

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**ROBERT HAWKES POTTER
CRD NO. 1198202**

Respondent.

NOTICE OF AGENCY ACTION

Docket No. SD-16-0007

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

You are hereby notified that agency action in the form of adjudicative proceeding has been commenced against you by the Utah Division of Securities (the "Division"). Pursuant to Utah Admin. Code R164-18-6(C) and Utah Code Ann. §63G-4-202(3), the Division Director finds that it is in the public interest and does not unfairly prejudice the rights of any party to convert this adjudicative matter from an informal to formal proceeding, which will be conducted according statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through -209; see also Utah Admin. Code Rule R151-4-101, *et seq.* The facts on which this action is based are set forth in the accompanying Petition. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code Rule R151-4-110.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Petition, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Lee Ann Clark
Utah Division of Securities

A copy to:

Jennifer Korb
Assistant Attorney General
Utah Division of Securities

160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0310

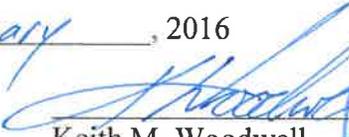
An initial hearing in this matter has been set for **Monday, March 21, 2016, at 9 a.m.** at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah. The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code Rule R151-4-710(2). After issuing the default order, the presiding officer may grant the relief sought against you in the Petition, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be Greg Soderberg, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6706. This adjudicative proceeding will be heard by Judge Soderberg and the Utah Securities Commission. At any hearings, the Division will be represented by the Attorney General's Office. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Petition should be directed to Jennifer Korb, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 4th day of February, 2016


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 5th day of February, 2016, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:



Certified Mail # 70150 640 0004 7575 4746

Lee Ann Lican
Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
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Salt Lake City, Utah 84114-6760
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSE
OF:**

**ROBERT HAWKES POTTER
CRD NO. 1198202**

Respondent.

**PETITION TO CENSURE, BAR AND
IMPOSE A FINE**

Docket No. SD-16-0007

Pursuant to the authority of the Utah Uniform Securities Act (the "Act"), Utah Code Ann. §61-1-6, the Utah Division of Securities (the "Division") hereby petitions the Utah Securities Commission (the "Commission") to enter an Order censuring, barring, and imposing a fine on Respondent Robert Hawkes Potter ("Potter") (CRD No. 1198202). In support of this petition, the Division alleges the following:

STATEMENT OF FACTS

Background, Disclosures, and Licensing History

1. Potter was a series 7, 63, and 65 licensed investment adviser representative ("IAR") and broker-dealer agent with Cambria Capital, LLC ("Cambria") (CRD No. 113760). Potter began his career in the securities industry in 1988 when he joined Lehman Brothers Inc. in

Salt Lake City, Utah. In August 1992, Potter left Lehman Brothers Inc. and obtained a position with Salomon Smith Barney Inc., where he remained until December 1998. In February 1999, Potter became associated with Financial West Group, and in March 1999 he also established Eagle Gate Securities Inc., and was listed as the Principal of the firm. Potter left Eagle Gate Securities in 2005 and, from 2005 until August 2011, Potter associated with Wachovia Securities, which was subsequently acquired by Wells Fargo Advisors, LLC, where he remained until he joined Cambria on August 3, 2011.

2. In July 2015, Cambria opened an internal investigation of Potter concerning use of unapproved means of communication with clients, commingling customer funds, and misleading/false statements with respect to account value, essentially leading to a guarantee of profits. As a result of the firm's review of this matter, Potter's employment with Cambria was terminated on August 3, 2015.
3. On September 3, 2015, the Financial Industry Regulatory Authority ("FINRA") issued a permanent bar against Potter for failing to cooperate with FINRA's investigation, prohibiting Potter from employment in the securities industry. On September 28, 2015, the National Futures Association ("NFA") barred Potter from associating with any NFA member after an investigation revealed that Potter was acting as an unregistered futures commission merchant when, under Potter's instruction, a customer wired funds to Potter's personal bank account.

