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Via Electronic Mail (**rule-comments@sec.gov**)

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers; File No. S7-12-23

Dear Secretary Countryman:

Cambridge Investment Research Advisors, Inc., a Securities and Exchange Commission ("SEC" or the "Commission") registered investment adviser ("RIA"), as well as its affiliated broker-dealer, Cambridge Investment Research, Inc., (collectively "Cambridge") appreciates the opportunity to comment on the above-referenced rule proposal regarding the use of predictive data analytics ("PDA") and similar technologies (the "Proposal"). The Proposal seeks to modify portions of the Securities Exchange Act of 1934 and the Investment Advisors Act of 1940 to address conflicts of interest associated with the use of this technology.

Cambridge appreciates the opportunity to comment on the Proposal, as the use of PDA and similar technology to optimize, predict, guide, forecast, or direct investment-related behaviors or outcomes is increasingly prevalent and critical to today's investment advisory business. In fact, the Commission acknowledges that "[w]e live in an historic, transformational age with . . . predictive data analytics models provid[ing] an increasing ability to make predictions about each of us as individuals." Press Release, SEC, SEC Proposes New Requirements to Address Risks to

Investors From Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers. (July 26, 2023), https://www.sec.gov/news/press-release/2023-140. This statement is emblematic of the importance of this topic.

The use of artificial intelligence, such as PDA, and other technology can be beneficial to investors in providing greater market access and efficiency. Nevertheless, the Proposal imposes a highly prescriptive process for evaluating, testing, and documenting the use of the "covered technology" with respect to conflicts of interest. Cambridge's concerns in this regard are as follows:

- The breadth of the Proposal constitutes a significant obstacle to firms building appropriate policies and procedures intended to achieve compliance with the Proposal.

- The definition of "covered technology" exemplifies the over-breadth of the Proposal in that it renders the use of the most basic tools, such as a calculator or an excel spreadsheet with embedded formulas, impossible.

- The scope of the Proposal creates potential conflicts with Regulation Best Interest ("Reg BI") and the Marketing Rule, among others.

- "Elimination or neutralization" of conflicts of interest eliminates the option to disclose and mitigate conflicts, as contemplated by Reg BI.

THE PROPOSAL IS OVER-BROAD

The stunning breadth of the Proposal is evidenced by the definition of "covered technology," which is any "analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes." https://www.sec.gov/rules/proposed/2023/34-97990.pdf at pg. 230. To be clear, any technology that is analytical, technological, or computational appears to fall within the scope of the Proposal.

This proposed definition encompasses as "covered technology" a spreadsheet with embedded calculations, or a planning tool intended to estimate future retirement income needs – both commonly used in the financial services industry. The Proposal further makes clear that "PDA-like" technology also includes technologies such as algorithmic trading, artificial intelligence, machine learning, natural language processing, chatbots, and digital engagement processes if they are used in communicating with investors or managing investments.

Against the backdrop of the Proposal's "covered technology" definition, firms are compelled to develop, implement, periodically review, and extensively document the specific steps of why and how the use of basic, common technology does not create a conflict of interest. Such practical

hurdles may stifle innovation, with the consequences of these failings ultimately borne by the investing public.

The alleged rationale underly the Proposal is, at least in part, the potential for conflicts of interest – according to Chairperson Gensler, these analytical tools *could* facilitate advisers or brokers placing their interests ahead of investors'. Id. The protections allegedly contemplated by the Proposal seem unnecessary considering the extensive and existing framework surrounding identification and disposition of conflicts of interest. Specifically, Reg BI contains extensive guidance and requirements related to fiduciary obligations and the identification, disclosure, mitigation, and/or elimination of conflicts. There is no credible reason for imposing overlapping, burdensome regulations that increase the costs of doing business and afford no additional benefits to investors.

REQUIRING ELIMINATION OR NEUTRALIZATION OF CONFLICTS MAY MANDATE FUNDAMENTAL BUSINESS MODEL CHANGES

The Proposal defines "conflict of interest" as using any "covered technology" in any way "that *takes into consideration* an interest of" the financial professional or firm. Notably absent in the definition is any requirement that the interest of the financial professional actually *be contrary* to the interest of the customer.

Simply requiring that in all client interactions the interests of the client are ahead of the interests of the firm is a significant deviation from existing practice. Id at 98. Historically, firms have disclosed certain conflicts and obtained the client's informed consent. This common practice is reflected in Commission's Standard of Conduct for Investment Advisers, SEC, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Exchange Act Release No. 34-86031 (July 12, 2019) and Regulation Best Interest, SEC, Regulation Best Interest: The Broker-Dealer Standard of Conduct, Investment Advisers Act Release No. IA-5248 (July 12, 2019). In these contexts, conflict elimination is compelled only when it cannot adequately be addressed through disclosure and mitigation. The current Proposal reflects a significant departure from this established standard.

