CAMBRIDGE

VIA ELECTRONIC MAIL: e-OED@dol.gov

July 20, 2015

Employee Benefits Security Administration
Office of Regulations and Interpretations
Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Department of Labor Conflict of Interest Rule and Related Proposals, RIN-1210-AB32

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") published notice of proposed rulemaking regarding the proposed rule to expand the investment advice fiduciary definition under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and related proposed prohibited transaction exemptions, published in the Federal Register on April 20, 2015 (the "Proposal").

Cambridge is an independent, privately owned firm located in Fairfield, Iowa. Cambridge is affiliated with over 2,700 independent financial services professionals ("advisors") throughout the country, and acts as an introducing broker-dealer and registered investment advisor serving more than 400,000 individual retirement accounts and retirement plans.

Cambridge acknowledges and appreciates the Department's underlying motivation behind the Proposal to expand the definition of a fiduciary as it relates to retirement investment advice – to protect the retirement investor. Cambridge supports the implementation of a thoughtful, well-crafted, and effective uniform standard of care applicable to all financial services professionals providing investment advice to retail clients. While Cambridge believes

1776 Pleasant Plain Road • Fairfield, Iowa 52556 • Phone: 800-777-6080 • Fax: 641-469-1691
cambridge@cir2.com • www.cir2.com

the Department has made considerable progress since the initial 2010 proposal, the Proposal, as provided, is overly complex, unduly burdensome and cost prohibitive. Additionally, Cambridge does not believe the Proposal will further the Department's goal of providing affordable, high quality investment advice to retirement investors. Rather, the Proposal will make it substantially harder for retirement investors to receive high quality, affordable, personalized advice, particularly for those who have smaller account balances. For the reasons set forth below, Cambridge cannot support the Proposal as currently drafted.

I. The Proposal as Currently Drafted is Unworkable.

At the outset, Cambridge is concerned that the Proposal overhauls forty years of carefully developed regulations by the Department by significantly expanding the definition of a fiduciary under ERISA. The Department would effect this change by replacing the current five-part investment advice fiduciary test with a new definition that extends the reach of fiduciary status to services and accounts that were previously excluded. Under the Proposal, an individual who provides investment advice or recommendations to an employee benefit plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner would be treated as a fiduciary in a wider array of advice relationships than under current requirements. This expansive definition will greatly increase the number of advisors and firms subject to ERISA fiduciary standards and corresponding liabilities.

Cambridge believes the proposed expanded definition of a fiduciary is not in the best interest of retirement investors. Contrary to the Department's intentions, the expansive definition of a fiduciary will eliminate the flexibility advisors and broker-dealers need to make the decisions about which investments and payment models are in the best interest of each individual client. In order for Cambridge and our advisors to serve the best interests of our clients, we need the ability to treat each client individually and tailor investment strategies that meet each client's specific circumstances. Flexibility in investment strategies and compensation structures allow our advisors to develop unique investment plans for each and every one of their clients. Should the Proposal be implemented in its current form, much of this flexibility will be eliminated and Cambridge believes it will not be financially viable for many advisors to provide retirement advice to clients with lower balances in their retirement accounts.

Cambridge and our advisors are currently heavily regulated by a complex regulatory regime. We are subject to comprehensive legal obligations and regulations under federal and state securities laws, rules and regulations. Cambridge is regulated by the Securities and Exchange Commission ("SEC") through the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940, along with their respective rules and regulations. Cambridge and our advisors are also subject to the Financial Industry Regulatory Authority ("FINRA") self-regulatory organization ("SRO") rules, oversight and examinations. As a member of FINRA, Cambridge and our advisors are required to uphold just and equitable principals of trade and high standards of commercial conduct or risk being subject to enforcement or expulsion from the industry. Cambridge is also required to disclose certain material conflicts of interests to our customers, and we are prohibited from participating in certain transactions that may present acute potential conflicts of interest.

For the reasons set forth above, Cambridge opposes the Department's Proposal that will impose the new ERISA fiduciary standard of care on all broker-dealers and registered investment advisers. Further, we oppose the Department's attempts to impose a new fiduciary standard of care while the Securities and Exchange Commission ("SEC") simultaneously considers a different fiduciary standard for broker-dealers and investment advisers based upon statutory language in Dodd-Frank. The creation of a competing and distinctly different fiduciary duty for retirement and non-retirement accounts will serve only to confuse investors, contradict Congressional intent and lead to inconsistent standards thus creating unnecessary compliance burdens for Cambridge and our advisors. As such, Cambridge strongly encourages the Department to work with the SEC and FINRA on developing a carefully-crafted, uniform fiduciary standard of care that would be applicable to all professionals providing personalized investment advice to retail clients in a unified manner.

II. Cambridge Supports a Uniform Standard of Care and Meaningful Disclosures.

Cambridge shares a strong and committed interest with the financial services industry and the Department in enhancing investor protections. As such, we support the establishment of a thoughtful, well-crafted, and effective uniform standard of care and meaningful disclosures applicable to all financial services professionals providing investment advice to retail clients that preserves the existing broker-dealer regulatory framework. Cambridge believes such a uniform standard and accompanying disclosures should be measured by its ability for advisors to provide affordable, high quality investment advice to all retail clients.

a. Elements of Uniform Standard of Care.

