in order to determine whether a particular recommendation for a particular retail customer is in the best interest it must be a facts and circumstances test, not a prescriptive regulatory definition. Plainly, circumstances can occur when it may be in the retail customer's best interest to invest in a broad range of diversified financial products, or to invest in riskier, concentrated, or more costly products. By meeting the Care, Disclosure, and Conflict of Interest Obligations, and Regulation Best Interest, Cambridge believes investor protection will be facilitated through a standard that is understood both by industry professionals as well as the investing public.

Furthermore, Cambridge supports the SEC's view that adherence to the proposed best interest standard will address investor concern regarding potential harm with broker-dealer incentives to recommend products that could put the broker-dealer's interest ahead of the customer because of higher compensation or other financial incentives. This standard appropriately recognizes that a broker-dealer's financial interest can exist while conflicts can be adequately addressed to ensure that the broker-dealer's interests align with those of the customer.

### **C. Different Standards Based on Uniform Principals**

In developing the proposed Regulation Best Interest, the SEC has drawn from principles that apply to investment advice under other regulatory regimes – most notably from FINRA, the Investment Advisor’s Act, and duties that would have applied to broker-dealers as a result of the vacated DOL Fiduciary Rule and related prohibited transaction exemptions. The SEC has drawn upon these principles with the goal of establishing greater consistency in the level of protection provided across advice relationships. Cambridge supports the SEC’s rule making efforts to maintain specific regulatory obligations for broker-dealers and investment advisors which reflect the structure and characteristics of each business model and their relationship with retail customers.

Concerns put forth that the Proposed Rules do not impose a uniform best interest standard of care on both broker-dealers and investment advisors have been articulated by certain stakeholders. However, Cambridge acknowledges and supports the SEC’s contention that rather than imposing the same standard on different business models, the proposed broker-dealer best interest standard would draw from key principles underlying best interest obligations outlined in other contexts, in particular Section 913(g) of the Dodd Frank Act, the DOL’s Impartial Conduct Standards and the Investment Adviser’s Act.

In support of the SEC’s approach, Cambridge notes that in the months preceding the DOL’s proposed Fiduciary Rule with its proposed uniform standard, many broker-dealers began reducing availability or totally eliminating retail customers’ access to certain products and services. Entire categories of accounts were eliminated by certain firms. As such, Cambridge believes the best interest obligation as put forth in the SEC’s Proposed Rules will enhance conduct obligations while preserving the range of choice and access available to broker-dealer customers today.

Moreover, Cambridge acknowledges the contention that because the broker-dealer model and the advisory model are different, it is appropriate to have different standards for investment advisers and broker-dealers and their registered persons *provided* they are based on a uniform set of principles. As stated by SEC Chairman Clayton ... “while the two standards draw from common principles, some obligations of broker-dealers and investment advisers will differ because the relationship types of these investment professionals differ. This is a practical necessity. But the principles are the same....”

Importantly, Cambridge believes retail investors must be able to retain their ability to choose the type of relationships they have with financial professionals, as well as having a broad array of products and services available to meet their financial goals. The SEC has proposed clear, understandable and consistent standards for recommendations for a brokerage relationship. Cambridge believes this approach will better align the broker-dealer best interest standard with investor protection while preserving investor choice and access to existing products, services, service providers and payment options.

The SEC indicated that in its review of a best interest standard of conduct for both broker-dealers and investment advisers, including the 913 Study, it determined to propose a tailored approach focusing on enhancements to broker-dealer regulations. In this way, such a best interest standard would reflect the unique characteristics of the broker-dealer client relationship. Cambridge agrees. Services, products and fee structures differ. A brokerage relationship is transaction based in nature, a broker-dealer may provide a variety of services, some of which may or may not include advice, and a broker-dealer may provide services in a principal or agent capacity. On the other hand, an advisory relationship exists primarily for ongoing advice about investments, typically involves portfolio management and often is on a discretionary basis.

