

16 May 2016

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DIRECTION ORDER

(Given pursuant to Sections 468 and 469, 477 and 478 of the Financial Markets Conduct Act 2013
(**FMC Act**))

Direction Order

A direction that Cambrian Corporation Limited (**Cambrian**):

1. amend the revised marketing material provided to the Financial Market Authority (**FMA**) on 18 March 2016 (the **current marketing materials**) so that the dominant message that foreign exchange trading provides an easy way to profit from financial markets is sufficiently balanced (including in terms of prominence, placement and context) by information about the risks of foreign exchange trading and the effort required for a trader to actively manage their positions;
2. certify in writing (including by email) to the FMA's Director of Regulation:
 - a. within 10 working days of the date of the Direction Order, that the current marketing materials comply with sections 19(1)(b) and 23 of the FMC Act and paragraph 1 above; and
 - b. 2 working days before the date of publication of any amendments to the current marketing materials and/or the date of publication of any other marketing materials in whatever form (together, the **marketing materials**), that such amendment(s) and/or other marketing materials comply with sections 19(1)(b) and 23 of the FMC Act;
3. ensure that its marketing materials clearly convey that:

- a. trading foreign exchange cannot be relied upon to provide substantial profits quickly and consistently; and
 - b. trading in foreign currency is high risk, may provide volatile returns and does not guarantee consistent profits; and
 - c. any disclaimers or references to risks are sufficiently clear and prominent to balance the dominant message created by the headline claims;
4. ensure that all statements in its marketing materials about the potential profits of foreign exchange trading and/or its system are balanced (including in terms of prominence, placement, and context) by statements about the risks involved with these activities;
5. make it clear in its marketing materials that its services are in relation to short-term (ie spot or intra-day) foreign exchange trading, not trading of derivatives (as defined in the FMC Act) and ensures that any statements, examples or charts relating to profit or success are consistent with this;
6. if Cambrian includes any chart, table, diagram or other pictorial, numerical or graphical representation in its marketing materials, the graphic representation must not give an impression that cannot be substantiated and must not be misleading in the context in which such representations are made;
7. does not include any statements in its marketing that expressly or by implication suggest that the customer can trade like a professional by using Cambrian's services;
8. in respect of any testimonial made by a person about Cambrian's services:
 - a. if Cambrian publishes a testimonial from any person who is not an independent, paying customer of Cambrian, Cambrian must ensure that the nature of that person's relationship to Cambrian's director(s) or staff (as applicable) must be accurately described in words of equal prominence beside the relevant testimonial;
 - b. Cambrian must not include a testimonial from any person who has traded in derivatives (or any other financial product as defined in the Financial Advisers Act 2008) since using Cambrian's services. Cambrian must substantiate all testimonials on this basis;
 - c. Cambrian must ensure that all published testimonials are exact copies of wording approved in writing by the person giving the testimonial. Cambrian must substantiate all testimonials on this basis; and
 - d. Cambrian must obtain the written consent of each person who gives a testimonial to their contact details being provided to the FMA (if requested by the FMA) and to the FMA contacting them to substantiate their testimonial;
9. ensures that it substantiates any and each representation in its marketing materials relating to:
 - a. the reputation of its brokers;

- b. its trade signals and alerts; and
 - c. the experience, expertise and qualifications of its staff;
10. provides a copy of the Direction Order to each of its clients (past and present) within 5 working days after the date of the Direction Order;
11. reports in writing (including by email) to the FMA's Director of Regulation within 7 working days after the date of the Direction Order, confirming that paragraph 10 has been complied with.

Reasons for the Direction Order

12. The reasons for recommending issuing a Director Order to Cambrian as proposed above are that –
- a. Cambrian has published misleading and deceptive marketing material relating to foreign exchange trading and in doing so has engaged in conduct that is misleading and deceptive in relation to the supply or possible supply of a financial service or the promotion of the supply or use of a financial service in contravention of section 19(1)(b) of the FMC Act, as detailed in the notice of intention to issue a direction order, dated 8 March 2016;
 - b. Cambrian has published marketing material containing unsubstantiated representations and in doing so has made unsubstantiated representations in contravention of section 23 of the FMC Act, as detailed in the notice of intention to issue a direction order, dated 8 March 2016;
 - c. while Cambrian has agreed to correct its marketing material to remove the misleading and unsubstantiated representations as detailed in the notice of intention to issue a direction order dated 8 March 2016, the current marketing materials continue to provide a dominant message that forex trading provides an easy way to profit from financial markets. This is not sufficiently balanced by information about the risks of foreign exchange trading and the effort required for a trader to actively manage their positions;
 - d. issuing a Direction Order as proposed is appropriate as, -
 - i. the previous marketing materials were in the public domain and used by Cambrian in its advertising activities for a considerable period of time. We are not satisfied that correcting the materials from now on will adequately mitigate the potential adverse effects of the breaches. Directing Cambrian to send a copy of the Direction Order to all its clients will ensure that clients are informed that the previous marketing materials were misleading or deceptive and contained unsubstantiated representations. Clients who signed up to Cambrian's services when the previous marketing materials were being used will have the

opportunity to consider if they did so on the basis of misleading or deceptive conduct and/or unsubstantiated representations. If so, they may be able to seek recovery of any losses on that basis. Publication of the Direction Order on the FMA's website will also alert the public that the marketing materials were misleading and could also raise general awareness of the risks involved with these types of services and therefore encourage other people to be more cautious about signing up to them in the future, leading to more informed decision-making by investors;

- ii. A direction order will assist to ensure ongoing attention to improved compliance, as Cambrian will be required to certify to the FMA that its marketing materials comply with the provisions of the FMC Act and to ensure that it will not publish marketing materials in the future that are misleading or deceptive or contain unsubstantiated representations; and
- iii. while we note that Cambrian has been co-operative and has agreed to comply with the directions outlined in the Notice of Intention to Issue a Direction Order, we remain of the view that issuing the Direction order is appropriate. We are concerned that Cambrian did not genuinely seek to comply with and follow the legal advice it received previously. Accordingly, we believe that a Direction Order will best ensure future compliance because it will act as a direct and immediate reminder of Cambrian's obligations and the consequences of breaching the Direction Order. We are also concerned that the director of Cambrian does not appear to accept the misleading nature of the previously published material, supporting the additional deterrence of a formal order. We note that if Cambrian fails to comply, the FMA may bring an action for breach of the Direction Order.

Any other information

13. Cambrian made written submissions to the FMA which the FMA considered before deciding to make the Direction Order. In summary:
 - a. The FMA requested that a number of representations in Cambrian's marketing materials be substantiated. Cambrian provided some references to underlying sources but insufficient supporting verification material was provided, given the use of superlatives in the marketing materials. Overall the evidence provided failed to support and substantiate the statements made in the marketing materials. The FMA was also concerned that the testimonials in Cambrian's original marketing materials were given by family members and close friends of Cambrian's director who had received the preliminary stages of Cambrian's educational process but had not traded using Cambrian's strategy and were therefore misleading.
 - b. Cambrian submitted that the performance of its trade history and results achieved was representation and substantiation for the claims made in its marketing materials. Cambrian provided the FMA with information including its trade journals, trade alerts,

trade updates and advice on adjusting entries and stop losses. The FMA analysed and assessed this information for the month of October 2015. The analysis did not result in any evidence that Cambrian's strategy results in the claimed returns.

Dated this 16th day of May 2016



Liam Mason
Director of Regulation
Financial Markets Authority