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Amended Notice of Hearing

Aspen Capital Management Inc.

And

**Cambria Bancorp Ltd., 3644871 Canada Inc. and
601949 B.C. Ltd.**

And

**Walter Leo Barnscher, Gordon Howard Callies,
Michael Jerome Knight, Kenneth Kim Leiske,
James Lee MacDonald and Richard Albert James Smith**

Section 161 of the *Securities Act*, RSBC 1996, c. 418

¶ 1 A hearing will be held (the Hearing) to give Aspen Capital Management Inc. (Aspen Capital), Cambria Bancorp Ltd. (Cambria), 3644871 Canada Inc. (Aspen Group) and 601949 B.C. Ltd. (ShelfCo) (Cambria, Aspen Group and ShelfCo are collectively the Issuers), and Walter Leo Barnscher, Gordon Howard Callies, Michael Jerome Knight, Kenneth Kim Leiske, James Lee MacDonald and Richard Albert James Smith (collectively the Individual Respondents), an opportunity to be heard before the British Columbia Securities Commission considers whether it is in the public interest to make the following orders:

1. pursuant to section 161(1)(b) of the *Securities Act*, RSBC 1996, c. 418 (the Act) that all persons cease trading in the securities of the Issuers;
2. pursuant to section 161(1)(b) of the Act that Aspen Capital, the Issuers, and the Individual Respondents (collectively, the Respondents) cease trading in and be prohibited from purchasing any securities or exchange contracts;
3. pursuant to section 161(1)(c) of the Act that any or all of the exemptions described in any of sections 44 to 47, 74, 75, 98 or 99 not apply to any of the Respondents;
4. pursuant to section 161(1)(d)(i) of the Act that the Individual Respondents resign any position that they may each hold as a director or officer of any issuer;

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5. pursuant to section 161(1)(d)(ii) of the Act that each Individual Respondent be prohibited from becoming or acting as a director or officer of any issuer;
 6. pursuant to section 161(1)(d)(iii) of the Act that the Individual Respondents be prohibited from engaging in investor relations activities;
 7. pursuant to section 161(1)(f) of the Act that the registrations of Aspen Capital and the Individual Respondents be suspended, cancelled, restricted, or that conditions be imposed on them;
 8. pursuant to section 162 of the Act that the Respondents each pay an administrative penalty;
 9. pursuant to section 174 of the Act that the Respondents each pay prescribed fees or charges for the costs of, or related to, the Hearing; and
 10. any other orders as may be appropriate in the circumstances.
- ¶ 2 The Commission will be asked to consider the following facts and allegations in making its determination:

Aspen

1. Aspen Capital was federally incorporated on August 13, 1987. Its registered address was 230 - 475 West Georgia Street, Vancouver, British Columbia (BC). It was registered as a securities dealer and portfolio manager from December 27, 1987 to March 6, 2000, after which it was licensed as a mutual fund dealer and portfolio manager. Aspen Capital surrendered its registration on September 18, 2000. It commenced bankruptcy proceedings on September 19, 2000.

The Issuers

2. Cambria was incorporated in BC on August 20, 1997. Its registered address was 2100 – 1075 West Georgia Street, Vancouver, BC.
3. Aspen Group was federally incorporated on July 29, 1999, and has been registered as an extra-provincial company in BC since May 5, 2000. Its registered address in BC was 2100 – 1075 West Georgia Street, Vancouver, BC.
4. ShelfCo was incorporated in BC on February 24, 2000. Its registered address was 115B – 19705 Fraser Highway, Langley, BC.

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5. None of Cambria, Aspen Group, or ShelfCo has ever filed a preliminary prospectus, prospectus, offering memorandum or a report of exempt distribution with the Commission.

The Individual Respondents

6. Barnscher resides in Langley, BC. He was Aspen Capital's president from June 2000 until August 31, 2000. He was a director, officer, and controlling shareholder of ShelfCo, and a director of Aspen Group, during material times. He was registered as a mutual fund salesperson from 1995 until 1999 with four different dealers. Barnscher was not registered to sell securities while he held positions with ShelfCo and Aspen Group.
7. Callies resides in Langley, BC. From June 8, 1999 until September 18, 2000 he was registered as a mutual fund salesperson with Aspen Capital. He was also a director of Cambria during material times.
8. Knight resides in BC. From 1992 until 1995 he was registered as a mutual fund salesperson. He was a senior officer and director of Aspen Group during material times, but was not registered to sell securities while he held those positions.
9. Leiske resides in White Rock, BC. He was registered as a mutual fund salesperson with Aspen Capital from July 20, 1998 until September 18, 2000. He was a director, officer, and controlling shareholder of Aspen Group and Cambria during material times. He was the president and secretary of Aspen Capital from May 1998 to May 2000, and a director from September 2000 to the present.
10. MacDonald resides in Cloverdale, BC. From January 30, 1997 until June 7, 1999, and from July 12, 1999 to June 15, 2000 he was registered as a mutual fund salesperson but, during material times, his registration was restricted by temporary orders issued by the Commission in another matter.
11. Smith resides in Coquitlam, BC. From October 29, 1999 until September 18, 2000 he was registered as a mutual fund salesperson with Aspen Capital. His registration under the Act ceased on March 13, 2002.

