CAMBRIDGE
INVESTMENT RESEARCH, INC.

VIA ELECTRONIC MAIL: EBSA.FiduciaryRuleExamination@dol.gov

April 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: RIN 1210-AB79; the Delay of File Number 29 CFR Parts 2509 and 2510 Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice; DOL Fiduciary Rule

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") consideration to Rescind or Repeal 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 original applicability date of April 10, 2017 and a delayed applicability date of June 9, 2017 (the "Rule").

Cambridge has thoroughly evaluated the Rule in accordance with the President's Memorandum to the Secretary of Labor, dated February 3, 2017 (the "President's Memorandum"). It is clear that the Rule, as written, is inconsistent with the priorities set forth in the President's Memorandum to empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home or saving for college, and to withstand unexpected financial emergencies. In light of this, Cambridge supports an immediate repeal of the Rule and strongly supports the Securities and Exchange Commission ("SEC") implementing a uniform standard of care for all investment accounts to accomplish the priorities set forth in the President's Memorandum.

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BACKGROUND ON CAMBRIDGE

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 more than 700,000 of their clients as 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 because of their ability to provide investment advice and holistic financial and retirement planning guidance without any expectation that certain products must be recommended.

Investment advice and financial and retirement planning guidance may be based on compensation in the form of fees, commissions, or both, with an independent financial professional continuing to focus on providing advice and guidance aligned with the client's best interests. 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, independent financial professionals with Cambridge typically 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 over 300,000 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 Department's consideration to Rescind or Repeal the Rule.

DISCUSSION

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 the significant unintended negative impacts related to the Rule and its overly tight deadline for partial and full applicability – even with the recent 60 day delay of the applicability date to June 9, 2017 – outweigh the benefits the Department was trying to accomplish. Cambridge's efforts to assess and comply with the timeline of the Rule have polarized its focus and commandeered its resources for over a year, forcing it to shift valuable resources away from serving the ongoing needs of over 3,000 advisors and more than 700,000 of their investing clients in accordance with the highest levels of quality and service Cambridge strives to deliver.

Cambridge estimates that as of the date of this letter, the total costs and expenses incurred by Cambridge and its advisors to prepare for implementation of the Rule is over $10.2 million. Additionally, Cambridge estimates it will cost another $5 million to $10 million for Cambridge and its advisors to fully implement the Rule. Most importantly, Cambridge estimates it will cost nearly $17 million in annual recurring costs for Cambridge and its advisors to comply with the various requirements of the Rule going forward. As we detail later, Cambridge estimates the private right of action and exposure to class-action lawsuits as a result of the Rule will cause Cambridge and its advisors to be subject to a minimum of $250,000 in additional legal liability on an annual basis and that its errors and omissions insurance premiums will increase by more than $600,000 on an annual basis. This means Cambridge expects costs and expenses incurred by the end of 2017 to be nearly $15 million to $20 million, with another $17 million or more to be spent annually to meet ongoing requirements of the Rule.

Such costs underscore the unduly burdensome nature of the Rule's impact on firms like Cambridge and highlight the untenable financial impact to the industry. 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 – these liabilities could likely run in the multi-millions of dollars and far surpass existing costs of overall compliance with the rule;
- Causing abandonment of investing clients because of overburdensome service barriers and fear of liability due to the threat of increased litigation;
- Causing disruptions in the industry that has and will continue to drive quality advisors out of the industry and abandoning investing clients;
- 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,[1] additional disclosures, new compliance obligations, new products, and changing procedures;

[1] 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

- 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 12 months of effort at a breathtaking pace, Cambridge faces the remaining weeks left to prepare for June 9th with a realization that even with the delay of partial applicability of the Rule to June 9, 2017 many, many investing clients will be harmed, and firms like Cambridge and its advisors will also be harmed, due to a reduction in investment advice and offerings, lack of services and products, increased costs, and increased litigation that will increase prices to investing clients.