Concerns have surfaced that under the Proposed Rules broker-dealers have an episodic duty of care, whereas investment advisers have an ongoing duty of care. Cambridge believes such concerns are misdirected. In Section 913 of Dodd Frank, Congress directed the SEC to review a standard of conduct for broker-dealers *and* investment advisers “when providing personalized investment advice about securities to retail customers.” As such, the Proposed Rules will allow retail clients to choose either business model with varying offerings, including investment needs, the frequency of account monitoring, the degree of account management and, Cambridge notes here, as the client’s needs and goals change, they have the flexibility to change how they work with their financial professional. As such, Cambridge believes maintaining the differences in business models is essential to preserving investor choice and access to a range of products and services.

#### **D. Disclosure Obligation**

Cambridge believes that the currently proposed double disclosure requirements – Regulation Best Interest Rule disclosures and Form CRS, serve a similar purpose and provide duplicative information. Instead, Cambridge believes that providing the Form CRS should fulfill the broker-dealer’s Disclosure Obligation under the Regulation Best Interest.

Cambridge supports a best interest standard of care which provides for a clear, concise and streamlined disclosure regime.

The SEC is proposing a Disclosure Obligation which would require a broker-dealer prior to or at the time of a recommendation to reasonably disclose to retail customers material facts relating to the scope and terms of the relationship and all material conflicts of interest associated with the recommendation. Cambridge agrees with such an approach, and has provided comments supporting reasonable disclosures in past rule proposal comment letters.

Cambridge notes, however, that today many broker-dealers provide to retail customers extensive information about their services, fees and conflicts of interest on their web-sites and in account opening information. Indeed, broker-dealers are subject to a number of specific disclosure obligations under the Exchange Act, including the antifraud provisions of the federal securities laws. That said, Cambridge supports the SEC’s efforts to address retail customer confusion relating to differences in financial service providers.

Furthermore, Cambridge supports the SEC's preliminary view that the broker-dealer model should not be encumbered with a conflict free rule regime. Cambridge believes a conflict free rule would likely result in limiting access or eliminating certain products which could cause harm to retail clients for whom those products are consistent with their investment objectives and best interest. Notably, the SEC provides that if specific requirements of Regulation Best Interest are met, it would not *per se* prohibit a broker-dealer from recommending transactions involving certain conflicts of interest. Accordingly, Cambridge supports the SEC's principles based approach to a Disclosure Obligation under Regulation Best Interest. Cambridge believes the proposed obligation reflects common goals such as clarifying the capacity in which a firm is acting, minimizing investor confusion, providing a clear understanding of fees and material conflicts of interest.

Cambridge favors a layered approach to disclosure, a regime designed to build upon an initial disclosure and to provide links to different sub-sections of key information. Many commentators, including the Financial Services Institute have argued that lengthy complicated notices have proven difficult for consumers to understand, and instead have advocated for notices that are simple, provide key context up front, and have pleasing design elements, such as large amounts of white space. Consumer testing by various financial regulatory agencies appear to support this contention.

For example, the Gramm-Leach-Bliley Act required financial institutions to provide information-sharing practices to their customers and to safeguard sensitive data. Since implementation of those consumer disclosures, many stakeholders argued the required notices were complicated, too lengthy and few consumers read or understood the information. Subsequently, consumer testing by federal financial agencies showed that consumers were more likely to read notices that were simple, provided key context up front, and had pleasing design elements, such as large amounts of white space. This testing indicated that notice in the form of a table was more effective than the long notice originally required by Gramm-Leach-Bliley, which performed poorly on all measures.

Cambridge believes the SEC's proposed disclosure requirements achieve the goal to facilitate retail customers' awareness of key information regarding their relationship with broker-dealers. However, Cambridge believes that the currently proposed double disclosure requirements are duplicative, will prove costly and will confuse retail investors. Instead, Cambridge supports the position that providing the Form CRS should fulfill the broker-dealer's Disclosure Obligation under Regulation Best Interest.

### **E. Care Obligation**

The SEC proposes, as part of Regulation Best Interest, a Care Obligation that would require a broker-dealer, when making a recommendation, to: 1) understand the risks and rewards associated with recommendation; 2) have a reasonable basis to believe that the recommendation is in the retail customer's best interest; and 3) have a reasonable basis to believe that a series of recommended transactions even if in the interest of the retail customer when viewed in isolation is not excessive and is in the retail customer's best interest when taken in light of the retail customer's investment profile.