Without any evidence, the Commission appears to assume that investors are incapable of making a knowing, voluntary decision with respect to properly disclosed matters and, thus, takes the position that disclosure will no longer be sufficient. If this were to become the new standard, that would compel a significant change in the way firms conduct business.

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REQUIRED NEW POLICIES AND PROCEDURES ARE UNNECESSARILY BURDENSOME

Beyond elimination or neutralization of a conflict, firms must also adopt policies and procedures and maintain records that document their processes for evaluating covered technologies; identifying conflicts of interest; eliminating or neutralizing those conflicts of interest; and designing and conducting an annual review of the effectiveness of these policies.

Without articulating a specific objective not already addressed by the existing regulatory framework, the Proposal creates significant operational burdens and costs on industry participants that use virtually *any* common technology. This burden exists in the face of only a *potential* for malfeasance – there is no indication of actual, nefarious conduct necessitating the implementation of this overly burdensome, pervasive regulatory framework.

The Proposal automatically imposes a time-consuming, cumbersome evaluation process with respect to new and existing technologies without a clear, corresponding, and justified necessity or benefit.

Furthermore, the Proposal also purports to cover "investor interactions", such as a firm's correspondence with or conveyance of information to investors, regardless of form. This encompasses in-person communications, those via a website or computer application (i.e., email), or messaging application, among other modes of communication. This definition is so broad that it could be read to cover all a firm's technology with few, if any, exclusively internal tools. https://www.sec.gov/rules/proposed/2023/34-97990.pdf at pg. 52.

While the Proposal claims to be "technology neutral," the Proposal imposes an obstacle to the use of any technology in communicating with investors or managing investments. The definition of "covered technology" is so broad that, as discussed above, even a spreadsheet could be deemed a "covered technology."

THE PROPOSAL CONFLICTS WITH OTHER REGULATIONS AND STANDARDS OF CONDUCT

In support of its authority to advance the Proposal, the Commission relies on its power "to promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors." *See* Securities Exchange Act of 1934, § 15(l)(2) and Investment Advisers Act of 1940, § 211(h)(2).

The Marketing Rule, 17 CFR 275.206(4)-1, addresses conflicts arising in the solicitation context. The use of third-party proposal generation tools may trigger the outsourcing provisions of the Proposal.

Similarly, the Commission's approach to conflicts, as reflected in the current Proposal, is strikingly unlike the approach outlined in Reg BI. Under Reg BI, it is enough for a firm to disclose fully and fairly its conflicts of interest to investors; however, under the Proposal, conflicts must be "eliminate[d] or neutralize[d]."

To prevent the use of disclosure to facilitate certain activity denies financial professionals the primary tool available to address possible conflicts of interest. For those conflicts which cannot be either eliminated or neutralized, firms will be prevented from allowing activities which may be of significant benefit to investors despite the potential conflict. For example, use of technology to support a particular recommendation notwithstanding the existence of a potential "conflict" should not preclude use of the product. What should matter is that investors are made aware of any relationship that could be perceived as potentially influencing the advice. Clients should be allowed to make informed decisions and evaluate the substantive merits of the recommendation.

Contrary to this simple objective, the "eliminate or neutralize" standard effectively bars working with investors with business models that are otherwise permitted under Reg BI, the Marketing Rule, and the Fiduciary Duty Interpretation.

DIFFERING TREATMENT OF BROKER-DEALERS AND INVESTMENT ADVISORS FURTHER ADDS TO THE BUDEN AND COMPLEXITY ASSOCIATED WITH THE PROPOSAL

Finally, the Proposal treats broker-dealers and investment advisers differently. Specifically, the Proposal's "covered technology" prohibitions apply to all clients of an investment adviser, including institutional investors. In contrast, a broker-dealer is obligated to neutralize or eliminate bias in "covered technology" only in the context of a retail client interaction and not with an institutional investor. *See* https://www.sec.gov/rules/proposed/2023/34-97990.pdf at pg. 50.

There is no basis for the Commission to implicitly conclude that an institutional, *brokerage* client requires less "protection" than an institutional, *advisory* client. This arbitrary assumption may effectively deny advisory clients the benefit of "covered technology" available to, for example, institutional brokerage clients.

CONCLUSION

Cambridge appreciates the opportunity to collaborate in a dialog about proposed limitations on the use of PDA and other artificial intelligence technology. Moreover, Cambridge understands and concurs, conceptually, with the SEC's goal to prevent firms from placing their interests ahead of those of investors. Nevertheless, it is critical for regulators, firms, and the investing public to mount a coordinated approach to the application of rapidly evolving technology. Analytical tools, such as artificial intelligence, facilitate efficient processing and analysis of vast quantities of

information, which further promotes data-driven investment decisions and potentially reduced investment advice costs. These are considerations and objectives that should inform policy making efforts.

Very truly yours,

/s/ *Seth A. Miller*

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