



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

June 29, 2018

Ms. Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
The Financial Industry Regulatory Authority, Inc.  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 18-16: Request for Comment on Proposed Amendments  
Relating to High-Risk Brokers and the Firms That Employ Them**

Dear Ms. Mitchell:

Cambridge Investment Research, Inc. (“Cambridge”) appreciates the opportunity to comment on Regulatory Notice 18-16: “Request for Comment on Proposed Amendments Relating to High-Risk Brokers and the Firms That Employ Them.” Cambridge understands these amendments are being proffered to address concerns relating to high risk associated persons who, by way of their bad acts, pose a heightened risk of harm to the investing public; and that the goal of these amendments is to promote investor protection and market integrity. It is with these goals in mind that Cambridge assessed the impact of the Proposed Amendments.

While Cambridge supports FINRA’s efforts to ensure the goals of investor protection and market integrity are being met, Cambridge believes changes to the amendments proposed to the Rule 9200 Series, the Rule 9300 Series, and the NASD Rule 1010 Series are needed. We support strengthening controls to protect investors from high risk associated persons and would support the Proposed Amendments if certain requirements were altered to afford associated persons and member firms the opportunity to take additional remedial measures to address these issues.

**A. Rule 9200 and 9300 Series**

The Proposed Amendments to the Rule 9200 Series (Disciplinary Proceedings) and Rule 9300 Series (Review of Disciplinary Proceedings) would allow a Hearing Panel to impose conditions or

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restrictions on the activities of member firms and associated persons while a disciplinary matter is on appeal before the National Adjudicatory Council (NAC), and would require member firms to adopt heightened supervisory procedures while the appeal is pending.

As written, the Proposed Amendments to Rule 9285(a) and Rule 9311(b) would grant the Hearing Panel unilateral authority to impose any conditions or restrictions on the activities of the respondent member firm or associated person absent any input, opinions or opposing views from the member firms who would be required to act upon those conditions and restrictions. The language in the Proposed Amendment could be interpreted by Hearing Panels as a grant of extensive power, possibly resulting in Hearing Panels imposing overly broad conditions and restrictions. Overly broad conditions or restrictions (those that are not substantially related to the violation) would not be fair to the respondent member firm or to the associated person and have little investor protection value because the condition or restriction is not tailored to address, prevent, or deter future instances of the alleged violation.

Though it may seem proper for the Hearing Panel to unilaterally “impose such conditions or restrictions on the activities of a respondent as the Hearing Panel considers reasonably necessary” while interim orders are on appeal to the NAC, a better measure would be to require the Hearing Panel to solicit and consider input from the respondent member firm regarding any conditions or restrictions being contemplated by the Hearing Panel. Instead of imposing mandates, penalties, and remedial actions, the Hearing Panel should instead confer with the respondent member firm regarding the facts and circumstances material to the disciplinary review. This would allow the respondent member firm to suggest ways it could adequately alter its compliance systems, within the context of the member firm’s size, resources, and overall ability to supervise, to insure that appropriate investor protection measures are taken. Cambridge believes that before unilaterally ordering conditions and restrictions, a more effective approach would entail the Hearing Panel considering input from the respondent member firm as to what remedial steps that member could employ to specifically address the activity that caused the alleged violation.

Additionally, with respect to any restriction or condition imposed on a member firm or associated person, Cambridge is concerned about possible actions that would need to be taken after a Hearing Panel has imposed restrictions on an associated person and the NAC reverses the Hearing Panel’s finding. How will lost income, lost opportunities and lost clients be addressed by the member firms or by FINRA? For example, what recourse would be available to a member or associated person if a Hearing Panel restricted business activities or suspended the member’s or associated person’s registration only to have their decision reversed by the NAC? As this rule proposal is drafted, the imposition of any conditions or restrictions by the Hearing Panel, coupled with the grant of authority to FINRA Enforcement under Proposed Rule change 9556(a)(2) (which allows for expedited proceedings against members for non-compliance with those conditions and restrictions, and authorizes the suspension or cancellation of a members registration), essentially amounts to an exaction of punishment before the determination of a final decree on the merits. Giving the impacted member firm an opportunity to address the Hearing Panel before the determination of whether any conditions or restrictions are warranted, and what those might be, could alleviate some of this concern.

Cambridge understands the need for investor protection and appropriate compliance controls, however, we believe FINRA’s efforts to strengthen controls and enhance investor protection could

more effectively be accomplished by considering input from the member firm as to how the member might establish reasonably designed supervisory systems, controls, and programs to address the specific alleged violations rather than imposing mandated requirements which may or may not be appropriately tailored to the member firm's business, size, and structure. As such Cambridge respectfully requests FINRA reconsider the current Proposed Amendments, and in the alternative seek remedial measures with a collaborative approach whereby member firms are given the opportunity to advise the Hearing Panel regarding any conditions or restrictions needed.

#### B. Expedited Review Proceedings of Interim Orders

A respondent member firm may seek an expedited review of the conditions and restrictions imposed by a Hearing Panel. The respondent's burden of proof in that proceeding is to demonstrate that the Hearing Panel committed an error and that the conditions or restrictions are not necessary to prevent customer harm. Cambridge proposes FINRA adjust to the Proposed Rule so that the respondent's burden of proof should be whether: a) the Hearing Panel committed an error; b) the conditions or restrictions are overly broad; or c) the restrictions or conditions are not narrowly tailored to prevent future occurrences of the underlying violations.