Cambridge generally agrees with the SEC's proposed language and supports a best interest standard of care that includes a duty to provide advice and service with skill, care and diligence based upon the information known about their client's investment objectives, risk profile, financial situation and reasonable restrictions. Cambridge understands this standard draws on an investment adviser's duties of care and loyalty and other similar standards applicable under federal securities laws. However, for reasons set forth below, Cambridge believes the SEC should remove the term "prudence" from the proposed standard of care obligation.

The proposed Care Obligation would require that a broker-dealer have a reasonable basis to believe a recommendation is in the best interest of the retail customer and does not put the financial or other interests in front of the retail customer. The SEC has stated that the Care Obligation is intended to incorporate and enhance the existing suitability requirements under federal laws. As previously stated, Cambridge supports this approach.

Cambridge believes such a standard should incorporate the investor protections in the existing regulatory framework, including a broker-dealer's existing well-established obligations under an adequate reasonable basis, customer specific, and quantitative suitability. Cambridge believes such an approach will clearly enhance broker-dealers existing suitability obligations in such a manner that is consistent with what a retail customer would reasonably expect from someone acting in their best interest.

Nevertheless, Cambridge requests that the SEC provide greater clarity on specific standards and services as it relates to the Care Obligation. Cambridge is concerned that any lack of clarity as to what is included or excluded under a broker-dealer's care obligations related to this standard will encourage plaintiff's attorneys to file claims for failure to act in the best interest of the customer. For example, the SEC has provided that the standard will not necessarily require a broker-dealer to recommend the least expensive or least remunerative security, or will not apply to financial planning services where no personalized advice is given. Cambridge notes the proposed provisions providing these specific exclusions, but would strongly advocate for far greater guidance as to specific inclusions and exclusions.

Additionally, Cambridge requests greater clarity regarding how a broker-dealer exercises its Care Obligations. Cambridge is particularly concerned regarding use of the term "prudence" when referring to the Care Obligation. Investment Advisers who provide recommendations under ERISA have a fiduciary duty subject to the "Prudent Man" rule. Cambridge suggests that the SEC remove the term "prudence" from the requirement that broker-dealers exercise "diligence, care, skill and prudence" when making a recommendation, as the SEC has not indicated Regulation Best Interest is the equivalent standard of care as ERISA.

Cambridge believes distinct clarity as to the SEC's position on whether or not the broker-dealer Care Obligation creates a fiduciary duty is critical to the success of the proposed Regulation Best Interest. While Cambridge understands the best interest standard of care embodies fiduciary principles, and supports such principles in the Proposed Rules, Cambridge strongly encourages the SEC to clearly state its position that the Care Obligation is not a fiduciary duty, and that failure to meet the Care Obligation standard does not create liability for failure to meet a fiduciary duty. In

addition, Cambridge encourages the SEC to create a safe harbor for broker-dealers and individuals who satisfy the conditions of Regulation Best Interest and clearly confirm they are not subject to civil or regulatory liability.

## **F. Conflicts of Interest Obligations**

In general, Cambridge supports the SEC's proposed rulemaking efforts to enhance retail customers' ability to evaluate recommendations from broker-dealers.

While supportive of the SEC's efforts, Cambridge notes that FINRA rules and case law currently impose substantial disclosure requirements on broker-dealers. Cambridge's website provides multiple disclosures related to potential conflicts of interests. Moreover, Cambridge does not believe regulatory rulemaking can eliminate all conflicts. Many commentators have consistently argued the nature of a broker-dealer relationship cannot be rendered conflict free. Thus, requirements of excessive industry regulations will not help reduce investor confusion or provide greater clarity regarding recommendations made by broker-dealers.

Cambridge believes the SEC's goals of facilitating disclosure and mitigating material conflicts of interest, while minimizing additional compliance costs that may be passed on to the retail customers can best be accomplished by requiring broker-dealers to adopt written supervisory procedures to detect and manage conflicts of interest, to avoid those they can and take steps to mitigate the impact of those conflicts that can't be avoided.