Potter's Employment with Cambria and Failure to Disclose Loans from Clients

4. On December 23, 2011, and every year thereafter, Potter completed and signed Cambria's annual compliance questionnaire. In the questionnaires, Potter acknowledged that he

understood Cambria's Written Supervisory Procedures ("WSPs"), securities laws, and FINRA rules, including all provisions relating to obtaining loans from clients, and that he did not have any outside business activities to report. Despite his signed attestations, on numerous occasions, Potter concealed one or more loans with clients from Cambria, the Division, and the Securities and Exchange Commission, among others, in violation of securities laws and firm policies.

5. After first associating with Cambria, on December 23, 2011, Potter opened both a personal investment account and retirement account with Cambria. Potter used unapproved loans from clients to trade in his personal brokerage account.
6. On March 28, 2012, after Potter signed the 2011 annual compliance questionnaire attesting that he had not received loans from Cambria clients, Shane Philbrick, Cambria's Chief Compliance Officer, discovered a promissory note attached to email correspondence between Potter and a client of the firm. The firm did not further investigate the loan because Potter explained that the loan agreement was entered into before Potter joined Cambria.
7. On November 13, 2012, in response to a significant increase in trade errors by Potter, Cambria initiated an internal investigation and found several issues relating to Potter's trading, including an increase in trade corrections, issues in margin accounts, and deposited checks with insufficient funds. As a result of the firm's investigation, on November 13, 2012, Potter was placed on heightened supervision, which significantly restricted both his personal and client account activity.
8. On May 20, 2014, Cambria initiated a second internal investigation of Potter's conduct as it related to potential violations of firm procedures and/or FINRA rules after a review of Potter's email communications revealed multiple promissory notes revealing that Potter may

have been borrowing money from clients during his association with Cambria. The investigation revealed that Potter had failed to disclose loans received from Cambria clients, including approximately \$50,000 borrowed from J.J., \$50,000 borrowed from L.N., a \$50,000 revolving line of credit with M.C., and undisclosed amounts borrowed from C.H. and G.H. Potter argued that all of these loans were received from those individuals as friends prior to his broker-dealer agent–client relationship with each of them. Cambria reported the investigation to FINRA by filing a 4350 Disclosure and Complaint Filing form.

9. After FINRA initiated its own investigation of Potter’s loans, on February 3, 2015, Potter provided Cambria with a “Net Worth Statement,” which purportedly disclosed, among other things, all of Potter’s personal loans from Cambria clients. This document revealed loans received from a business entity, as well as six individuals who were non-clients of the firm. The total amount in disclosed loans at that time was \$916,500. In addition, Potter disclosed a total of \$285,500 from three business entities, all entities owned and controlled by M.C., a Cambria client, and all characterized as commercial loans by Potter.
10. In early 2015, Potter produced a list to the U.S. Securities and Exchange Commission (“SEC”) disclosing “all Promissory Notes made to Robert Potter.” In addition to the loans from the aforementioned individuals, the list includes individuals whose names were not disclosed to Cambria or FINRA, including P.B., J.H., H.B., and C.P., all non-clients of the firm. The borrowed amount totals approximately \$1,377,000, at least \$460,500 more than Potter disclosed to Cambria in February 2015. Potter also revealed to the SEC that he received loans from V.S. and K.L., both non-clients, and S.D., a Cambria Client. On the list produced to the SEC, Potter claimed that most lenders were non-clients.