The uniform standard of care proposed by Cambridge would include the following elements:

- **i.** Financial advisors must act in the best interests of their customers.
- **ii.** Advice must be provided with the skill, care and diligence of a reasonable person based upon information that is known about the customer's investment objectives, risk tolerance, financial situation and other needs.
- **iii.** Material conflicts of interests must be avoided when possible, but may be managed by obtaining informed consent to act when such conflicts cannot reasonably be avoided.

iv. Broker-dealers and advisors must have policies and procedures that are reasonably designed to mitigate conflicts of interests concerning the provision of investment advice to their customers.

b. Meaningful Disclosures.

Cambridge believes investors should receive concise, consolidated, meaningful disclosures written in plain English. Disclosure documents should be provided at account opening, the point of sale, and on an annual basis. Cambridge supports the following disclosures.

i. Account Opening Disclosure. A short-form disclosure provided as part of the account opening process that establishes the following:

1. The standard of care owed by the broker-dealer and advisor to the client;
2. The nature and scope of the business relationship between the parties, the services to be provided, and the duration of the engagement;
3. A general description of the nature and scope of compensation to be received by the broker-dealer and the advisor, and a general description of any material conflicts of interest that may exist between the broker-dealer, advisor and the investor;
4. An explanation of the investor's obligation to provide the broker-dealer with information regarding the investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the investor may disclose;
5. An explanation of the investor's obligation to inform the broker-dealer of any changes in the investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the investor may disclose; and
6. A phone number and/or e-mail address the investor can use to contact the broker-dealer regarding any concerns about the advice or service they have received and a description of the means by which an investor can obtain more detailed information regarding these issues, free of charge.

ii. Website Disclosure. The broker-dealer's website should provide investors with the functionality to receive information concerning available investments, considerations for making investment decisions, compensation schedules outlining typical brokerage fees and service charges, and any material conflicts that may arise due to compensation structures or revenue sharing arrangements, including a list of product manufacturers providing such compensation or revenue sharing.

iii. **Point of Sale Disclosure.** Broker-dealers and advisors should provide a point of sale disclosure to investors that can be accomplished by delivering a summary prospectus or offering documents that set forth material fees and expenses, the product's investment objective or goal, and a statement that the broker-dealer and advisor may receive payments for the sale of the product or related services.

iv. **Annual Disclosure**. On an annual basis, investors should be provided with a good faith summary of investment-related fees incurred by the investor from the broker-dealer with respect to all products and services provided during the prior year.

The uniform standard of care and meaningful disclosures Cambridge proposes above would not only enhance investor protection but would also preserve the existing broker-dealer regulatory framework. Cambridge further believes the proposal outlined above would be economically feasible for the industry to implement and would enable financial advisors to continue to provide affordable, high quality investment advice to retirement investors.

III. The Department's Best Interest Standard is Impractical.

The best interest standard proposed by the Department is impractical in the broker-dealer context because broker-dealers act primarily as securities firms, not as fiduciary advisors. The proposed standard requires investment advice to be provided "without regard to the financial or other interests" of the Advisor, Financial Institution or any Affiliate, Related Entity, or other party. At its core, the Department's best interest standard is incompatible with the nature of brokerage firms and implies that a broker with a financial interest in a brokerage transaction involving a retirement plan or IRA could not receive the benefit of the new class exemption called the Best Interest Contract Exemption ("BICE"). Broker-dealers consider many factors when determining which products the firm will offer on their platforms to clients, including suitability determinations that include pricing to customers and revenue to the firm. To the extent the firm factors revenue considerations into its decision making process, the BICE would not be available if the firm or the advisor receives variable compensation. This is just one example of the inherent conflict between the Department's proposed standard of conduct and the nature of the broker-dealer business model.

IV. The Proposal is Too Restrictive and Will Harm Investors.

The Department's Proposal is overly-prescriptive and restricts the flexibility that currently exists in the market-place. Financial advisors need the flexibility to treat each client as an individual and to tailor investment strategies to meet each client's specific needs and circumstances. Part of this flexibility is achieved through the ability of financial advisors to create personalized investment strategies and utilize variable compensation structures to develop unique and tailored investment plans for their clients. If the Proposal is implemented, much of this flexibility will be eliminated and it will not be financially viable for advisors to provide retirement advice to clients with lower retirement account balances.

The Proposal also creates a competing and distinctively different fiduciary duty for retirement and non-retirement accounts and will create additional investor confusion about professional standards thereby exacerbating the existing lack of consistency in our regulatory system. By failing to coordinate with the SEC and FINRA to implement a uniform standard of care across all securities investments and accounts, the Department will create additional disharmony in the regulation, examination and enforcement of financial advisors and financial institutions.