Furthermore, Cambridge suggests that such supervisory procedures should be tailored to the broker-dealer's business model. As such, Cambridge supports a risk based compliance and supervisory approach limited to material conflicts of interest that are associated with a recommendation rather than conducting a detailed review of each recommendation of a securities transaction. Cambridge believes use of a risk based approach will provide broker-dealers with the flexibility to establish systems addressed to focus on specific areas of their business that may pose the greatest risk of non-compliance with the Conflict of Interest Obligations as well as the greatest risk of potential harm to retail customers through such noncompliance.

Accordingly, Cambridge supports the SEC's approach to identify, eliminate or mitigate and disclose conflicts of interest through building upon existing regulatory obligations drawing on the principles of the obligations that apply to investment advice in other contexts.

Under the proposed rule, broker-dealers would be permitted to exercise their judgment as to whether conflicts can be effectively disclosed and determine what conflict mitigation methods would be appropriate. Certain transactions such as receiving commissions or transaction based compensation, recommending proprietary products, principal transactions, or complex products would not be prohibited per se, but would require such conflicts to be reasonably disclosed.

Certain commentators argue the Proposed Rules will not ensure broker-dealers eliminate or mitigate conflicts. However, Cambridge believes such concerns are unsupported, and contends that the proposed principles-based approach will lead many broker-dealers to eliminate conflicts that cannot be managed. Cambridge recommends such commentators consider the numerous recent changes in conflict of interest compliance within the broker-dealer industry in response to

the DOL's now vacated Fiduciary Rule. Since proposed implementation of the Fiduciary Rule, many broker-dealers have leveled compensation and financial service professionals are receiving the same percentage of compensation regardless of what product or platform is selected. Additionally, many broker-dealers have eliminated sales contests, adopted the use of incentives based on product agnostic goals, and have restructured commission payouts and recruitment incentives. Importantly, Cambridge would ask the final rule to clarify that, subject to the Care and Disclosure Obligations, product agnostic incentives are permissible.

## **G. Key Terms**

The SEC proposes to define "retail customer" as: "a person, or the legal representative of such person, who: (1) receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer or a natural person who is an associated person of a broker or dealer, and (2) uses the recommendation primarily for personal, family, or household purposes. Notably, the SEC commentary here indicates this definition excludes recommendations related to business or commercial purposes.

Cambridge encourages the SEC to more closely match this proposed definition with the approach taken by FINRA by providing exemptions for broker-dealers from the customer-specific obligations with respect to "institutional accounts" including high net worth investors and sophisticated investors – provided certain conditions are met. Similar to rule-making the SEC has proposed in other areas of Regulation Best Interest, Cambridge advocates for harmonizing and building upon definitions with existing FINRA rules and guidance.

Likewise, Cambridge supports a final rule harmonizing the term "recommendation" in accordance with the FINRA guidance and case law. In determining whether a broker-dealer has made a recommendation, factors that have historically been considered in the context of broker-dealer suitability obligations include whether the communication "reasonably could be viewed as a 'call to action'" and "reasonably would influence an investor to trade a particular security or group of securities."

FINRA Rule 2111 sets forth an explicit standard for what constitutes a recommendation and recognizes "call to action" as the hallmark. Cambridge believes this definition is fully understood and in use by the industry. Moreover, the SEC appropriately excludes certain communications under this approach from the meaning of "recommendation" provided such communications do not include a recommendation of a particular security or securities. Other examples of exclusions, as recognized under existing broker-dealer regulation, would include providing general investor education.

Similar to certain comments above, Cambridge believes harmonizing the final rule with existing FINRA rules and guidance will provide clarity to firms, financial professionals, and investors.

Lastly, as a point of clarity, Cambridge requests that the SEC consider whether financial services entities and individuals who are not broker-dealers or registered persons, such as banks, insurance companies, credit unions and managing general agents, when providing advice or

recommendations on securities or securities like products, should be subject to the Best Interest Obligation. Cambridge believes that as financial products and services expand, retail clients will seek greater diversity and regulators will continue efforts to enhance customer protection. As such, all financial professionals should be equally subject to regulatory oversight when providing advice on securities or securities like products.

