



VIA ELECTRONIC MAIL: [EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov)

March 17, 2017

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attention: Fiduciary Rule Examination

**Re: Proposed Rule; 60 Day Extension of Applicability Date  
Department of Labor Conflict of Interest Rule and Related Proposals  
RIN-1210-AB79**

To Whom It May Concern:

Cambridge Investment Research, Inc. and Cambridge Investment Research Advisors, Inc. (collectively “Cambridge”) appreciate the opportunity to comment on The Department of Labor’s (the “Department”) proposal to extend for 60 days the applicability date (the “Delay”) of the rule entitled Definition of the Term “Fiduciary;” Conflict of Interest Rule - Retirement Investment Advice, published in the Federal Register on April 8, 2016, effective on June 7, 2016, with an applicability date of April 10, 2017 (the “Rule”).

Before sharing comments on the Delay, Cambridge would like to provide additional information about itself. Cambridge is a privately-controlled financial solutions firm focused on serving independent financial services professionals (“advisors”) and their investing clients. Cambridge’s national reach includes: Cambridge Investment Research Advisors, Inc. – a corporate Registered Investment Advisor (“RIA”) federally registered with the Securities and Exchange Commission (“SEC”); and Cambridge Investment Research, Inc. – an independent broker-dealer, member FINRA/SIPC. Cambridge is among the largest privately-controlled independent broker-dealers/RIAs in the country supporting over 3,000 advisors nationwide who serve their clients as

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investment advisor representatives and registered representatives, choosing to use either Cambridge's RIA or their own RIA.

Independent financial services professionals are not employees of an independent financial services firm like Cambridge – they are independent contractors and entrepreneurial business owners. They have the freedom to structure their business in a manner that best serves their investing clients. Independent financial professionals utilize a broker-dealer and/or an RIA who provides services that include processing investment business, marketing assistance, practice management, and education. In addition, a broker-dealer and/or an RIA holds responsibility for regulatory compliance and adherence to securities laws.

There are several types of broker-dealers, and some are subsidiaries of commercial banks, investment banks, and investment companies. But, independent broker-dealers are different from those firms because independent broker-dealers generally do not underwrite securities, they do not create research, and they do not engage in investment banking. Cambridge Investment Research, Inc. is an independent broker-dealer and allows financial professionals to offer non-proprietary products, such as mutual funds or life insurance, from a variety of companies. Cambridge has long been dedicated to the open architecture relative to product choices, and many believe this enables access to the broadest array of product choices across the industry. Many independent financial professionals choose to work with independent broker-dealers in order to offer their investing clients unbiased investment advice and objective financial and retirement planning guidance.

The unbiased investment advice and objective financial and retirement planning guidance may be based on compensation in the form of fees, commissions, or both. Cambridge has long been recognized as a pioneer of the hybrid fees and commissions model, and as an independent broker-dealer Cambridge was an early adopter of the fee-based approach in the early 1990's. While many independent financial service professionals transact business under a fee-based fiduciary standard established under the Investment Advisors Act of 1940 and state laws, Cambridge continues to support choice regarding fees and commissions because Cambridge believes advisors and their investing clients are best able to make decisions together following analysis and discussion of the relevant needs for each investing client, including servicing expectations and related fees for the services delivered. In either case, Cambridge's advisors approach the overall relationship in a holistic, consistent manner for the investing client.

Cambridge believes in, and supports, the value a trusted advisor brings to their investing clients. This value includes serving as a wealth manager and financial behavior coach for the investing client as the trusted advisor brings the experience and financial stewardship needed to balance the emotions on the part of the investing client – emotions which left unchecked can negatively impact their long-term goals and objectives. These trusted advisors also help their investing clients understand the interplay of decisions. In addition, investing clients can benefit from the tax-conscious guidance and discipline a trusted advisor can provide.

In supporting over 3,000 advisors throughout the country, Cambridge serves more than 400,000 individual retirement accounts and retirement plans, as well as several hundred thousand non-retirement accounts. Cambridge is proud that 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 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 personalized connection Cambridge has with main street advisors; and the personal relationship these advisors have with their investing clients – many of whom also live and work in the same communities. Cambridge hopes this perspective will help the Department better understand the following comments regarding the proposed Delay of the Rule.

Cambridge acknowledges and appreciates the Department's original underlying motivation behind the Rule to protect the retirement investor. Cambridge has consistently supported the implementation of a thoughtful, well-crafted, and effective uniform standard of care applicable to all financial services professionals providing investment advice to clients, regardless of the type of investment account a client may have. Given that Cambridge supports a uniform standard of care for all investment accounts, Cambridge believes the SEC is in a better position than the Department to create and implement a rule that accomplishes this goal.

