FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021072094101

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Cambria Capital, LLC (Respondent)
Member Firm
CRD No. 133760

Pursuant to FINRA Rule 9216, Respondent Cambria Capital, LLC submits this Letter of Acceptance, Waiver, and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Cambria has been a FINRA member since 2005, with its principal place of business in Salt Lake City, Utah. The firm has eight registered persons at one branch and is a full-service securities brokerage firm. On November 29, 2024, the firm filed a Form BDW terminating its registration with FINRA.[1]

OVERVIEW

From March 2019 through June 2021, Cambria charged an unfair commission on 255 transactions. During the same period, Cambria failed to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with FINRA Rule 2121. As a result, Cambria violated FINRA Rules 2121, 3110, and 2010.

From April 2019 through August 2021, Cambria failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA Rule 2111 and, beginning on June 30, 2020, the Care Obligation of Rule 15*l*-1 of the Securities Exchange Act of 1934 (Reg BI) with respect to excessive trading. As a

[1] For more information about the firm, including prior regulatory events, visit BrokerCheck® at www finra.org/brokercheck.

result, Cambria violated FINRA Rules 3110 and 2010, and from June 30, 2020 through August 2021, violated Reg BI's Compliance Obligation and FINRA Rule 2010.

From April 2019 through March 2020, Cambria failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 in connection with recommendations of non-traditional and volatility-linked exchange-traded products (ETPs) in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

I. Cambria charged unfair commissions on 255 transactions and failed to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA Rule 2121.

FINRA Rule 3110(a) requires a member firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA Rule 3110(b) requires a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

FINRA Rule 2121 provides that:

> [If a member] acts as agent for [its] customer in any [securities] transaction, [the member] shall not charge [its] customer more than a fair commission or service charge, taking into consideration all relevant circumstances[.]

FINRA Rule 2121 Supplementary Material .01 (Rule 2121.01) sets a guideline of five percent for determining whether a commission is unfair or unreasonable. However, the "5% Policy" is a guide, not a rule. A commission pattern of five percent or even less may be considered unfair or unreasonable.

The percentage of the commission is only one of the relevant factors to be considered in determining fairness. Rule 2121.01 identifies seven other factors that members should consider in determining the fairness of a commission, including the type of security involved, the availability of the security, the price of the security, and the size of the transaction.

FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." A violation of FINRA Rules 3110 or 2121 also constitutes a violation of FINRA Rule 2010.

From March 2019 through June 2021, Cambria charged a total of $19,200 in commissions on 255 transactions in 20 customer accounts. Cambria charged a commission of $75 or more per transaction regardless of the principal value of the trade.

The commissions charged, which ranged from over 5% to 77% of each transaction's principal value, were not fair and reasonable. The amount of commissions charged on these transactions exceeding 5% equaled $3,155.37.

During this same period, Cambria failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with FINRA Rule 2121. The firm's WSPs failed to describe the supervisory steps designated firm principals should take to achieve compliance with the fair pricing requirements set forth in Rule 2121. The WSPs also did not state what factors firm principals should consider when determining the fairness of commissions or how to document their reviews. Also, firm principals manually reviewed the daily trade blotter for potentially unfair commissions, yet the blotter did not set out the percentage commission charged on each trade. Cambria's supervisors failed to identify that the firm charged excessive commissions in the 255 separate instances noted above.

Therefore, Cambria violated FINRA Rules 2121, 3110, and 2010.

II. Cambria failed to establish and maintain a supervisory system reasonably designed to achieve compliance with SEC and FINRA rules related to excessive trading.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Reg BI. Rule 15*l*-1(a)(1) of Reg BI requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer. Reg BI's Care Obligation, set forth at Exchange Act Rule 15*l*-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest in light of the retail customer's investment profile.