#### **IV. FORM CRS RELATIONSHIP SUMMARY**

##### **A. Introduction**

The SEC is proposing to require investment advisers and broker-dealers to deliver a written disclosure statement in the form of a relationship summary to retail investors – the Form CRS. In the case of an investment adviser, initial delivery would occur before or at the time the firm enters into an investment advisory agreement with the retail investor; in the case of a broker-dealer, initial delivery would occur before or at the time the retail investor first engages the firm’s services. Dual registrants would deliver the relationship summary at the earlier of entering into an investment advisory agreement with the retail investor or the retail investor engaging the firm’s services.

Cambridge supports a two-tiered layered approach to disclosure with a clear, concise well-crafted initial disclosure, no more than four pages, providing a high level of key information to the investor with hyperlinks to a more detailed and current disclosures on the firm’s website. Cambridge believes this two- tiered approach will help investors better understand marketplace differences and assist the investor in making informed choices for the services that best suit particular needs and circumstances. Cambridge believes the goals of the SEC in its proposed Form CRS conforms well to a layered approach, and supports the SEC’s contention the disclosure should be as short as practicable and utilize plain understandable language.

##### **B. Form CRS – Affiliated Entities**

As a threshold matter, throughout the Form CRS proposal, the SEC refers to the requirements of broker-dealers, investment advisers and dual registrants. The SEC refers to dual registrants as firms that are dually registered with the SEC as a broker-dealer and investment adviser offering both types of services. In articulating the proposed rules and requirements related to Form CRS, the SEC has provided certain requirements applicable to dual registrants. Cambridge is organized as two separate corporate entities, under common ownership and control. That is, as a broker-dealer and an investment advisor affiliated under the same corporate structure. Cambridge requests that the SEC provide clarity that all references to dual registrants are applicable to broker-dealers and registered investment advisers organized under a single corporate structure as affiliated entities.

##### **C. Double Disclosure Obligations**

The SEC has proposed requiring broker-dealers to provide two seemingly duplicative disclosures: the Disclosure Obligation in the proposed Regulation Best Interest; and the Form CRS Relationship Summary. Cambridge does not support the requirement for redundant and seemingly unnecessary double disclosures under the Proposed Rules.

The Form CRS would be in addition to, and not in lieu of, current disclosure and reporting requirements for broker-dealers. The document would alert retail investors to important information when choosing a firm and a financial professional, and facilitate comparisons across firms that offer the same or substantially similar services. The Disclosure Obligation would require a broker-dealer to disclose in writing the material facts relating to the scope and terms of the relationship and all material conflicts of interest associated with the recommendation. The former requires limited discretion in scope and presentation; the latter does not provide for any specific form, manner or frequency.

Cambridge submits that requiring two separate disclosures will confuse investors, create difficulties for firms to measure compliance with intended disclosure obligations, and increase costs with little additional benefit. Also, Cambridge respectfully posits that broker-dealers are already subject to numerous investor related disclosure obligations including retail communications and revenue sharing disclosures.

Moreover, the two broker-dealer disclosure requirements appears to serve similar purposes and, as such, Cambridge strongly advocates for the SEC to consider the Form CRS sufficient for purposes of compliance with the Disclosure Obligation under the Proposed Rulemaking Package. Cambridge recommends the SEC consider a two-tiered approach utilizing Form CRS.

In advocating for a two-tiered approach, Cambridge supports a client disclosure regime which starts with an initial disclosure document, no more than four pages, provided at the time of formal engagement between the broker-dealer and the retail customer. This initial disclosure would provide a high level summary of key information to the investor and hyperlinks to more detailed disclosures posted to the broker-dealer's website or otherwise made available to the investor in a format or formats they prefer. Cambridge notes that such links to critical investor information would not be unfamiliar to many retail customers today. For example, Cambridge's website currently provides hyperlinks to such key information as privacy policies, code of ethics, documents explaining the differences between commissionable accounts and advisory accounts and in-depth revenue sharing disclosures – to name a few. As such, Cambridge supports this approach and believes the Form CRS combined with a second tier of disclosures would provide many of the elements of the SEC's proposed Disclosure Obligation regime without the redundancies in the current proposal.

#### **D. Investment Adviser Disclosure Obligation**

Cambridge additionally notes, registered investment advisers would not be required to comply with the Disclosure Obligation in Regulation Best Interest and thus avoid the duplicative nature of the proposed disclosure regime; however, the relationship summary creates a number of redundancies with the required Form ADV, Part 2 for investment advisory relationships. Cambridge encourages the SEC to address elimination of duplicative information which will only further confuse advisory clients, create needless responsibilities on registered investment advisers and potentially increase the cost of services.