The Department's Proposal further fails to account for the impact it will have on low and middle-income investors' access to financial advice. Low and middle-income investors cannot afford to pay ongoing fees associated with a managed account and such fees are often not suitable for small transactions and/or small account balances. By placing enormous burdens on firms and financial advisors in order to continue receiving variable compensation, the Proposal will reduce access to retirement advice and services to the very class of people the Department claims it wants to protect the most. The Department's support of "passive management solutions" such as "robo advisors" is akin to a one size fits all mentality. However, this mentality ignores the importance and value of a holistic investment approach offered by financial advisors to develop unique and tailored investment plans for their clients utilizing flexible investment strategies and variable compensation structures. While technology platforms like "robo advisors" can create standard models and offer portfolio rebalancing at modest price points, they cannot provide the same level of financial planning services offered by financial advisors to clients who are at some point on their financial journey going to experience emotional reactions, tragedy, unpredictable events, and other life events. Below are some of the benefits financial advisors provide to their clients that cannot be matched by technology platforms.

- Financial advisors actively promote retirement savings to segments of the population that are underrepresented in the retirement system. They emphasize the importance of commencing and retaining retirement savings, encourage employers to adopt retirement plans, and encourage individuals to participate in those plans or IRAs.

- Financial advisors help clients navigate major financial decisions and pressures resulting from debt, bankruptcy, medical conditions, tragedy, death, and unpredictable and unforeseen dependent needs.

- Financial advisors work with clients to remain calm during times of market volatility, where inexperienced investors often make impulsive, ill-timed and ill-informed decisions.

- Financial advisors also assist clients with estate and tax planning decisions necessary to help clients make their assets last through retirement.

The Proposal favors and encourages low-cost, online, algorithm-based allocation and rebalancing tools at the expense of personalized investment advice, which will deny investors choices regarding who they can utilize and how they can receive and pay for financial advice. Further, by favoring low-cost, online, algorithm-based technology platforms, the Department presumes that investors have access to online investment resources and desire to utilize such tools to obtain the services they desire. The Department has completely ignored the impact to retirement investors and their account balances if the only option they have available is to utilize an online investment resource, which they may not have access to or desire to use in the first place. The impact of this cannot be overstated.

V. The Best Interest Contract Exemption is Fraught with Problems.

The proposed expansion of the investment advice fiduciary definition by the Department is accompanied by a proposal to create a new class exemption called the Best Interest Contract Exemption ("BICE"). The Department's stated purpose for the exemption is to preserve the ability for investment advice fiduciaries to receive variable compensation and compensation from third parties. The BICE would allow a financial advisor and a firm to receive otherwise prohibited compensation for services provided in connection with a purchase, sale or holding of an asset subject to the proposed fiduciary standard.

While Cambridge applauds the Department for providing proposed relief in this area, we believe the Best Interest Contract Exemption, as proposed, will unnecessarily expose broker-dealers and financial advisors to unacceptable liability risks, excessive and duplicative disclosure requirements and financially untenable compliance costs. Cambridge estimates the total cost to Cambridge and its advisors to implement the Proposal as currently drafted and to comply with its various requirements will range between $18 million to $23 million. Additionally, Cambridge estimates the annual recurring costs to Cambridge and its advisors to comply with the various requirements of the Proposal will exceed $6 million. Such costs underscore the unduly burdensome nature of the Proposal's impact on firms like Cambridge and highlight the untenable financial impact to the industry.

a. The Best Interest Contract Requirements Would Create Considerable Liability Risks For Financial Advisors and Financial Institutions.

The proposed exemption would compel both financial advisors and financial institutions to enter into a best interest contract in order to receive the benefits of the BICE. Under the

Proposal, a financial advisor and a financial institution would be required, prior to making a single recommendation, to enter into a legally enforceable contract with the retirement investor acknowledging status as a fiduciary, with representations and warranties contracting to 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.

Cambridge believes the best interest contract as proposed is untenable. The proposed 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 that Cambridge and its advisors will be subject to $250,000 in additional legal liability on an annual basis due to the private right of action and exposure to class-action lawsuits as a result of the Proposal. Such increased costs will also substantially impact the viability of providing services to clients with small account balances. The likely outcome will be many financial advisors and broker-dealers will cease services to many smaller retirement investors – the very investors the Department is seeking to protect. Of great concern to Cambridge is the requirement to execute the proposed contract prior to any recommendation by a financial advisor. This will create an unnecessary hurdle for clients to even engage a financial advisor to understand potential investment needs. Further, the Department has not provided clarity as to the specific meaning of a "recommendation." Moreover, the warranties, with respect to compliance with all applicable laws, will burden firms with enforcement investigations by the SEC, FINRA, the IRS and the OCC as a result of clients who allege such warranties have been violated.

Cambridge believes the Department should, therefore, eliminate the best interest contract requirement. The potential risk of liability from the proposed best interest contract will likely drive many broker-dealers and financial advisors from the retirement channel. Retirement advice will become more expensive and participation in the retirement system could decline – all of which would be counter-productive to the stated intentions of the Department.