Aspen Capital Failed to Segregate Client Funds

12. Aspen Capital received subscription money and prepayments for securities that its clients intended to purchase.

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13. Aspen Capital, as a dealer, was required under section 58(a) of the *Securities Rules*, BC Reg. 194/97, as amended (the Rules) to hold client subscription money and prepayments in a trust account and, under section 58(b) of the Rules, to segregate those funds from its own assets.
14. On March 12, 1999, a former associate of Leiske filed a Statement of Claim in the Supreme Court of British Columbia against Leiske and Aspen Capital in a commercial dispute involving the purchase and sale of Aspen Capital. On March 15, 1999, \$84,975.33 was taken from Aspen Capital's operating bank accounts as a result of a garnishing order.
15. On March 23, 1999, Aspen Capital transferred \$6,620.96 in client funds from its mutual fund trust account to another trust account in the name of Cambria (the Cambria Account).
16. On March 24, 1999, Aspen Capital obtained the release of the garnished funds in the amount of \$84,965.33. It deposited them in the Cambria Account. The result was that client funds became commingled with operating funds.
17. From March 26, 1999 until August 16, 1999, 251 transactions were settled through the Cambria Account. Many of these transactions included transfers of funds between the Cambria Account and Aspen Capital's trust and operating accounts. Throughout this period, Aspen Capital used the Cambria Account to hold client trust funds and operating funds at the same time.
18. Aspen Capital failed to segregate client funds from Aspen Capital's own assets, contrary to section 58(b) of the Rules.

Aspen Capital Failed to Remit Trust Interest

19. The funds that Aspen Capital held on behalf of clients for the purchase of mutual funds earned interest.
20. From October 1998 until May 2000, Aspen Capital failed to calculate and remit to mutual fund companies the interest earned monthly on client funds held in trust for investment in mutual funds, contrary to section 58(c) of the Rules.

Aspen Capital Failed to Maintain Adequate Capital

21. As a securities dealer until March 6, 2000, Aspen Capital was required to maintain positive risk adjusted capital under section 19(2) of the Rules.

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22. After March 6, 2000, as a mutual fund dealer that held client funds, Aspen Capital was required to maintain working capital of greater than \$75,000 plus its bond deductible, under section 19(3) of the Rules.
23. As a portfolio manager from December 16, 1999 to September 18, 2000, Aspen Capital was required to maintain working capital greater than \$25,000 plus its bond deductible, under section 20(1) of the Rules.
24. Aspen Capital, as a securities dealer until March 6, 2000, failed to maintain positive risk adjusted capital in September and December 1998, December 1999, and in February 2000, contrary to section 19(2) of the Rules.
25. Aspen Capital, as a mutual fund dealer from March 6, 2000 until September 18, 2000, failed to maintain the minimum prescribed working capital in April, May, and September 2000, contrary to section 19(3) of the Rules.
26. Aspen Capital, as a portfolio manager from December 1999, failed to maintain the minimum prescribed working capital from December 1999 and in February, April, May and September 2000, contrary to section 20(1) of the Rules.

The Trade and Distribution of Cambria Securities

27. From February 3, 1999 to December 20, 1999, Leiske sold at least 75,600 Cambria shares to six investors.
28. From August 27, 1999 to December 8, 1999, Callies sold 260,000 Cambria shares to thirteen investors.
29. On or about October 13, 1999, Callies sold to an investor a \$50,000 investment certificate issued by Cambria and signed by Leiske as Cambria's president.
30. The private issuer exemption from the registration and prospectus requirements of the Act under sections 46(j) and 75(a) of the Act was purportedly relied upon for the distribution of the Cambria securities, but in all or most cases was not available.
31. Cambria distributed its securities without a prospectus or an applicable exemption from the Act or Rules, contrary to section 61 of the Act.
32. Leiske and Callies distributed securities of Cambria without registration or a prospectus, and without applicable exemptions from the Act or Rules, contrary to sections 34 and 61 of the Act.