While the Rule is well-intentioned, Cambridge believes there are significant unintended negative impacts related to the Rule and its overly tight deadline for partial and full applicability. Cambridge's efforts to assess and comply with the timeline of the Rule have polarized its focus and commandeered its resources for nearly a year, forcing it to shift valuable resources away from serving the ongoing needs of over 3,000 advisors and their many thousands of investing clients in accordance with the highest levels of quality and service Cambridge strives to deliver.

The ambiguity, lack of clear guidance and rushed nature of the Rule's implementation causes Cambridge to believe the long term impacts of the Rule were not fully thought through and evaluated regarding the effects of the Rule in:

- Creating significant liabilities for firms above and beyond any other segment of the relationship with an investing client through the Department's overreach and creation of a private right of action;
- Causing abandonment of investing clients because of overburdensome service barriers;
- Driving quality advisors out of the industry;
- Limiting investment choices for investing clients due to inadequate product options;

- Creating confusion among clients, advisors, broker-dealers, RIAs, product providers, and custodians because of a different and completely new standard of care,<sup>1</sup> additional disclosures, new compliance obligations, new products, and changing procedures;
- Compounding compliance obligations by creating overburdensome requirements, forcing development of manual and automated processes; and
- Being overly complex and lacking full clarity while reflecting potential unintended consequences for plan participants and beneficiaries, IRA owners, and plan fiduciaries.

After almost 11 months of effort at a breathtaking pace, Cambridge faces the remaining few weeks left to prepare for April 10<sup>th</sup> with a firm belief that partial applicability of the Rule on April 10, 2017 will harm many, many investing clients, as well as firms like Cambridge and its advisors, due to confusion, lack of services, products, education, and a reduction in access to advice in the marketplace.

That said, and more specifically for the reasons set forth below, Cambridge supports the proposed Delay and believes it would be prudent to extend the partial applicability date of April 10, 2017 and the full applicability date of January 1, 2018 an additional 12 months or more to evaluate the Rule to determine whether it should be revised or rescinded in accordance with the President’s Memorandum to the Secretary of Labor, dated February 3, 2017 (the “President’s Memorandum”).

**I. The Delay will avoid potential confusion, reduce costs and provide more time to enhance the experience for investing clients when certainty exists as to the Rule’s final form.**

Cambridge believes the Delay will help provide the necessary time to more thoroughly address the uncertainty of the Rule as a result of the President’s Memorandum. Failure to implement a Delay will create confusion for investing clients and the entire industry if the Department ultimately decides to revise or rescind the Rule after firms like Cambridge and its

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<sup>1</sup> References to a new standard of care are intended to recognize there are already several regulatory definitions in existence, with each detailing a distinct definition as well as separate compliance requirements. Cambridge is prepared to expand further on this point because it is important to recognize a complex regulatory regime exists, especially in terms of defining fiduciary. Independent broker-dealers such as Cambridge, and its advisors, are currently subject to comprehensive legal obligations and regulations under federal and state securities laws, rules, and regulations. This includes the SEC through the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940 along with respective rules and regulations. In addition, this also includes the Financial Industry Regulatory Authority (FINRA) self-regulatory organization rules, oversight, and examinations. In addition, statutory language applies related to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Further, the Employee Retirement Income Security Act of 1974 (ERISA) has been a key driver for retirement regulation for more than four decades. The Rule is adding another investment advice fiduciary definition beyond what is defined under ERISA. In short, multiple definitions for standard of care exist and they are typically referenced across the industry as Suitability, ERISA, SEC or State advisory, and now the DOL Fiduciary Rule.

advisors start implementing the Rule's requirements. While Cambridge will comply with the Rule's ultimate requirements if and when it is applicable, Cambridge does not intend to adhere to certain requirements implemented prior to any subsequent revisions or rescission of the Rule if those requirements are no longer applicable. As an example, failure to implement the Delay will cause Cambridge to incur tens of thousands of dollars in costs and expenses to print and mail the best interest contract exemption transition disclosure ("Transition Disclosure") to thousands of clients across the country. Upon receiving the Transition Disclosure, the clients will need to be educated on what it means and what firms like Cambridge and its advisors are required to do for investing clients under the Rule. If the Department ultimately decides to revise or rescind the Rule, Cambridge will be required to incur additional costs and expenses to inform clients of the new requirements. If the new requirements are even moderately different, Cambridge believes clients will be profoundly confused as to why and how it is possible that Cambridge and its advisors are no longer complying with the original requirements. This will create skepticism for the industry as well as the Department as investing clients search for answers. Cambridge believes a Delay is the only way to ensure the investing clients' overall experience is positive and that investing clients understand the new options and processes driven by the Rule. Cambridge believes appropriate education is an important part of the experience, and more time to prepare relevant information that is easy to understand will be beneficial to investing clients once the Department determines if the Rule will remain the same, be revised, or rescinded.