No single test defines when trading is excessive, but factors such as the turnover rate and cost-to-equity ratio are relevant to determining whether a member firm or associated person has excessively traded a customer's account in violation of Reg BI or FINRA Rule 2111. The turnover rate represents the number of times that a portfolio of securities is exchanged for another portfolio of securities. The cost-to-equity ratio measures the amount an account must appreciate just to cover commissions and other expenses. In other words, it is the break-even point where a customer may begin to see a return. A turnover rate of six or more, or a cost-to-equity ratio above 20 percent, generally indicates that a series of recommended transactions was excessive.

Prior to June 30, 2020, FINRA Rule 2111 required members and associated persons to have a reasonable basis to believe that a recommendation of a transaction or investment strategy involving a security or securities to any customer is suitable for the customer. Under Rule 2111.05(c), members and associated persons with actual or *de facto* control over an account were required to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, is not excessive and unsuitable for the customer in light of the customer's investment profile. FINRA Rule 2111 is still in effect, but as of June 30, 2020, it no longer applies to recommendations that are subject to Reg BI, and the element of control was removed from the quantitative suitability component.

Additionally, Reg BI's Compliance Obligation, set forth at Exchange Act Rule 15*l*-1(a)(2)(iv), requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI, including the Care Obligation. Reg BI's Adopting Release provides that broker-dealers should consider the nature of that firm's operations and how to design such policies and procedures to prevent violations from occurring, detect violations that have occurred, and to correct promptly any violations that have occurred.[2] A violation of Reg BI is also a violation of FINRA Rule 2010.

From April 2019 through August 2021, Cambria's supervisory system, including its WSPs, and as of June 30, 2020, its written policies and procedures pursuant to Reg BI, were not reasonably designed to achieve compliance with FINRA Rule 2111 or the Care Obligation of Reg BI as they pertain to excessive trading. The WSPs did not include any guidance on how to calculate or assess an account's turnover rate or cost-to-equity ratio or describe any reports that should be used in order to identify potential excessive trading. Cambria's supervisory system for detecting potential excessive trading consisted of the firm's principals manually reviewing the daily trade blotter. The daily trade blotter, however, only reflected the prior day's trading and did not provide any information relating to patterns of, or overall, trading in customer accounts. Nor did it provide any information about the turnover rate or cost-to-equity ratio or the cumulative costs of trading in customer accounts. Cambria's clearing firm made exception reports available to the firm, which contained information on customer accounts that had been flagged for meeting certain thresholds, such as high turnover rates and high commission-to-equity ratios. However, Cambria did not access or review these reports.

Cambria failed to identify two retail customer accounts that were excessively traded from April 2019 through August 2021. Cambria's representative recommended 35 trades to the first customer resulting in an annualized cost-to-equity ratio of 71.25% and an annualized turnover rate of 7.15. The trading in the first customer's account generated total trading costs of $3,501, including $2,625 in commissions. The same firm representative recommended 380 trades to the second customer, resulting in an annualized cost-to equity ratio of 44.96% and an annualized turnover rate of 7.26. The trading in the second customer's account generated total trading costs of $38,267, including $28,589 in commissions. Notwithstanding the high frequency of trading, cost-to-equity ratios, and

[2] *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, Exchange Act Release No. 86031, 84 FR 33318 at 33397 (July 12, 2019).

turnover rates, the firm did not contemporaneously identify these two accounts as excessively traded through its manual review of the firm's trade blotter or otherwise.

Therefore, from April 2019 through August 2021, Cambria violated FINRA Rules 3110 and 2010, and from June 30, 2020 through August 2021, Cambria violated Exchange Act Rule 15*l*-1(a)(1) and FINRA Rule 2010.

III. Cambria failed to establish and maintain a supervisory system reasonably designed to achieve compliance with its suitability obligations in connection with recommendations of non-traditional and volatility-linked ETPs.

Non-traditional ETPs are designed to return a multiple of an underlying index or benchmark, the inverse of the benchmark, or both over the course of one trading session, typically lasting a single day. In June 2009, FINRA Regulatory Notice 09-31 reminded firms that, due to the effect of compounding, the performance of non-traditional ETPs over periods longer than a single trading session "can differ significantly from the performance (or inverse of the performance) of their underlying index or benchmark during the same period of time." As a result, they "typically are not suitable for retail investors who plan to hold them for more than one trading session[.]"