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The Trade and Distribution of Aspen Group Securities

33. From December 10, 1999 to December 14, 1999, Smith sold 96,000 shares in Aspen Group to twelve investors.
34. On December 14, 1999, Knight sold 200,000 shares in Aspen Group to two investors. Leiske acted in furtherance of the trade by Knight.
35. The private issuer exemption from the registration and prospectus requirements of the Act under sections 46(j) and 75(a) of the Act was purportedly relied on to distribute the Aspen Group securities, but was not available.
36. Aspen Group distributed its securities without a prospectus or an applicable exemption from the Act or Rules, contrary to section 61 of the Act.
37. Smith, who was registered to sell mutual funds only, Knight, and Leiske sold securities of Aspen Group without registration or a prospectus and without applicable exemptions from the Act or Rules, contrary to sections 34 and 61 of the Act.

The Trade and Distribution of ShelfCo Securities

38. From March 13, 2000 to June 6, 2000, Barnscher and MacDonald jointly sold 1,613,705 shares of ShelfCo to ten investors.
39. All of the ShelfCo shares sold jointly by Barnscher, who was not registered, and MacDonald, who was registered to sell mutual funds only and whose registration was restricted by the Commission at the time, were traded without registration or a prospectus, and without applicable exemptions from the Act, contrary to sections 34 and 61 of the Act.
40. ShelfCo distributed its securities without a prospectus or an applicable exemption from the prospectus requirements of the Act, contrary to section 61.

The Aspen Group Scheme

41. With the intention of promoting the purchase of Aspen Group shares and based on information provided to him by Leiske, Knight advised two investors (the Aspen Group Investors) that they could purchase and hold Aspen Group securities in their registered retirement savings plans (RRSPs) without incurring any tax liabilities.

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42. On the basis of Knight's advice, the Aspen Group Investors, on or around December 14, 1999, each contracted to purchase \$50,000 of Aspen Group securities at \$0.50 per share or an aggregate of 100,000 shares for a total of \$100,000.
43. For the purpose of assisting the sale of Aspen Group securities to the Aspen Group Investors, Leiske caused a chartered accountant to prepare and issue a requirement letter dated December 23, 1999 that stated that the Aspen Group shares would meet the requirements for a qualified investment in an RRSP.
44. Among other things, the requirement letter identified and relied upon the following assumptions:
- Aspen Group had issued 2,206,633 common shares.
 - The Aspen Group Investors would hold less than 10% of Aspen Group's issued and outstanding shares.
 - The fair market value of the Aspen Group shares on December 23, 1999 was estimated or calculated at \$0.50 per common share.
45. These assumptions, based on information provided by Leiske, were false because as at December 23, 1999:
- According to its share register, Aspen Group had not issued 2,206,633 common shares but rather 2,607,580 shares.
 - Included in Aspen Group's share register were 2,150,000 founders' shares that had not yet been paid for and therefore had not been properly issued. Including the 100,000 shares paid for by the Aspen Group Investors, only a total of 457,500 shares were apparently paid for by subscribers.
 - The shares to be purchased by the Aspen Group Investors represented more than 10% of the properly issued shares.
 - The 2,150,000 founders' shares were priced at \$0.0001 per share, such that even if the founders' shares had been fully paid for the purchase by the Aspen Group Investors represented more than 10% of the capital of Aspen Group.

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- The fact that the 2,150,000 founders' shares were purportedly issued for a nominal purchase price on December 2, 1999, while other purchasers purportedly subscribed for a total of 457,500 shares on December 10 and 14, 1999 for at a price of \$0.50 per share, indicates that \$0.50 per share did not represent their fair market value but only the price at which they were sold to persons other than the founders. There has never been a market for Aspen Group shares.
- 46. The proceeds from the investment made by the Aspen Group Investors amounted to substantially all of the capital of Aspen Group at the time. The proceeds were transferred to Cambria to fund a subordinated loan from Cambria to Aspen Capital so that Aspen Capital could meet its minimum capital requirements.
- 47. As the controlling mind of Aspen Group, Leiske was aware of the true state of the company's issued and outstanding share capital and that the funds of the Aspen Group Investors were to be used as capital by Aspen Capital.
- 48. The chartered accountant sent the requirement letter, dated December 23, 1999, to the RRSP trustee for the Aspen Group Investors.
- 49. At the direction of the Aspen Group Investors, their RRSP trustee paid the subscription price for their Aspen Group shares on December 23, 1999.
- 50. The Aspen Group Investors would not have invested in Aspen Group had they known that the purchase of shares in Aspen Group would not have been eligible for their RRSPs or that the money would be used to fund Aspen Capital's operating expenses.
- 51. Leiske, by providing false information to the chartered accountant for the purpose of causing a misleading requirement letter to be prepared, made a statement that he knew, or ought reasonably to have known, was a misrepresentation, contrary to section 50(1)(d) of the Act.
- 52. Leiske, by causing the chartered accountant to issue a misleading requirement letter and by omitting to provide to the Aspen Group Investors all the information in his possession that was material to their investment decision, engaged in acts in furtherance of a series of transactions relating to trades in Aspen Group shares when he knew that those transactions perpetrated a fraud on those investors, contrary to section 57(b) of the Act.