#### C. NASD Rule 1010 Series

The Proposed Amendments to NASD Rule 1010 Series seek to place additional limitations on member firms by requiring a member firm to first submit a written letter to FINRA's Department of Member Regulation, through the Membership Application Program (MAP), seeking a materiality consultation, when a natural person, who has in the prior five years one or more final criminal actions or two or more specified risk events, seeks to become an owner, control person, principal, or registered person of an existing member firm.

Cambridge generally supports this Proposed Amendment as it relates to the criteria requiring a firm to file a material consultation where a proposed owner, control person, principal or registered person of a member firm has one or more criminal matters, or two or more specified risk events in the prior five years. However, Cambridge respectfully requests FINRA reconsider the dollar threshold as provided in the proposed definition of the "specified risk event" contained in the proposed amendments to Rule 1011. As we believe the *de minimis* dollar thresholds are unreasonably low, and for the following reasons, we request FINRA reconsider raising the *de minimis* amounts to at least \$50,000.

Cambridge believes the proposed dollar thresholds applied to consumer initiated customer arbitration awards, arbitration settlements, and total monetary sanctions would impose unreasonable limitations on prospective owners, control persons, or registered persons who do not truly belong in the high risk category but are due to the methodology used to determine that classification. In some instances, the employment of a strictly quantitative approach to classifying an associated person as a high risk broker would result in unfairly categorizing an individual as a high risk broker because of the number of qualifying "specified risk event" disclosures that appear on that associated persons U4, whether the associated person committed any violation or not. This is often the case with control persons, principals, and registered persons who were required to disclose events due to a managerial role in the chain of supervision, and thus responsible for, but likely not directly involved in, the actions

causing the violations resulting in the disclosures. Leaders in our industry can delegate authority but they cannot delegate responsibility – Chief Compliance Officers and Presidents of member firms are routinely held responsible for the actions of those under their purview. Here, as a point of reference, Cambridge would note that just as Regulatory Notice 18-15 regarding heightened supervision describes how member firms should employ a qualitative approach when determining which associated persons should be placed on heightened supervision, a qualitative approach to determining which associated persons should be classified as high risk brokers for purposes to this rule would also not only be more meaningful but would be more appropriate. Since, however, a qualitative classification is not being contemplated, raising the *de minimis* dollar threshold could eliminate some of those unfair characterizations.

Additionally, Cambridge is particularly concerned that the impact of the low dollar threshold on non-high risk brokers would temper and interfere with a member firm's ability to raise capital through the sale of ownership interests, transition control persons or principals as part of a merger or acquisition, or to recruit multiple registered persons who operate as a singular branch office. Cambridge believes the transition from one member firm to another is not the most appropriate time to mitigate the challenges associated with high risk brokers. Rather, the low thresholds imposed and the actions required of member firms would likely result in frustrating brokers who are not high risk, impeding choice, and confusing clients by holding up the registration process for those registered persons who might transition from one member to another. Furthermore, it is likely that these measures will not be viewed favorably by the investing public when their registered representative is mired in re-registration, awaiting approval to join a new member firm, while their accounts could potentially lie dormant and unmanaged at the registered representative's former broker dealer.

Accordingly, Cambridge believes that this rule change likely poses an unreasonable restraint on a registered person's ability to transfer their practice to a member firm when such a transfer may be in the best interest of clients or the broker, or to transition from a business relationship whereby neither party envisions a future in the relationship. Thus, we would argue the low threshold levels as proposed do not serve as investor protection measures, but could actually harm investors whose registered representatives seek to change registration from one member to another, and potentially into a better situation for those clients.

Lastly, the proposed measure may result in other unintended consequences to member firms and associated persons. Often customer arbitrations, regulatory and civil actions are settled for the projected cost of defense. In many cases today, that dollar amount is likely nearer to or greater than \$50,000 rather than \$15,000. Cambridge believes the \$15,000 threshold will incentivize associated persons, who may face such actions, to continue arbitrating these types of proceedings rather than settle because of the impairment presented by this proposed rule change. This in turn will likely increase litigation costs for all involved and result in a greater number of proceedings, and more expansive proceedings as well.

Thus, a higher threshold would be less likely to interfere with those who seek to become an owner, control person, principal, or registered person of a new member firm and are not intended to be targets of FINRA's efforts to protect investors under this Proposed Amendment, would temper the proposed burden on member firms in this area, and would mitigate the potentially high economic impact which could result from this proposed rule.

Cambridge also recommends FINRA amend this process to afford associated persons contemplating transition, but who may be considered a high risk broker, the opportunity to directly and confidentially submit an application seeking a materiality review through MAP as an alternative to member firms submitting an application on behalf of an associated person for a materiality review through MAP. When an associated person to whom the rule applies contemplates a transition from one member to another, that associated person should be able to apply to FINRA on their own behalf in advance of any contemplated move. The associated person should have the opportunity to submit the application to FINRA, and to then obtain approval in anticipation of changing member registration, rather than requesting his or her current firm or any number of prospective firms he or she is looking to join to submit an application on his or her behalf. This alteration would save time and money, and would give associated persons confidence that they are free to separate from one member and move to the next without interruption. As written, the proposed rule could create an environment where, because of these disclosures, if an associated person is not permitted to join a new member firm, but does not want to continue associating with his or her current firm, the only remedial measure for the member firm would be to terminate the associated person who wants to leave that firm. A better measure would be to allow the associated person with the disclosure events noted in the rule proposal to pre-qualify their transition with FINRA on their own.

Cambridge is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with FINRA on this important regulatory issue.

Respectfully submitted,

*// Seth A. Miller*

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