11. On October 21, 2015, after meeting with Potter, the Division uncovered numerous other loans which were not disclosed to Cambria, FINRA, or the SEC. Potter characterized these loans as “trading checks,” and denied that they should be characterized as personal loans from clients. During his interview with the Division, Potter remained elusive in his responses and only minimally cooperated so as not to reveal the extent of these practices.
12. In addition to the loans disclosed in Potter’s Net Worth Statement, the Division’s investigation has revealed that Potter borrowed additional funds from clients, including the following:
 - a. Between 2011 and August 2015, Potter borrowed approximately \$15,000 from F.C., a client of Cambria, without disclosing the loan to the firm.
 - b. Between 2011 and August 2015, Potter borrowed at least \$40,000 from S.D., a client of Cambria, without disclosing the loan to the firm.
 - c. Between 2011 and August 2015, Potter borrowed monies from J.D., a client of Cambria, without disclosing the loan to the firm.
 - d. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least \$75,000 from C.H. and G.H., clients of Cambria, without disclosing the loan to the firm.
 - e. Between 2011 and August 2015, Potter borrowed at least \$10,000 from J.J., a client of Cambria, without disclosing the loan to the firm.
 - f. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least \$24,000 from J.P., a client of Cambria, without disclosing the loan to the firm.
 - g. Between 2011 and August 2015, Potter borrowed at least \$1,500 from T.P., a client of Cambria, without disclosing the loan to the firm.
 - h. Between 2011 and August 2015, Potter borrowed \$15,000 from J.T., a client of Cambria, without disclosing the loan to the firm.

C.A.'s Purported Investments through Potter

13. In January 2015, Potter solicited C.A., an acquaintance and owner of a construction company in Arizona, to invest in crude oil. Potter told C.A. that the investment guaranteed profits and that C.A. would be investing in crude oil as a customer of Cambria. Instead of providing C.A. with a new account application, on January 21, 2015, Potter provided C.A. with wiring instructions for Potter's personal account with America First Credit Union. Potter never opened a Cambria account for C.A. and never made any investments in crude oil on behalf of C.A. Instead, through numerous text messages, Potter falsely represented that he made the investment, and lied about the performance of the account, of note:
- a. On or about January 22, 2015, C.A. wired \$5,000 to Potter's personal AFCU account.
 - b. On or about February 11, 2015, C.A. instructed Potter to sell his crude oil interest if the value dropped below \$6,200—Potter claimed that the current value on that day was \$7,500.
 - c. On March 2, 2015, Potter told C.A. that his account value totaled \$7,800.
 - d. On March 23, 2015, C.A. wired an additional \$5,000 to Potter's AFCU account.
 - e. On April 14, 2015, Potter told C.A. that the current value on that day was \$7,500. After C.A. requested \$7,000 from his account, Potter told C.A. that he wired the funds on April 20, 2015.
 - f. After C.A. inquired about the funds on May 4, 2015, Potter admitted to C.A. that he made a \$30,000 error in his personal trading account and that C.A.'s funds were deposited into that account.
14. On July 28, 2015, C.A. called Cambria's CCO Shane Philbrick and informed him of his investment with Potter. Philbrick's investigation into the matter revealed that C.A. was not a Cambria client and

that Potter had traded C.A.'s investment funds in his own personal brokerage account. Additionally, Philbrick could not find transactions in Potter's personal brokerage account which corresponded with the dates C.A.'s investments were supposedly made. C.A. provided Philbrick with a text message conversation between C.A. and Potter in support of his claims.

15. In August 2015, Cambria terminated Potter for his violation of Cambria's client communication policies.¹

16. Additionally, Potter admitted to the Division that he concealed his business relationship with C.A. when he was interviewed by the SEC.

Written Supervisory Procedures

17. Cambria's WSPs, since 2011 to the present, have strictly prohibited all loans from customers, stating, "No registered representative of the firm shall borrow money from or lend money to any; customer of such person unless: The lending or borrowing arrangement meets one of the following conditions: (a) customer is a member of the immediate family; (b) the customer is a financial institution regularly engaged in providing credit, financing and/or loans; (c) customer and registered representative are both registered persons of the same firm; (d) the lending arrangement is based on a personal relationship with the customer; or (e) the lending arrangement is based on a business relationship outside of the broker/customer relationship."

18. The WSPs allow for loans from clients under certain exceptions listed under FINRA Rule 3240. The exception that would most closely apply in this matter is the exception for a lending arrangement that is "based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker-customer relationship." However, these exceptions do not apply here. Under

¹ Cambria's WSPs prohibit communicating with clients through text messaging.