As an alternative, Cambridge proposes an account disclosure document provided to a client at account opening or prior to the execution of a recommendation to purchase, sell or hold an asset. Such a document could accomplish goals in line with the best interest contract set forth in the Department's Proposal but without the onerous conditions and requirements that will result in unsustainable liability risks.

To the extent that the written contract requirement is made part of the final rule, the exemption should allow for negative consent and electronic delivery at account opening or prior to the execution of a recommendation to purchase, sell or hold and asset in order to satisfy the BICE. We believe this is a critical stipulation because, in the absence of a negative consent provision, it will be extremely burdensome for advisors to obtain client signatures and the failure to do so will expose advisors and firms to even greater liability risk.

b. BICE Principles Should More Clearly Define Reasonable Compensation.

The BICE impartial conduct standards require that a broker-dealer refrain from making recommendations regarding the purchase or sale of an asset unless the compensation the broker-dealer will receive is reasonable. However, the Department has not provided sufficiently clear guidance on the definition of "reasonable compensation."

Without clear guidance regarding what constitutes a permissible compensation structure under the BICE, Cambridge believes broker-dealers likely will be exposed to cost prohibitive litigation where state courts, without any case history or clear direction, will make determinations based on opinion and hindsight.

Therefore, should the requirement to execute a pre-engagement contract remain in the final version of the Proposal, Cambridge would request the Department provide clear guidelines for broker-dealers as to what it views as reasonable compensation under the BICE.

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

The Department unnecessarily and arguably without Congressional or administrative authority creates 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 finds this aspect of the Proposal to be highly problematic. As a threshold matter, Cambridge believes that the Department likely 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, Cambridge believes the Department's proposal to apply contract law and 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. We believe the ensuing class action suits would add greatly to the regulatory environment costs with no proven benefit to any party. Additionally, such an action would encroach on the authority of the SEC and FINRA and create significant confusion as to enforcement authority and rulemaking. Equally problematic, the private right of action would allow plaintiffs to seek damages that greatly exceed alleged benefits lost and will allow the plaintiff's bar to plead for unquantifiable damages, including exemplary, expectation, consequential and punitive damages.

Cambridge believes the Department fails to recognize that 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. We believe 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.

d. BICE Point of Sale and Annual Disclosure Requirements Would Be Voluminous, Prohibitively Costly, and Conflict with Current Regulations.

The Department has proposed that to qualify for the BICE, an advisor must, prior to executing any new asset purchase, furnish a document to an investor with an individualized disclosure of the estimated dollar cost amount of projected total costs for one, five and ten-year periods. Advisers would also be required to provide an annual disclosure to each investor that lists: (1) each asset that the investor purchased or sold during the prior year and the corresponding transaction price; (2) the total dollar amount of all fees and expenses paid with respect to each asset that the investor purchased, held, or sold during the year; and (3) the total amount of all direct and indirect compensation that the adviser and firm received in relation to the purchase, retention, or sale of the investor‘s assets.

This proposed set of complex reporting disclosures would require complete accuracy as a condition of the exemption, and in order to comply, broker-dealers would have to rely on third parties to provide an extensive amount of the required data. To ensure that advisors capture all of the information required by the Department in the disclosures, broker-dealers will be forced to retain accounting, financial, and programming experts to restructure their sales, transaction, accounting, reporting, and information technology systems. In addition, attorneys and consultants will be required to make certain that the content, format, timing, and delivery of the disclosures comply with the BICE. Importantly, a firm's failure to comply with the requirements as a result of an unintentional systemic error, or reliance on untimely or incorrect data from a third party, would likely result in costly litigation.

The point of sale disclosure requirement also appears to contradict the current regulatory regimes of both the SEC and FINRA. The BICE would require an adviser to furnish a chart to a retirement investor that provides for each asset recommended, the total projected cost prior to effecting the purchase of an asset for one, five and ten-year periods, expressed in a dollar amount, in the dollar amount recommended by the adviser applying reasonable assumptions regarding investment performance. The BICE would require, in direct contradiction of SEC rules, that the information be expressed in terms of the amount proposed to be invested, rather than the $10,000 currently required by the SEC. Also, FINRA rules currently prohibit broker-dealers from separately projecting costs and expenses of an investment. Finally, even if FINRA rules did not prohibit such projections, broker-dealers do not have access to the tools necessary to create the cost projections. To the extent such projections exist, broker-dealers would need to purchase this information from third-party services and rely on the accuracy of such information.

Cambridge believes the annual and point of sale disclosure requirements in the Proposal would duplicate many of the disclosures that advisers currently provide to investors, will drastically increase ongoing compliance burdens, and significantly increase costs which will, in one way or another, be partially borne by the retirement investor. Also, cost projections, which are generally based on performance projections, likely will require approval from third parties and other financial service regulators.