## **II. Additional time is necessary for investing clients and their advisors to understand the Rule.**

It is not possible to ensure the best experience for investing clients without first training and expanding the experience for advisors. The significance and complexity of the Rule, which includes the introduction of a completely new standard of care that differs from the multiple existing standards of care and their separate compliance requirements, requires more time for the industry to fully understand the Rule and the new products and procedures required. Since the Rule was announced in April of 2016, Cambridge has been assessing the Rule and actively engaged in educating and sharing relevant information to the extent possible with its advisors; however, the ambiguity, lack of clear guidance and rushed nature of the Rule mitigates the effects of such an initiative. Further the uncertainty created by the President's Memorandum which may lead to revisions to or a rescission of the Rule inhibits the industry and firms like Cambridge from providing clarity to advisors and clients through clear education given that the Rule may be modified in the future. Once certainty is provided around the Rule, firms like Cambridge will need time to work more fully with collaborative product providers and custodians across the industry to provide advisors with the additional education and information they need to best serve the investing clients. Therefore, the Delay is essential to alleviate these problems.

### **III. Technology development requires additional time to be the most effective.**

Enhanced technology is required to effectively support the Rule, and the abbreviated time frame driven by the Rule forces firms like Cambridge to begin with manual processes because automated solutions are not yet available due to development time. In an effort to be compliant, a manual approach will be used if a Delay is not implemented, but it is less efficient and effective over the long term for complex regulation. Technology is necessary for a better investing client experience to automate for the delivery of new disclosures as well as recommendations for the client. Additionally, given the uncertainty created by the President's Memorandum which may lead to revisions to or a rescission of the Rule, technology requirements may change, causing additional delays and increased costs for firms like Cambridge to develop and implement appropriate technological solutions. With the Delay, Cambridge believes more time would allow further development of appropriate technology for the benefit of everyone involved, especially investing clients and the advisors they need to support their needs.

### **IV. Technology development is costly and time is needed to absorb costs.**

Cambridge believes compliance with the Rule is best achieved with enhanced technology in order to preserve process related efficiencies and manage the significant additional risk while significantly expanding archival of detailed documentation. Such an initiative likely represents one of the most costly endeavors undertaken by many firms across the industry and the ability to spread costs over a period of time ultimately will have a positive impact on the ability to serve the needs of investing clients. As Cambridge has indicated in the public, it anticipates technology and related costs necessary to meet its obligations under the Rule will approach \$20 million. These costs could increase as Cambridge gets further into development and continues to better understand the specifics related to observing the requirements of the Rule for Cambridge and its advisors to serve investing clients. The significant scope of increased costs will be felt by everyone involved in the chain of services across firms, and will likely include a transference of some level of costs to investing clients. The existing lack of clarity and vagueness of the Rule combined with the uncertainty created by the President's Memorandum which may lead to revisions to or a rescission of the Rule, further compounds overall harm to all firms, and this ultimately impacts investing clients. The Delay would help firms like Cambridge, advisors and investing clients avoid the negative consequences identified above.

### **V. A Delay will allow needed time to preserve choice for investing clients.**

Investing clients have unique needs and must define their own preferences in how they wish to receive advice; and they deserve choice in terms of solutions that best meet their needs. More time is needed to preserve the right of choice for investing clients while enhancing consumer protection. An appropriate breadth of products compliant with the Rule has not yet been developed across the industry. Without the Delay and additional time to allow product development, investing

clients will have very limited options without access to experienced advice to interpret the marketplace confusion created by the Rule.

**VI. New products and procedures are in development, but more choices are needed for investors.**

The timeline for implementation of the Rule is too short given the complexities of the new regulations and the impacts of new requirements on products. An unintended negative impact is very few options will be available to investing clients if the partial applicability date of April 10<sup>th</sup> stands. Without being forced to rush, the Delay will enable product providers to build out appropriate products in accordance with more clarity regarding the requirements of the Rule.

**VII. The Delay is needed for product development and education to avoid harm to smaller investing clients.**

Without a delay, time has been too limited for the development of product options focused on meeting the needs of smaller investing clients. The requirements of the Rule are driving new products and structures, yet the abbreviated time frame driven by the Rule may actually hurt smaller investing clients with an unintended consequence of too few options, and perhaps less well thought out options, for their unique needs. Just one example is that the Delay would allow more time across the industry for development of an appropriate breadth of products suitable for the needs of the smaller investing clients, which is typically investing clients with less than \$25,000 in investable assets. These individuals also deserve options to help them save appropriately for their retirement planning goals and get access to independent and objective advice. In addition, many advisors have indicated they may not be willing to accept the additional risks or invest the additional time necessary to comply with the Rule for accounts of smaller investing clients.

Smaller investing clients need time to fully understand and discuss new product options with advisors of their choice and to understand the options that may or may not be available as firms implement the Rule. Cambridge believes the Delay will allow more time for both product and servicing option developments and the subsequent necessary education smaller investing clients deserve.