I. Investing Clients Will Have Reduced Access to Affordable Retirement Savings Advice and Offerings As a Result of the Rule, Especially Small Investors.

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. In order for Cambridge and its advisors to serve the best interests of investing clients, it is paramount that they maintain a broad array of investment platforms and product offerings and have the ability to treat each client individually so investment strategies can be tailored to meet each client's specific circumstances. Flexibility in investment strategies and compensation structures allow advisors to develop unique investment plans for each and every one of their clients. The proscriptive and burdensome requirements of the Rule have forced firms like Cambridge to limit this flexibility which will reduce access to affordable retirement savings advice and offerings for investing clients, especially small investors.

A. Investment Platforms Are Being Limited, Not Expanding.

The Rule created a new class exemption called the Best Interest Contract Exemption ("BICE") that allows financial advisors and financial institutions to receive otherwise prohibited compensation for services provided in connection with recommendations related to certain types of accounts. Under the Rule, a financial advisor and a financial institution desiring to receive variable compensation are required to enter into a legally enforceable contract with the retirement investor acknowledging status as a fiduciary, with representations and warranties contracting to

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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.

the adherence to impartial conduct standards; attesting to the assessment of reasonable compensation; warranting that the broker-dealer and advisor will not provide any misleading statements regarding assets, fees and conflicts, attesting to adherence of all federal and state laws, adherence to written policies to mitigate conflicts, and to ensure adherence to such policies and disclose all conflicts. Furthermore, the contract may not contain any provision disclaiming liability from a violation of any contractual term or the waiver or qualification of the investor's ability to enter into a class action suit against the advisor or the firm for any violation of the contract's terms. Finally, the contract would create a private right of action that previously did not exist under federal law for IRA owners.

Given the onerous requirements and increased liability that will result from utilizing the BICE, Cambridge has decided that, with limited exceptions, its financial advisors will no longer be able to use all of the platform options otherwise available today for each and every investing client if the Rule is fully implemented. Specifically, Cambridge's financial advisors will not be able to offer financial advice to investing clients using the Best Interest Contract if the account size is less than $25,000 unless the average account size for the household is greater than $50,000. As a result of this impending policy, many investing clients and advisors will be adversely effected, resulting in significant disruption regarding needed access to advice by investing clients.

Cambridge's financial advisors may be required to convert many commissionable accounts to an advisory platform that complies with the BICE level fee fiduciary requirements. This will cause significant disruptions for investing clients and financial advisors given they will be required to execute new agreements related to the provision of investment advice in accordance with the requirements of the Investment Advisors Act of 1940. Of the more than 400,000 individual retirement accounts and retirement plans serviced by Cambridge and its financial advisors, Cambridge estimates that more than 35,000 accounts have already been converted to a level fee fiduciary account. This number will increase dramatically as Cambridge implements provisions to comply with the Rule.

One of the biggest disruptions that will impact investing clients is that if they do not meet the requirements established by Cambridge to use the Best Interest Contract, they will be forced into a small account, level fee option, with significant restrictions or they will not be served at all. This is not consistent with the President's Memorandum because there will be limited investment options available to these clients who will be required to use a pre-established model based on their investment profile. This eliminates the ability of financial advisors to develop and implement investment strategies tailored to meet each client's specific circumstances. Losing this flexibility will decrease access by investing clients by limiting these investing clients to certain retirement savings offerings, retirement product structures, retirement savings information, and related financial advice. These individuals deserve options to help them save appropriately for their retirement planning goals and to access independent and objective advice.

B. Quality Financial Advisors Are Abandoning Investing Clients and the Industry.

It is undeniable that since the Rule was first published in April 2016, many financial advisors across the industry began culling out their client relationships based on account size and weighing their options of exiting the profession entirely due to the overburdensome service barriers and fear of liability due to the threat of increased litigation. Cambridge has observed this repeatedly over the past 12 months. Many advisors in the industry have started transitioning away from servicing clients who have small accounts and have indicated they will be unwilling to service clients whose investment needs or desires require use of the Best Interest Contract due to the additional risks it creates and the additional time necessary to comply with the Rule. Other advisors have taken steps to leave the profession, whether through accelerated retirement or moving on to other professions.