Another challenge to conducting an accurate analysis of projected costs related to the Department's disclosure requirements is the lack of specificity in many areas of the Department's proposed data requirements and the unknown expenses that third party aggregators, or those firms that create businesses around providing such aggregation, might impose upon broker-dealers. Nevertheless, based on what can be projected from the Proposal, Cambridge's internal analysis indicates that in order for it to comply with the proposed disclosure regime, technology costs alone for developing software, obtaining new data for client accounts from product companies and third party record keepers, and creating necessary internal tools, would cost Cambridge approximately $7.2 million on a one-time developmental basis and approximately $4 million per year on an ongoing basis.

In addition, a conservative estimate of the labor required for Cambridge to develop the platform for the proposed required disclosures would include approximately 50 employees working full time with a sustained focus and timely cooperation from third parties, for a period of approximately 18 months straight. However, considering the financial industry is not currently tooled for such an endeavor, and the fact that other business priorities will undoubtedly seek to compete with this effort, a more realistic timeframe for completion would be 36 to 60 months.

e. The BICE Record Keeping and Data Request Requirements Would Be Cumbersome and Prohibitively Costly.

Another substantial burden for broker-dealers contained in the BICE proposal is its requirement that all records relating to compliance with the BICE must be retained for six years, and that broker-dealers provide unconditional access to those records to the Department, the Internal Revenue Service, retirement plan participants, retirement plan fiduciaries, and IRA owners and their representatives. Additionally, upon request by the Department, broker-dealers would be required to produce voluminous amounts of information about each individual asset that their customers purchase, hold, or sell, and that information would be required to be reported within six months of the Department's request.

Firms would be required to disclose detailed information about each investor, including the identity of the investor's advisor, quarterly return information for the investor's portfolio, and external cash flows into and out of the investor's portfolio including the date of the transfers. Furthermore, the Department seeks the authority to publicly disclose any and all of the information it obtains from the disclosing firms, so long as it removes individually-identifiable financial information. Cambridge is gravely concerned by the Department's proposal to request and obtain such sensitive client information on a large scale and unchecked basis considering recent personal data breaches at the Internal Revenue Service and the Office of Personnel Management, as well as, multiple private businesses. Cambridge requests the Department to specifically disclose the steps and protocols the Department would take to ensure it can guarantee the safety and security of the individually-identifiable financial information that it will receive under the Proposal.

The requirement for Cambridge and other firms to retain and produce this data will be an extremely burdensome effort that will require the expenditure of logistical, technical, legal, and financial resources to ensure compliance with the BICE requirements. Conforming to these requirements will require huge cost outputs, which on their face are prohibitively costly, and will result in costs being passed down to financial advisers and their clients.

For all of the reasons set forth above, Cambridge believes the data retention and disclosure requirements of the BICE must be eliminated or greatly scaled back so that the costs of development, implementation, maintenance and compliance are realistic and achievable. Additionally, the Department must clarify whether the BICE requires standards that are beyond those required under other regulations imposed on firms like Cambridge, such as SEC Rule 17a-4.

f. The Required Website Disclosures Under the BICE Would Be Overly Burdensome and Impossible to Maintain.

The BICE will require financial institutions like Cambridge to maintain a machine readable public website that reports the direct and indirect compensation received by the firm, each individual adviser, and each firm affiliate that was provided in connection with each asset that was purchased, held, or sold through or by the broker-dealer within the prior 365 days; the source of all of the compensation; and how the compensation varied within and among the classes of assets that were available to be purchased, held, or sold through or by the firm.

Cambridge considers the proposed internet disclosure requirements for a public web-site to be antithetical to a competitive business model, unreasonably complex, overly-burdensome and would expose broker-dealers to unacceptable risk. How financial institutions will remain competitive while disclosing such a detailed level of confidential information seems beyond understanding – not to mention current contractual requirements for confidentiality.

Cambridge also requests the Department to conduct further analysis on the disclosure requirements applicable to financial institutions given the vast array of investment products the independent advisor model offers to clients considering that each product has unique pricing structures and compensation models, and several variations of each product are typically offered. By way of example, a single fund family provider Cambridge makes available to its clients offers more than 590 versions of its funds for sale, available through two separate custodians, in addition to positions directly held at the fund, thereby tripling potential tracking requirements of the 590 versions of the funds. Additionally, Cambridge's advisors each have different compensation structures, and many advisors allocate earnings from client transactions on a percentage basis across multiple team members resulting in advisors receiving fractions of a percentage of income on any given transaction for a particular product. The extent to which this level of detail must be disclosed under the Proposal is mind-numbing to say the least.

As such, maintaining a public web-site with the required internet disclosure for each advisor affiliated with Cambridge will be a monumental undertaking that is overly burdensome and it will impose significant costs on Cambridge and our advisors. In addition, the scope, breadth, and complexity of such an undertaking will lead to errors that could confuse investors and expose advisors and broker-dealers to an unreasonable risk of litigation. Moreover, Cambridge questions how useful this information would be to investors, especially given the enormous expense and effort that would be required to produce it. Cambridge believes the Department should, therefore, eliminate this requirement from the BICE.