FINRA Rule 3240, for the exception to apply, the licensee is required to notify the broker-dealer prior to entering into a lending arrangement, and the broker-dealer must pre-approve such arrangements in writing. On multiple occasions, Potter concealed loans he received from Cambria clients. The Division's investigation revealed that, in total, Potter borrowed more than \$1.5 million dollars from clients.

19. Potter violated Cambria's WSPs, and thus his employment agreement on numerous occasions, ultimately resulting in his termination from the firm on August 3, 2015.

FIRST CAUSE OF ACTION

Existing Permanent Bar under §61-1-6(2)(a)(ii)(D) of the Act

20. Under 61-1-6(2)(a)(ii)(D) of the Act, Division action is warranted and the commission may issue an order to bar a licensee from employment with a licensed broker-dealer or investment adviser in the State of Utah, if the commission finds that the licensee is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing a conduct or practice involving any aspect of the securities business.
21. In the present matter, on September 3, 2015, the Financial Industry Regulatory Authority ("FINRA") issued a permanent bar against Potter for failing to cooperate with FINRA's investigation, prohibiting Potter from employment in the securities industry. On September 28, 2015, the National Futures Association ("NFA") barred Potter from associating with any NFA member after an investigation revealed that Potter was acting as an unregistered futures commission merchant when, under Potter's instruction, a customer wired funds to Potter's personal bank account.

SECOND CAUSE OF ACTION

Fraud Unlawful under §61-1-1(2) of the Act

22. In January 2015, Potter solicited C.A. to enter into a crude oil commodities investment and, in connection with the offer and sale of those securities, misrepresented material facts or omitted to state material facts necessary in order to make the statements made not misleading, including but not limited to the following:

- a. Potter told C.A. that C.A. would invest in crude oil when, in fact, C.A.'s funds were deposited into Potter's personal AFCU checking account and never used to invest in crude oil but instead, among other things, were used to cover Potter's overdraft charges in his personal checking account.
- b. On or about February 11, 2015, C.A. instructed Potter to sell his crude oil interest if the value dropped below \$6,200—Potter claimed that the current value at the time was \$7,500 when, in fact, no account in C.A.'s name existed at Cambria, and thus no account value could have been assessed and communicated to C.A..
- c. On March 2, 2015, Potter told C.A. that his account value totaled \$7,800 when, in fact, no account in C.A.'s name existed at Cambria, and thus no account value could have been assessed and communicated to C.A..
- d. On March 23, 2015, Potter convinced C.A. to wire an additional \$5,000 to Potter's AFCU account, and continued representing to C.A. that the funds were in C.A.'s Cambria account when, in fact, a Cambria account for C.A. was never created and the funds were used by Potter for personal purposes.
- e. Potter failed to disclose to C.A. that C.A. was never a client of Cambria.
- f. Potter failed to disclose to C.A. that C.A.'s funds would be used to cover Potter's overdraft amounts in his personal checking account.

- g. Potter failed to disclose to C.A. that C.A.'s funds would be used to purchase other securities in Potter's personal brokerage account, but not crude oil.
- h. Potter failed to disclose to C.A. that Potter's access was restricted at Cambria and that he could no longer purchase commodities investments at the firm.

THIRD CAUSE OF ACTION

Dishonest and Unethical Business Practice under 61-1-6(2)(a)(ii)(G) of the Act R164-6-1g(C)(28), applicable to Agents through R164-6-1(D)(7): Failing to Comply with FINRA Rules 3240 and 2210

23. Between 2011 and 2015, on numerous occasions, in violation of Cambria's Written Supervisory Procedures, and FINRA Rule 3240,² Potter failed to request and receive approval prior to entering into numerous loans with Cambria clients, and concealed from Cambria numerous loans he entered into with clients.
24. On February 3, 2015, Potter provided Cambria with a "Net Worth Statement," which putatively disclosed all of Potter's loans from Cambria clients, and loans to other individuals. This document revealed loans received from a business entity and six individuals. In February 2015, Potter produced a list to the SEC purportedly disclosing all Promissory Notes issued by Potter in addition to the loans from the aforementioned individuals, the list includes clients whose names were not previously disclosed to Cambria. On the list produced to the SEC, Potter claimed that several lenders were non-clients of Cambria. However, a complete client list obtained by the Division from Cambria revealed that Potter borrowed funds from clients, which he did not disclose to either Cambria, including the following:

² FINRA Rule 3240 prohibits registered persons from borrowing money from customers, unless a member's written supervisory procedures allow the borrowing of money from customers, and the registered person receives written permission from the associated member prior to borrowing or lending money from customers.