## **E. Presentation and Format**

The SEC is proposing broker-dealers be required to deliver a relationship summary to retail investors before or at the time the retail investor first engages the firm's services. In the case of an investment adviser, initial delivery would occur before or at the time the firm enters into an investment advisory agreement with the retail investor; dual registrants would deliver the relationship summary at the earlier of entering into an investment advisory agreement with the retail investor or the retail investor engaging the firm's services. Updates would be required following a material change.

As an initial matter, Cambridge applauds the SEC for its proposed rule allowing the delivery of disclosures electronically. The internet has become a critical part in the daily lives of many individuals including retail investors. Electronic delivery will facilitate the expansion of specific information relevant to a retail investor's search parameters, provide key information readily available at the click of a button, and facilitate ease of use in access to information on products, services, service providers and payment options. Importantly, electronic delivery will allow firms to provide timely information effectively and cost efficiently.

Cambridge supports a conflicts disclosure regime that can be provided once at the point of engagement and subsequently updated if substantive changes occur, rather than each time a retail client makes a transaction. Cambridge believes this would be less burdensome for firms, more effective for investors and likely less costly for all. Cambridge has held forth in past commentaries that disclosures at the point of a transaction may be untenable and likely ineffective in terms of costs and timely provision of key information. Cambridge also agrees with other many commentators who have argued that multiple disclosures do not provide enhanced investor protection.

In support of this position, Cambridge points to a recent recommendation of a subcommittee of the SEC's Investor Advisory Committee which expressed support for a layered disclosure including a summary disclosure document incorporating key information along with prominent notice regarding how to obtain a copy of the full report, as well as the ability in the electronic document to click through to more detailed disclosure on a particular topic. Cambridge agrees with these IAC findings.

However, Cambridge requests the SEC provide further guidance on what specific facts and circumstances would trigger delivery of a new relationship summary. Delivery requirements in the relationship summary proposed by the SEC also include a directive that firms should provide current retail customers with an updated relationship summary when a material change to the nature and scope of the firm's relationship with the retail client has occurred. The SEC provides several examples of such a material change, including, before or at the time a recommendation is made that the retail investor transfers from an investment advisory account to a brokerage account, or transfers from a brokerage account to an investment advisory account, or moves assets from one type of account to another in a transaction not in the normal, customary or already agreed course of dealing. The SEC provides further guidance that a determination of whether a change is material depends on specific facts and circumstances. Cambridge encourages the SEC to provide

a broad set of examples when the delivery requirement would be required, and believes such guidance is critical to the success of the Proposed Rules.

Cambridge supports the SEC's contention that the relationship summary should be as short as practicable, limited to four pages with a mix of tabular and narrative information.

As indicated above, Cambridge is in favor of an initial document providing a high level summary of key information with hyperlinks to more detailed disclosures. Such an approach will benefit both retail investors and firms by allowing firms to direct clients to a single location. Click-through technology will allow retail clients to quickly locate and view key information, while firms can provide timely disclosures, material changes and other key information in a cost effective manner.

Cambridge also questions the Proposed Rulemaking Package requirements that the presentation and format of the relationship summary is highly prescriptive with a one size fits all approach. Firms would have limited discretion in presentation of firm specific information. The SEC's purpose for limiting presentation formats across firms is to facilitate retail investor's ability to compare firms. Cambridge understands the SEC's intent, nevertheless certain concerns exist regarding investor confusion comparing multiple business models restricted to a common presentation format. Firms' product offerings, services, capabilities, restrictions and complexity vary widely. Cambridge advocates for additional flexibilities related to presentations of products and services, as well as, certain prescribed wording involving the conflicts of interest, and requirements to monitor investments. Cambridge does not object to addressing these matters in the disclosure but would ask for flexibility in addressing required information whereby prescriptive requirements could undermine or negatively impact the client relationship. Cambridge believes an important benefit of the relationship summary will be the conversations it facilitates between the client and investment professional.