In the alternative, Cambridge would argue the current disclosures under ERISA sections 408(b)(2) and 404(a)(5) should suffice for many accounts, and firms should be permitted to comply with the disclosure requirements by referencing existing ERISA disclosures, prospectus, or other information. Lastly, if current ERISA disclosures are not sufficient for IRAs, the Department should harmonize the BICE disclosures with other disclosure regimes already existing in the securities industry.

g. The BICE Grandfathering Provision Should Be More Expansive.

Cambridge applauds the Department for its efforts to provide relief with regard to IRA accounts established prior to the effective date of the BICE for those advisors who did not meet ERISA's existing definition of fiduciary. However, the Proposal provides that in order to rely on this relief, the advisor would be prohibited from providing any further advice to the IRA account owner regarding the purchase, sale or holding of the Asset after the applicability date of the BICE. Essentially, this could create an incentive for advisors not to discuss existing positions with existing clients. Additionally, broker-dealers relying on this grandfather provision would need to implement controls to ensure advisors' compliance with this exemption provision. As proposed, the provision would still require a massive re-papering of existing accounts in order to move forward with any subsequent advice – a process that would be prohibitively costly for broker-dealers and advisors in many respects, and quite likely impossible for others. Cambridge estimates the cost to Cambridge and its advisors to repaper existing accounts and to implement controls to ensure compliance with this exemption will cost between $11 million to $14 million.

While Cambridge appreciates the Department's attempt to provide an exemption for pre-existing accounts, the relief proposed is seemingly illusory, and not likely to be meaningful in practice, given the Proposal's conditions. Instead, Cambridge supports replacing the proposed pre-existing transaction rule with a conventional grandfather rule that exempts existing accounts from the Proposal.

h. The Proposal's Exclusion of Certain Types of Products from the BICE Is Not in the Best Interest of the Retirement Investor.

The Proposal would limit the availability of certain products to retirement plans and IRA investors by excluding a variety of investments from the list of "Assets" eligible for the BICE. The Department has stated the best interest of retirement investors is served with basic, diversified portfolios and opines that certain excluded assets (investment products) do not feature an appropriate degree of transparency, liquidity, and marketability.

Cambridge disagrees with the Department's position and asserts that the exclusion of specific investments from the list of "approved" assets is actually not in the best interest of all investors. Under certain circumstances, depending on an investor's specific investment needs, the excluded assets, contrary to the Department's position, could clearly be in that particular retirement investor's best interest. The potentially precluded products, like direct placement products, are often non-correlated to the stock market, and can be long term options for building a balanced, diversified, risk-adjusted portfolio. Cambridge believes that advisors are in the best position to understand their clients' unique retirement savings needs and should have the flexibility to recommend the best investments in the context of those specific needs. Thus, Cambridge requests the Department to reconsider its approach of limiting the universe of eligible investment products and allow the market to determine which investment products serve the best interests of retirement investors.

VI. The Department Should Expand the Scope of the Investment Education and Seller's Carve-Outs.

The carve-outs related to the Proposal would further narrow the types of educational information that broker-dealers and advisors can provide to plan participants and IRA owners, eliminate small plans from the carve-outs and deny the carve-out if the plan directly pays a fee for investment advice. Cambridge is concerned that such further restrictions will negatively impact an advisor's ability to effectively help retirement investors understand retirement plan and IRA investment options.

a. The Education Carve-Out Must Preserve Investor Access to Investment Education.

The proposed expansion of the investment advice fiduciary definition would be accompanied by a proposal to further restrict the definition of investment education provided to retirement investors. Cambridge believes investment education to be one of the most critical services advisors provide to retirement investors. In order for retirement investors to make educated decisions regarding their financial futures, it is imperative that they receive professional guidance. However, the Department's proposal to narrow investment education with respect to specific investment products, investment managers, and the value of particular securities or other properties, makes it less effective for investment education recipients and will lead to counterproductive results. Retirement investors will have less access to quality information regarding their investment options. Inevitably, the education available to investors will less effectively help them understand retirement plan and IRA investment options.

Cambridge encourages the Department to reconsider the importance of education information, and the importance of allowing advisors and broker-dealers to provide investment education to clients without exposure to potential fiduciary liability. We therefore request the Department to consider revising the Education Carve-Out to allow advisors to specifically identify investment and distribution options available under a plan or IRA. In addition, the Education Carve-Out should be revised to protect recommendations that relate to previous investment products and education regarding activities that reduce plan outflows, such as rollovers to IRAs.

b. The Seller's Carve-Out Should Cover Plans of Any Size and Should Be Expanded to Cover All Advice.

The Department's Proposal on the Seller's Carve-Out as written does not offer exemptive relief to advice for plans with fewer than 100 participants and fiduciaries managing less than $100 million in plan assets. The Department opines in the Proposal that small plans are much more similar to individual retirement investors than to large financially sophisticated institutional investors. The inference from this view would be that only large plan fiduciaries have the ability to discern when an advisor is acting in a selling capacity. Cambridge estimates this carve-out exclusion would detrimentally impact more than 200 retirement plans and approximately 100,000 clients that Cambridge and its advisors currently serve. Additionally, the proposed exemption will be administratively impossible to comply with for plans that fluctuate above or below 100 participants or $100 million in plan assets.