**VIII. Education and information must be prepared regarding transparency of fees.**

The Rule is driving a new evolution in the transparency of fees, and time is needed for investing clients to be better educated on what this means to them as they plan for their retirement. Many, if not most investing clients utilize their trusted advisor as a key resource for information. Consumer financial media is another outlet they reference. Both the consumer media and advisors need time to understand the new requirements regarding transparency of fees so they in turn can better help all investing clients, including smaller investing clients as they may have even more limited access to advice as an unintended consequence of the Rule. The existing lack of clarity

and vagueness regarding the Rule increases the likelihood of confusion and limits the investing client in understanding what they need to know to make important decisions about their financial well-being and retirement planning.

**IX. Delay of the Rule will allow more time to consider the merits of revision or rescission of the Rule.**

Cambridge supports the intent of the Rule to enhance consumer protection, but this must be done while preserving the right of choice for investing clients. With this in mind, at a minimum there are elements of the Rule that could be simplified and improved. More importantly, Cambridge believes a uniform standard of care applicable to all investment accounts would be valuable to all investing clients, not just retirement investors. Cambridge, under separate cover, is looking forward to responding to the Department's requests for comment to revise or rescind the existing Rule.

**X. If given the opportunity Cambridge stands ready to comment more fully on its positions related to the simplification and improvement of the Rule; but for this Cambridge needs more time.**

Regardless of intent, the Department did not solve the original problem characterized as a retirement crisis with the Rule. For example, addressing conflicts of interest through disclosures and leveled compensation will not create more retirement savers. If given time and opportunity, Cambridge can be prepared to share available research about positive impacts on the saving efforts by individuals, as well as the positive impacts on more individuals actually saving for their retirement.

**XI. Conclusion.**

Cambridge supports the Department's stated purpose of the Rule to increase retirement investor protection; however, Cambridge does not support the Rule as written. As such, Cambridge continues to advocate the implementation of a well-crafted and effective uniform standard of care applicable to all financial services professionals providing investment advice to retail clients, concise and meaningful disclosures, preservation of commission and fee compensation structures, and associated rule exemptions allowing advisors to provide effective retirement investment advice and education to investing clients without exposure to potential class action liability.

To further press the issues, Cambridge believes the April 10, 2017 partial applicability date, and the full applicability date of January 1, 2018, present significant challenges in meeting the requirements presented by the Rule due to the complexity of the Rule, and the much abbreviated time frame provided for implementation.



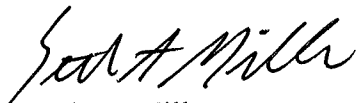
The twelve month time frame was grossly insufficient for assessment, development, education, and implementation because:

- The scope and complexity of the 1,300 plus pages reflecting the Rule and its intended effect on hundreds of thousands of investing clients required a significant amount of time just to properly assess the intent of the Rule and the regulatory requirements, and it appears at least 24 to 36 months would have been more appropriate for implementation prior to applicability dates to better resolve issues with the Rule regarding vagueness and lack of clarity;
- The many months required for assessing the intent of the Rule significantly impacted and overly limited critical time needed across the industry to define the most appropriate solutions for the best interests of investing clients, including development of leveled compensation products necessary to meet the needs of investing clients under the BICE;
- The limited time line of the Rule has driven firms and advisors to develop overly rushed processes and procedures related to the new solutions and requirements with too many manual and too few automated for efficiency and effectiveness;
- Adequate time has not been available for extensive education of financial advisors on their new regulatory obligations, and financial professionals are an important part of the solution for investing clients which includes the role of the advisor in educating investing clients on the few options available to them in observance of the Rule;
- These impacts driven by the overly short timeline are leading numerous advisors to consider choosing not to serve certain segments of the investing public;
- The challenges related to education and awareness are further compounded by conflicting news reports over an extended time frame about the fate of the Rule; and
- More time is needed to assess revision or repeal of the Rule because enhancing consumer protection must be done while preserving the right of appropriate choice for investing clients; and the best approach is a uniform standard of care applicable to all investment accounts for all investing clients, not just retirement investors.

Cambridge appreciates the opportunity to offer comments regarding the potential Delay of the Rule. Cambridge takes its role seriously in serving trusted advisors and their investing clients, and believes being dedicated to objectivity while striving to provide a higher standard of care for retirement and non-retirement investors is critical to positively reshaping financial services to

better respond to the needs of investing clients. Cambridge would be happy to further discuss any of the comments or recommendations in this letter with the Department.

Respectfully,

A handwritten signature in black ink, appearing to read "Seth A. Miller". The signature is written in a cursive style with a large initial "S".

Seth A. Miller

General Counsel

Senior Vice President, Chief Risk Officer