Fewer investment platforms and fewer advisors servicing investing clients are realities of the Rule, whether by choice or as a result of safeguards established by firms to comply with the Rule. Neither of these realities are good for investing clients, and they will have reduced access to affordable retirement savings advice and offerings as a result of the rule, especially small investors. For these reasons, Cambridge supports a repeal of the Rule to ensure investing clients will remain empowered to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home or saving for college, and to withstand unexpected financial emergencies.

II. The Rule and Exemptions Are Not Moving Markets Toward a More Optimal Mix of Advisory Services and Financial Products.

While the requirements of the Rule are forcing firms and the industry to develop new products and structures, the markets are not moving toward a more optimal mix of advisory services and financial products. In reality, quite the opposite is true. Many firms like Cambridge interpret the Rule to permit less flexibility and creativity than exists in the market place today; as a result, many firms in the industry are planning to restrict the types of accounts and financial products that financial services professionals may offer to investing clients. Additionally, firms are setting policies that will dictate what types of products and services clients may receive, based on factors such as account size, compliance and supervision costs, technology development and effectiveness, and litigation risks.

The ambiguity of the Rule coupled with the abbreviated implementation time frame has created the unintended consequence of too few product options, and perhaps less well thought out options, for the unique needs of all investing clients. The Rule has forced action across the industry to evaluate and develop products suitable for the needs of all clients, particularly smaller investing clients, which is typically investing clients with less than $25,000 in investable assets. However, nobody in the industry can fully agree on what product features are compliant with the Rule while at the same time compliant with the requirements and expectations of the SEC, FINRA and the various state regulators.

The Rule has effectively eliminated the ability of firms like Cambridge and its advisors to continue offering products to investing clients in the format that has existed for the past 40 years. An appropriate breadth of products compliant with the Rule does not exist because the Rule is too complex and the impacts of the Rule were not fully assessed in terms of the impacts of the new requirements on products. An unintended negative impact of the Rule is very few options will be available to investing clients, particularly smaller investing clients, and they will be harmed if the Rule is implemented. For these reasons, Cambridge supports a repeal of the Rule.

III. The Rule Will Cause an Increase in Litigation and an Increase in the Prices that Investing Clients Must Pay to Gain Access to Retirement Services.

The Best Interest Contract requirement under the Rule will unnecessarily expose firms like Cambridge and its financial advisors to unacceptable litigation and liability risks, excessive and duplicative disclosure requirements and financially untenable compliance costs. Such burdens will significantly increase the cost for Cambridge and its advisors to conduct business, which will result in higher prices to investing clients.

A. The Best Interest Contract Requirements Will Create Considerable Liability Risks for Cambridge and its Financial Advisors.

Cambridge believes the Best Interest Contract as implemented is untenable. The requirements are unreasonable, onerous and overly burdensome. Advisors and broker-dealers' exposure to class-action lawsuits and liabilities will be extremely costly – potentially cost prohibitive, and in a declining market, potentially detrimental to the viability of their business models. Cambridge estimates the private right of action and exposure to class-action lawsuits as a result of the Rule will cause Cambridge and its advisors to be subject to a minimum of $250,000 in additional legal liability on an annual basis and that its errors and omissions insurance premiums will increase by more than $600,000 on an annual basis.

These increased costs and litigation risk will substantially impact the viability of providing services to clients with small account balances. As stated above, given the onerous requirements and increased liability that will result from utilizing the BICE, Cambridge has decided that, with limited exceptions, its financial advisors will no longer be able to use all of the platform options otherwise available today for each and every investing client if the Rule is fully implemented. Specifically, Cambridge's financial advisors will not be able to offer financial advice to investing clients using the Best Interest Contract if the account size is less than $25,000 unless the average account size for the household is greater than $50,000. As a result of this impending policy, many investing clients and advisors will be adversely effected, resulting in significant disruption.