Cambridge does not believe the size of the plan is an accurate determinant as to the competency of the fiduciary. Small plan fiduciaries are held to the same standards as large plan fiduciaries with regard to fiduciary duties. Under ERISA section 404(a)(1)(B), all plan sponsors, regardless of plan size, must execute their responsibilities with the skill and knowledge of a prudent expert, or in the alternative, must engage third-parties who have such expertise. Regardless of the size of the plan, courts have consistently held that fiduciaries who are not equipped to fully exercise their duties with regard to the sound management of plan assets must seek independent advice.

Since all plan fiduciaries are already bound to have or obtain the type of financial expertise that the Department uses to justify the large-plan carve-out, it stands to reason that all plan fiduciaries, including those serving plans with less than 100 participants, should be covered. As such, Cambridge urges the Department to extend the Seller's Carve-Out to plans with fewer than 100 participants and fiduciaries managing less than $100 million in plan assets.

VII. PTE 84-24 Should Be Expanded to Allow Compensation in All Forms for Both Fixed and Variable Annuities and Mutual Fund Sales for Plans, Participants and IRAs.

Broker-dealers and financial advisors have heavily relied on PTE 84-24 in the context of commissioned sales of annuity products and mutual funds to IRAs. In its current form, PTE 84-24 permits brokers who are fiduciaries to purchase insurance and annuity contracts and mutual funds for a plan or IRA and to receive commissions on the sales. However, the Proposal would require brokers relying on this exemption on a going forward basis to comply with the Department's best interest standard and the BICE. This new standard is inconsistent with the broker-dealer business model as brokers would be required to comply with the BICE impartial conduct standards in order to receive variable commissions for the sale of these products by ensuring they are acting in the best interest of the client "without regard to the financial or other interests" of the broker. This new standard will ultimately result in broker-dealers discontinuing certain relationships that have traditionally relied on the protections of PTE 84-24 and remove products from the investment landscape, which will reduce access to professional advice and limit the investment options for retirement investors, particularly among IRA owners.

Further, the revised PTE 84-24 requires brokers to provide information regarding commissions, expressed as a percentage of gross annual premium payments in Year 1 and in succeeding years, as well as a description of any fees, charges, penalties, discounts or adjustments under the contract. Cambridge would like to point out that independent broker-dealers do not create, maintain, or compile this type of information, and would need to expend significant resources to develop systems to compile or obtain such information.

Lastly, the revised PTE 84-24 set forth in the Proposal provides new definitions for insurance commissions and mutual fund commissions, which explicitly prohibit revenue sharing, administrative fees and marketing payments, or payments from parties other than the insurance company product manufacturer. The definition of insurance commission offered by the Department lists only two forms of commission payment, renewal fees and trailers, which are permissible under the exemption. With this limited definition, broker-dealers and financial advisors are unclear what the Department's expectations are regarding other types of permissible commission sales, which creates uncertainty and may potentially expose the industry to compliance and liability risks. Therefore, Cambridge requests that PTE 84-24 be expanded by the Department to allow compensation in all forms, for both fixed and variable annuities, and mutual fund sales for plans, participants and IRAs. Additionally, Cambridge requests the Department to provide more clarity on permissible types of commissions where compensation may vary by product type (and within a product type) by product manufacturers.

VIII. PTE 86-128 Should Be Expanded to Include Relief for Nondiscretionary Fiduciaries.

PTE 86-128 in its current form provides an exemption for fiduciaries to receive a fee from a plan or IRA for executing securities transactions as an agent on behalf of the plan or IRA and further allows a fiduciary to act in an agency cross transaction and receive compensation. The Department's revised PTE 86-128 would restrict the relief under the exemption to fiduciaries who have discretionary authority or control over the management of plan assets, force fiduciaries relying on the exemption to comply with the impartial conduct standards and other requirements set forth in the BICE, and revoke relief for fiduciaries who provide investment advice to IRAs. Nondiscretionary fiduciaries would be forced to use the BICE to receive fees for the execution of covered activities.

Cambridge believes the revised PTE 86-128 is unnecessary and should be withdrawn by the Department. Alternatively, the Department should expand the relief under the exemption to include nondiscretionary fiduciaries because they should not be subject to the more complex requirements of the BICE.

IX. The Department's Eight Month Applicability Date for Implementation of the Proposal is Unrealistic.

The Department has advised that the regulation and exemption applicability date for the Proposal will be eight months after publication of the final version in the Federal Register. Cambridge considers this implementation date unrealistic and encourages the Department to reconsider this timeline. Even if many of the requested changes put forth to the Department's proposal by industry advocates were incorporated into the Proposal, the eight-month timeframe would still be unrealistic. The timeframe is clearly inadequate and unreasonable considering the technical complexities for the disclosures and record keeping obligations are difficult to quantify given the required tools do not appear to currently exist in the industry. Additionally, the proposed rules and exemptions would be completely foreign to the financial services business models.