## **V. RESTRICTIONS ON THE USE OF ADVISER OR ADVISOR**

The SEC is proposing to restrict broker-dealers or any natural person who is an associated person of such broker-dealer, when communicating with a retail investor, from using as part of its name or title the words "adviser" or "advisor" unless it is registered as an investment adviser under the Advisers Act or with a state, or any natural person who is an associated person of such broker or dealer who is also a supervised person of a registered investment adviser. This restriction would not apply to registered investment advisers and their supervised persons providing investment advice on their behalf.

Cambridge supports the SEC's efforts to help retail investors distinguish between who is and who is not an investment adviser, understand the standard of care owed to them, and select the business model that best suits their financial goals.

However, Cambridge would also point to protections provided to investors by applicable provisions of the federal securities laws and FINRA rules. Broker-dealers can face liability for intentionally, recklessly, or negligently misleading investors about the nature of the services they are providing through, among other things, materially misleading advertisements or other

communications that include statements or omissions, or deceptive practices or courses of business.

Moreover, Cambridge is concerned that restricting the use of certain titles may lead to the adoption of other similarly misleading titles rather than solving the problem. Most of Cambridge's financial professionals are affiliated with Cambridge in both a registered representative and investment advisor representative capacity. Cambridge believes the most effective approach should be based on disclosure, and to allow existing rules governing communications with the public to regulate the use of titles to ensure they are not misleading. Basing restrictions on titles will likely lead to investor confusion, and in the long run, require further rulemaking as variations on certain titles will likely surface. Cambridge believes the existing rule regime coupled with the disclosure regime the SEC has proposed will sufficiently ensure that the retail investor understands the capacity in which they are working with the financial professional, and therefore, restriction on the usage of the term "adviser" is unnecessary.

Under the Rulemaking Package, dually registered firms would be permitted to use the terms in their title, but only associated persons of the firm who are supervised by a registered investment adviser and who provide investment advice on their behalf may use them. However, the proposed rules do not indicate whether or under what circumstances financial professionals associated with firms who have a broker-dealer firm and a registered investment adviser firm who are affiliated under common ownership and control, but are not dually registered could use "adviser" or "advisor" in its name or title when communicating with retail investors. Cambridge requests that the final rule specify that firms that are affiliated in this way and their associated persons will be treated as dual registrants or dual hatted professionals.

## **VI. PROPOSED INTERPRETATION OF INVESTMENT ADVISER FIDUCIARY DUTY**

Cambridge supports comprehensive and effective compliance policies and procedures. Cambridge believes greater clarity on all aspects of an investment adviser's fiduciary duty will improve the ability to craft such policies and procedures, as well as, support the elimination of confusion for retail clients and investment professionals.

The SEC provides in the proposed rule that "an investment adviser's fiduciary duty under the Advisers Act comprises a duty of care and a duty of loyalty." The SEC cites a Congressional intent to "eliminate, or at least expose, all conflicts of interest which might incline an investment adviser – consciously or unconsciously – to render advice which is disinterested." The SEC notes, however, that the fiduciary duty to which advisers are subject is not specifically defined in the Advisers Act or in SEC rules. Cambridge believes compliance with a concept that is not clearly defined is a problematic undertaking, and encourages the SEC to provide greater clarity in its proposed fiduciary duty interpretation.

A key component of an investment adviser's fiduciary responsibility is to disclose, mitigate or eliminate conflicts of interest. The current proposed interpretation does not specify when a disclosure could mitigate a material conflict or which conflicts would be disclosable or non-disclosable. Cambridge requests guidance, in the form of examples, which would identify conflicts

that can and cannot be mitigated through disclosure, and examples of conflicts that can arise and under what facts and circumstances such conflicts can exist. Cambridge also requests guidance as to what aspects of an investment adviser's fiduciary duty the SEC considers "relinquishable", "waivable" or subject to limitation, and which part the SEC considers "non-waivable."