Volatility-linked ETPs are designed to track Chicago Board Options Exchange Volatility Index (VIX) futures, rather than the VIX itself. In October 2017, FINRA Regulatory Notice 17-32 reminded firms that "many volatility-linked ETPs are highly likely to lose value over time. Accordingly, volatility-linked ETPs may be unsuitable for certain retail investors, particularly those who plan to use them as traditional buy-and hold investments."

Cambria's supervisory obligations under FINRA Rule 3110 included establishing a reasonable system to supervise for compliance with FINRA Rule 2111, which requires a member firm and its registered representatives to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer.

From April 2019 through March 2020, Cambria's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with the suitability requirements of FINRA Rule 2111 in connection with recommendations of non-traditional and volatility-linked ETPs. For example, the firm's WSPs did not provide reasonable guidance to supervisory principals regarding how to identify and address potentially unsuitable sales of non-traditional and volatility-linked ETPs. Cambria did not establish a supervisory system reasonably designed to ensure compliance with the requirement that representatives have a reasonable basis to recommend non-traditional and volatility-linked ETPs, including that they consider the intended holding periods identified in the products' prospectuses.

As a result of these supervisory failures, Cambria failed to detect and address three instances in which a firm representative recommended that customers buy non-traditional or volatility-linked ETPs without a reasonable basis to recommend them. These customers, who each had an investment objective other than speculation, held non-traditional and volatility-linked ETP positions for periods ranging from nine to 152 days, and the customers collectively incurred $3,512.33 in losses.

Therefore, Cambria violated FINRA Rules 3110 and 2010.

B. Respondent also consents to the imposition of the following sanctions:

- a censure; and
- restitution in the amount of $48,435.76[3] plus interest as described below.[4]

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of $48,435.76, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from August 10, 2021 until December 3, 2024.

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org, with a copy to Jamie.Stinson@finra.org, from a work-related account of the registered principal of Respondent. The email must identify Respondent and the case number and include a copy of the check, money order, or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org, with a copy to Jamie.Stinson@FINRA.org, no later than 30 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 30 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

[3] This amount consists of (1) the excessive commissions charged on the 255 transactions, (2) the commissions and trading costs charged on the two accounts that were excessively traded, and (3) the losses associated with the non-traditional and volatility-linked ETPs held by three customers.

[4] Pursuant to the General Principles Applicable to all Sanction Determinations contained in FINRA's *Sanction Guidelines*, FINRA did not impose a fine after it considered, among other things, Respondent's revenues and financial resources, Respondent's Form BDW filing terminating its registration with FINRA, and Respondent's agreement to pay restitution.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The imposition of a restitution order or any other monetary sanctions in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

A. To have a complaint issued specifying the allegations against it;

B. To be notified of the complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made, and to have a written decision issued; and

D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and

C. If accepted:

1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and

4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

12/9/24
Date

Cambria Capital, LLC
Respondent

Print Name: Gordon McBean

Title: CEO

Accepted by FINRA:

Signed on behalf of the
Director of ODA, by delegated authority

12/17/2024
Date

Jamie Stinson
Principal Counsel
FINRA
Department of Enforcement
200 Liberty Street, 11th Floor
New York, NY 10281

Attachment A

Schedule of Restitution

Customer	Restitution Amount (exclusive of interest)
Customer A	$110.16
Customer B	$69.00
Customer C	$321.66
Customer D	$106.09
Customer E	$178.30
Customer F	$70.09
Customer G	$299.22
Customer H	$322.10
Customer I	$496.24
Customer J	$3,629.88
Customer K	$141.18
Customer L	$2,909.41
Customer M	$103.15
Customer N	$39,016.03
Customer O	$514.51
Customer P	$51.96
Customer Q	$38.28
Customer R	$11.22
Customer S	$15.27
Customer T	$32.01
TOTAL	**$48,435.76**