Broker-dealers will need time to review potential changes to business models and determine budgets for the costs associated with the proposed compliance regime, even before the implementation process begins. The impact of new fiduciary standards, the training and followup supervision required to ensure compliance, and the administrative and systems processes that will need to be implemented will require at a minimum 36 months and more realistically 60 months to create the framework. Even this projection is based upon the assumption that required third party cooperation is optimal, a conventional grandfather rule is adopted, and that many of the existing exemptions are preserved. If these recommendations are not adopted by the Department, a much longer transition period will be necessary.

X. Cambridge Requests The Department Address Additional Technical Questions in Addition to the Recommendations and Concerns Set Forth Above.

Given the vast breadth and scope of the Proposal, Cambridge believes the Department should provide clarity to certain vague, ambiguous, and overlooked aspects of the Proposal. Cambridge therefore requests the Department address the following technical questions related to the Proposal in addition to the recommendations and concerns set forth above.

a. Does the BIC have to be entered into with a specific advisor?

b. Would a new BIC be required when an advisor leaves a firm, when an account is reassigned to a different advisor, or when an account becomes an orphan or house account?

c. Can the financial institution sign the BIC on behalf of its advisors?

d. Will the new rule require a complete repapering of all existing IRA and ERISA accounts?

e. Will advisors within a team relationship (e.g. split compensation earned from a single retirement investor) all be required to sign the BIC?

f. Does the ban on exculpatory language in the BIC include information in the contract that securities have risk and the client is accepting that risk and other such language that is typically considered standard contract terms?

g. Can the BIC require obligations, representations and warranties from the retirement investor? (e.g. they must provide complete and accurate information)

h. Is the BIC a one-time contract with updated disclosures when necessary?

i. How do the impartial conduct standards in the Proposal differ from a broker-dealer's and associate person's obligations under FINRA Rules? (e.g., FINRA Rules 2010 and 2111)

j. Many contracts include an indemnification of the financial institution for acts or omissions of the financial institution when carrying out the instructions of a client. Is such an indemnification prohibited under the Proposal?

k. If a client violates the terms of the BIC, can the advisor or financial institution consider the BIC void or voidable or disclaim liability for damages resulting from the client's violation?

l. Is choice of law or choice of venue a prohibited contractual provision in the BIC?

m. When is a purchase deemed to be "executed" for purposes of the required point of sale disclosure?

n. What is reasonable compensation? (e.g. direct, indirect, cash, non-cash)

o. How is reasonable compensation defined?

p. Under what circumstances can an advisor recommend a higher commission investment over a lower commission investment?

q. How could a financial institution that has a differential compensation structure demonstrate compliance that does not tend to encourage advisors to make recommendations that are not in the best interest of the investor?

r. Will the entire rollover process be subject to the Proposal, even though a client may not follow a recommendation to rollover an IRA?

s. Is the Proposal's definition of material conflicts of interest intended to be consistent with case law that defines fiduciary duty pursuant to the Investment Advisers Act? If not, how are they different?

t. What is the definition of a "sufficiently broad range of assets to meet the investor's needs?"

u. Will pre-existing advice provided to a Plan or client before the effective date be considered a non-exempt prohibited transaction?

v. Can the webpage disclosures provide a range of compensation per asset for all advisors affiliated with a financial institution or must every advisor's compensation structure be separately reported on the webpage for each asset?

w. What is a "machine readable format" for purposes of meeting the website requirement?

x. What does a website freely accessible to the public mean? Is a webpage that requires a visitor to create a user name and a password to gain access considered freely accessible to the public?

y. Are ongoing contributions to an existing fixed annuity contract considered purchases that trigger the financial institution to provide written disclosure at the time of each additional contribution?

z. If an existing IRA account is scheduled for automatic rebalancing, would the rebalancing of the IRA account after the effective date of the proposed rule cause the advisor and the financial institution to be subject to the best interest standard and BIC?

XI. CONCLUSION.

Cambridge supports the Department's stated purpose of the Proposal and related exemptions, to increase retirement investor protection. As such, Cambridge advocates 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, and associated rule exemptions allowing advisors to provide effective retirement investment education to clients without exposure to potential liability.

However, Cambridge believes the Proposal, as provided, is overly complex, unduly burdensome and cost prohibitive. Cambridge does not believe the Proposal will further the Department's goal of providing effective retirement investor protection. Rather, the Proposal will make it substantially harder for retirement investors to receive high quality, affordable, personalized advice, particularly for those who have smaller account balances.

Cambridge appreciates the opportunity to offer comments and alternative recommendations on the Proposal. We look forward to working collaboratively with the Department during this comment period to refine the Proposal's conditions and requirements and to ensure that all retirement investors are provided access to high quality, affordable, personalized advice from the advisor of their choice regardless of their unique needs or account size. Cambridge would be happy to further discuss any of our comments or recommendations in this letter with the Department.

Respectfully,

Seth A. Miller
General Counsel
Senior Vice President, Risk Management