## **VII. AREAS OF ENHANCED INVESTMENT ADVISER REGULATION**

### **A. Continuing Education for Investment Advisers:**

Cambridge believes continuing education plays an important role in addressing ongoing competency and professional development in the financial services industry. Cambridge dually registered advisers currently comply with FINRA Rule 1250 – Continuing Education Requirements, and many advisers have additional designations such as CFP, CFA and CPA. Cambridge encourages the SEC to consider current firm and professional continuing education requirements in considering any proposed requirements of continuing education. If such rules are mandated, Cambridge would advocate for continuing education to have the flexibility for firms to create programs based on their current business model and existing continuing education practices. As such, Cambridge believes that continuing education requirements should mirror FINRA Rule 1250, avoiding duplication of training topics and allowing firms to customize training based on their business model. Importantly, Cambridge strongly advocates for a specific exemption from any SEC continuing education requirements for investment advisers with professional designations that require testing and ongoing continued education requirements. Cambridge believes that financial services designations that include annual continuing educational requirements to maintain good standing by those designating organizations should fulfill the SEC's proposed goals in supporting continued education without specific SEC requirements.

### **B. Federal Licensing for Investment Advisers**

Cambridge notes the SEC's consideration in federal licensing requirements, and recognizes professional licensing provides retail clients with an additional tool in reviewing potential investment adviser relationships. However, compliance with licensing requirements would increase costs to both firms and investment professional, and potentially to retail investors. As such, any effort in federal licensing should be coordinated with the states and the North American Securities Administrators Association to avoid conflicting regulatory requirements and burdens of compliance. Cambridge would encourage the SEC to consider investment adviser representatives who have been in the industry for a certain period of time to be grandfathered into any proposed licensing requirement.

### **C. Investment Adviser Account Statements**

Cambridge does not recognize the need for additional requirements for investment adviser account statements. The requirement of account statements in addition to custodial statements would be duplicative and costly to both firms and retail investors without any foreseeable additional benefit. Investment advisers currently provide detailed information on fees, provide

advisory agreements, the Form ADV disclosure brochures and fee receipts. Cambridge believes requiring account statements would not provide retail investors with any additional benefits but would add additional costs to firms.

#### **D. Financial Responsibility Requirements**

Cambridge recognizes the SEC's concerns that registered investment advisers are not subject to net capital requirements comparable to those applicable to broker-dealers, and that when serious fraud by an adviser occurs, an adviser may not have sufficient assets to compensate clients for their loss. As such, Cambridge could support a fidelity bonding requirement for advisers to meet client obligations. However, Cambridge believes consideration should be given to firms who already have such requirements for their broker-dealer business to not bear additional financial burden in consideration of the combined requirements.

### **VIII. CONCLUSION**

Cambridge supports the SEC's Proposed Rulemaking Package with certain modifications because it provides a clear standard of care enhancing existing broker-dealer conduct obligations to act in the best interest of the retail customer with defined guidelines for managing conflicts and aligning the standard of care with investor protection, while preserving choice and access to existing products, services, and payment options. Cambridge supports the SEC's effort to integrate the proposed standard of care into investor protections provided by the existing regulatory framework. Moreover, Cambridge supports the SEC's proposed principles based approach to a broker-dealer standard of care which will allow firms to tailor their practices to their business models and retail clients.

Cambridge does not support the separate and duplicative disclosure requirements as proposed in Regulation Best Interest and Form CRS. In the alternative, Cambridge advocates for a two-tiered layered approach to disclosure, delivered electronically and built upon an initial short and concise disclosure with hyperlinks to key information more detailed and current disclosures on the firm's website

Cambridge commends the SEC for stating it does not believe the Proposed Regulation Best Interest would create any new private right of action, nor intends such a result; and appreciates the SEC's recognition that a broker-dealer's financial interest can exist while conflicts can be addressed adequately to ensure that the broker-dealer's interests can align with those of the customer.

Cambridge has consistently supported the establishment of a thoughtful, well-crafted and effective standard of care and meaningful disclosures. Thus, with the consideration of certain reservations, Cambridge supports the Rulemaking Package. Cambridge appreciates the opportunity to offer comments and alternative recommendations on the Proposed Rulemaking Package, and looks forward to working collaboratively with the SEC during this comment period to engage in the process, and ensure that all retail investors are provided access to high quality, affordable, personalized advice from the financial professional of their choice regardless of their

unique needs or account size. Cambridge would be happy to further discuss any comments or recommendations in this letter with the SEC.

Respectfully Submitted,

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