- a. Between 2011 and August 2015, Potter borrowed approximately \$15,000 from F.C., a client of Cambria, without disclosing the loan to the firm.
- b. Between 2011 and August 2015, Potter borrowed at least \$40,000 from S.D., a client of Cambria, without disclosing the loan to the firm.
- c. Between 2011 and August 2015, Potter borrowed monies from J.D., a client of Cambria, without disclosing the loan to the firm.
- d. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least \$75,000 from C.H. and G.H., clients of Cambria, without disclosing the loan to the firm.
- e. Between 2011 and August 2015, Potter borrowed at least \$10,000 from J.J., a client of Cambria, without disclosing the loan to the firm.
- f. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least \$24,000 from J.P., a client of Cambria, without disclosing the loan to the firm.
- g. Between 2011 and August 2015, Potter borrowed at least \$1,500 from T.P., a client of Cambria, without disclosing the loan to the firm.
- h. Between 2011 and August 2015, Potter borrowed \$15,000 from J.T., a client of Cambria, without disclosing the loan to the firm.

25. As part of an ongoing pattern of concealing the use of client funds obtained from loans or otherwise, in between January 2015 and July 2015, Potter used unapproved methods of communication when, in violation of Cambria's Written Supervisory Procedures and FINRA Rule 2210,³ he sent text messages to C.A. discussing an investment opportunity with him and leading him to believe that he was a Cambria client with a brokerage account at the firm

³ FINRA Rule 2210 requires all retail communication, including electronic communication, to be approved by a qualified registered principal of the member before the earlier of its use or filing with FINRA's Advertising Regulation Department.

when, in fact, he was not a client of Cambria. Potter sent numerous text messages to C.A. instructing him to wire funds and discussing the alleged purchases and sale of a crude oil investment.

FOURTH CAUSE OF ACTION

Dishonest and Unethical Business Practice under 61-1-6(2)(a)(ii)(G) of the Act R164-6-1g(D)(1): Engaging in the practice of lending or borrowing money or securities from a customer.

26. Between 2011 and 2015, on numerous occasions, in violation of securities laws, Potter engaged in the act of borrowing money from clients without receiving prior approval from Cambria, including the following:

- a. Between 2011 and August 2015, Potter borrowed approximately \$15,000 from F.C., a client of Cambria, without disclosing the loan to the firm.
- b. Between 2011 and August 2015, Potter borrowed at least \$40,000 from S.D., a client of Cambria, without disclosing the loan to the firm.
- c. Between 2011 and August 2015, Potter borrowed monies from J.D., a client of Cambria, without disclosing the loan to the firm.
- d. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least \$75,000 from C.H. and G.H., clients of Cambria, without disclosing the loan to the firm.
- e. Between 2011 and August 2015, Potter borrowed at least \$10,000 from J.J., a client of Cambria, without disclosing the loan to the firm.
- f. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least \$24,000 from J.P., a client of Cambria, without disclosing the loan to the firm.
- g. Between 2011 and August 2015, Potter borrowed at least \$1,500 from T.P., a client of Cambria, without disclosing the loan to the firm.

- h. Between 2011 and August 2015, Potter borrowed \$15,000 from J.T., a client of Cambria, without disclosing the loan to the firm.

REQUEST FOR RELIEF

The Division requests that, based upon Respondent's willful violations of the Act, pursuant to §61-1-6 of the Act, the Commission enter an order censuring and barring him, and imposing a fine, in an amount determined by the Commission.

Dated this 4 day of February, 2016.



Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:



Jennifer Korb
Assistant Attorney General