Additionally, Cambridge has observed many advisors in the industry have started transitioning away from servicing clients who have small accounts and have indicated they will be unwilling to service clients whose investments needs or desires require use of the Best Interest Contract due to the additional litigation risks it creates and the additional time necessary to comply with the Rule. Other advisors have taken steps to leave the profession entirely, whether through accelerated retirement or moving on to other professions.

The private right of action and class action enforcement has been pronounced by the Department as the primary, if not the sole, means of enforcement of the Rule. It is undeniable that this will cause an increase in litigation. Additionally, firms like Cambridge are expending significant initial and recurring resources to develop compliance and supervision structures and programs, and seeking technology development, to help mitigate potential violations of the Rule and to reduce litigation risks. Cambridge estimates it will cost Cambridge and its advisors more than $13 million annually in recurring expenses to comply with the BICE disclosure, contracting and oversight requirements necessary to comply with the Rule. The increased cost of compliance will result in higher prices to investing clients.

B. The Private Right of Action is Unnecessary and Overreaching.

The Department unnecessarily and arguably without Congressional or administrative authority created a new private right of action permitting clients to sue an advisor or broker-dealer in state court for breaching the terms of the Best Interest Contract. Cambridge believes the Department does not have the statutory authority under ERISA to create a private right of action for the failure to comply with the terms of a regulation or the terms of an exemption. Specifically, Congressional statutory language under ERISA does not appear to authorize such jurisdiction to the Department. Furthermore, the Rule's effect of using contract law to transfer enforcement of the Best Interest Contract to state court will prove extremely costly to both individual retirement investors and broker-dealers alike, and prove highly disruptive to the entire retirement system as key players reconsider retirement advice business models. The ensuing class action lawsuits will add greatly to the regulatory environment costs with no proven benefit to any party.

Cambridge believes the current SEC and FINRA rules more than adequately provide tried-and-true processes and forums for dispute resolution and investor complaints for retirement accounts. The existing processes and forums allow retirement investors to seek redress for many if not all of the activities that would be at issue in a BICE dispute, such as failure to disclose a material conflict, improper or unsuitable investment advice and receipt of excessive commissions. Indeed, there has been no substantial evidence or statistical data put forth by the Department that the current dispute resolution regimes provided by the SEC or FINRA are unfair to retirement account investors or fail to allow their interests to be fully vetted. Cambridge believes regulatory statistics bear this out. Furthermore, the current regulatory venues for dispute resolution are generally less costly and restrictive for investors, as well as advisors and broker-dealers.

Based on the reasons set forth above, the Rule will increases costs to investors through the threat of litigation. Therefore, the Rule should be repealed as it does not align with the guiding principles set forth in the President's Memorandum.

CONCLUSION

Cambridge believes there are significant merits for the immediate repeal of the Rule. While Cambridge supports the stated intent of the Rule to enhance consumer protection, this must be done while preserving the right of choice for investing clients. With this in mind, Cambridge believes a uniform standard of care applicable to all investment accounts would be valuable to all investing clients, not just retirement investors. In light of this, Cambridge supports an immediate repeal of the Rule and strongly supports the Securities and Exchange Commission ("SEC") implementing a uniform standard of care for all investment accounts to accomplish the priorities set forth in the President's Memorandum.

Further, Cambridge believes 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. Cambridge also believes the Rule as written is inconsistent with the priorities set forth in the President's Memorandum to empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home or saving for college, and to withstand unexpected financial emergencies.

Cambridge appreciates the opportunity to offer comments regarding the Department's consideration to Rescind or Repeal 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 concerning the immediate repeal of this Rule.

Respectfully,

Seth A. Miller

Seth A. Miller
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Senior Vice President, Chief Risk Officer