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Callies' Scheme

53. An investor with no investment experience gave Callies \$80,000 to invest. Cambria gave this investor an investment certificate having a principal of \$50,000, bearing 10% interest per annum. At the time, the investor was 86 years old.
54. The balance of \$30,000 was returned to this investor. The investor then wrote a cheque in the amount of \$30,000 personally to Callies on the premise that it would be invested in investments related to Aspen Capital.
55. Callies misappropriated the \$30,000 for his own use. He did not invest the money into any investments for this investor.
56. Callies directly engaged in a series of transactions relating to the trade and acquisition of Cambria securities with an investor in BC when he knew, or ought to have known, that those transactions perpetrated a fraud on that person, contrary to section 57(b) of the Act.

Breaches of the Act and Rules

57. Leiske breached the following sections of the Act and Rules:
 - (a) section 34 of the Act, by trading in the Cambria and Aspen Group shares without registration or an exemption from the registration requirement of the Act;
 - (b) section 61 of the Act, by participating in the distribution of the Cambria and Aspen Group shares without an exemption from the prospectus requirement of the Act;
 - (c) section 50(1)(d) of the Act, by providing the chartered accountant with false and incomplete information in order to obtain a requirement letter that would assist the sale of the Aspen Group securities to the Aspen Group Investors; and
 - (d) section 57 of the Act, by participating in the fraudulent sale of Aspen Group shares to the Aspen Group Investors.
58. Under section 168.2 of the Act and in respect of conduct of Aspen Capital after June 29, 1999, Leiske breached sections 19(2) and (3), 20(1), and 58(b) and (c) of the Rules by authorizing, permitting or acquiescing in Aspen Capital's contravention of those provisions while he was a director and senior officer of Aspen Capital.

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59. Barnscher breached sections 34 and 61 of the Act by trading in, and participating in the distribution of the ShelfCo shares without an exemption from the registration and prospectus requirements of the Act.

60. Callies breached the following sections of the Act:

- (a) section 34, by trading in the Cambria shares without registration or an exemption from the registration requirement of the Act;
- (b) section 61, by participating in the distribution of the Cambria shares without an exemption from the prospectus requirement of the Act; and
- (c) section 57, by defrauding an investor.

61. Knight breached sections 34 and 61 by trading in and participating in the distribution of Aspen Group shares without an exemption from the registration and prospectus requirements of the Act.

62. MacDonald breached sections 34 and 61 of the Act by trading in and participating in the distribution of the ShelfCo shares without an exemption from the registration and prospectus requirements of the Act.

63. Smith breached sections 34 and 61 of the Act by trading in and participating in the distribution of the Aspen Group shares without an exemption from the registration and prospectus requirements of the Act.

64. Cambria, ShelfCo, and Aspen Group breached section 61 of the Act by distributing their securities without a prospectus and without an exemption from the prospectus requirement of the Act.

65. Aspen Capital breached the following sections of the Rules:

- (a) section 58(b) of the Rules, by failing to keep separate its clients' investment funds from its operating funds;
- (b) section 58(c) of the Rules, by failing to remit interest earned on client funds; and
- (c) sections 19(2), 19(3) and 20(1) of the Rules by failing to maintain the prescribed minimum capital.

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Acts Contrary to the Public Interest

66. As directors and officers of Cambria, Aspen Group and ShelfCo, as the case may be, Callies, Knight, Leiske and Barnscher failed to take reasonable care to ensure the companies complied with section 61 of the Act, and therefore failed to exercise the care, diligence, and skill of a reasonably prudent person under sections 118 and 135 of the *Company Act*, RSBC 1996, c.62, contrary to the public interest.

67. The conduct of the Respondents set out in this Notice of Hearing was contrary to the public interest.

¶ 3 The Respondents may each be represented by counsel at the Hearing and make representations and lead evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Commission Secretary at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.

¶ 4 The Hearing will commence on April 21, 2004 at 10:00 a.m. at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia and is scheduled to proceed from April 21, 2004 to May 14, 2004.

¶ 5 Determinations may be made in this matter if the Respondents, or their counsel, do not appear at the Hearing.

¶ 6 February 20, 2004

¶ 7 Stephen J. Wilson
Executive Director