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June 9, 2016

Mr. Keith Woodwell
Division of Securities
State of Utah
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Re: No-Action Letter on Behalf of Cambia Management, LLC Regarding Exemption from Licensing as Investment Adviser.

Dear Mr. Woodwell:

We represent Cambia Management, LLC, a Utah limited liability company (the "General Partner"), and Cambia Real Estate, LP, a Delaware limited partnership (the "Company"). On behalf of the General Partner, we respectfully request a no-action letter from the Utah Division of Securities (the "Division") under Section 61-1-25(5) of the Utah Uniform Securities Act, as amended (the "Act"), and Rule 164-25-5 of the Utah Administrative Code. Specifically, we request that the Division declare that it will take no action if the General Partner, as the general partner of the Company, is not licensed with the Division as an investment adviser.

The General Partner desires a no-action letter in order to evidence its good faith effort to comply with the Act and the rules promulgated thereunder as well as to provide assurance that it can proceed with the proposed transaction without having registered as an investment adviser. The transactions in question have not yet been commenced.

FACTS

The Company intends to raise up to $10 million through the offer and sale of limited partnership interests only to accredited investors in accordance with Rule 506(b) of the Securities Act of 1933, as amended (the "Securities Act"). The Company would file a Form D with the Securities and Exchange Commission and the Division in accordance with the requirements of applicable law and the rules promulgated thereunder. The Company's investors would include persons other than those identified in Section 61-1-3(3)(b) of the Act. The general partner of the Company would be the General Partner, and the General Partner would control the business and affairs of the Company, subject to the limitations set forth in the Company's limited partnership agreement. The General Partner would be entitled to receive an annual management fee (calculated as a percentage of contributed capital) as well as a carried interest in the Company's profits. Both the General Partner and the Company would have their principal place of business in Utah.

The Company proposes to make secured loans to real estate developers in order to fund working capital, refinancings, general operations or other business objectives. The Company intends to make capital calls prior to making the secured loans. Neither the Company nor the General Partner would have any discretion to use the funds other than for making secured loans and paying the costs and expenses (including the General Partner's management fee) associated with the management and operation of the Company. The offering documents of the Company and the limited partnership agreement would include restrictions to this effect.

The General Partner may request that other lenders, including affiliates of the General Partner, act as a co-lender with the Company on certain loans. This fact would be disclosed to potential investors in the Company's offering documents. Furthermore, any other lenders acting as a co-lender shall, in all cases, (1) be in the business of making loans similar to the loans made by the Company; (2) have the necessary commercial expertise to evaluate any co-lending transaction and enter into any corresponding agreements; and (3) be making any such loans for their own commercial purposes rather than for investment purposes.

While each loan made by the Company would be a unique and distinct transaction, with varying terms for each loan (such as the maturity date, interest rate and payment terms), each loan would have the following characteristics in common:

1. Each loan would be evidenced by customary loan documentation and would be fully collateralized by real estate. In addition to real estate collateral, the loan will be secured by other assets of the borrower, including, without limitation, the common equity securities held by the principals of the borrower. Additionally, each principal of the borrower will generally be required to personally guarantee the loan.

2. The General Partner would use commercially reasonable valuation methodologies to establish the value of the collateral for loans made by the Company, including in some cases appraisals by an independent appraiser. The amount of the loans will be less than 100% of the value of the real estate collateral at the time the loan is made or less than 80% of the expected final sales price of the real property, based on the General Partner's analysis.

3. Trust deeds would be signed and recorded and financing statements would be filed with the applicable county or state agency, and the security interest in the real estate, common equity securities and any other assets would be properly perfected. The Company would also purchase title insurance on each parcel of real property pledged as collateral.

4. The General Partner would have full discretion in the selection of borrowers and negotiating the terms of the loans. However, under the Company's limited partnership

agreement, the General Partner would only have the discretion to make loans of the nature described in this letter. Under the Company's limited partnership agreement, the General Partner would not be permitted to make investments of any other nature.

5. Some of the loans may be made for the purpose of refinancing outstanding indebtedness. In addition, some of the loans may be subordinate to senior debt, but even in such cases, the loans would be collateralized. The maturity dates will likely range from six to twenty-four months in most instances, and proceeds from the sale of the real property are generally required to be paid to the Company toward the principal and interest due and owing under the promissory note.

6. The loans would contain customary covenants, the violation of which may accelerate the borrower's obligation to repay, or have other consequences.

7. As an additional means of securing repayment of the loan, in certain instances the Company would receive preferred equity in the borrower (the "Preferred Equity") and would enter into an operating agreement with the common members. In the absence of a default by the borrower, the Preferred Equity would have no voting rights, would not be entitled to receive distributions or allocations, and would be automatically relinquished upon repayment of the principal, interest and fees of the loan. Upon a default by the borrower under the loan documents, the Company will be entitled to certain rights typical of a secured lender, including the ability to remove and replace management of the borrower, and the ability to cause all distributions of cash to be made to the Company until such time as the principal and interest have been paid in full. Finally, the Preferred Equity cannot be pledged or hypothecated and the Company would not be entitled to any appreciation in value of the Preferred Equity. The Preferred Equity would not be held by the Company as an investment, but rather as a security mechanism to ensure payment of the loan from the borrower.

8. Except to the extent the Preferred Equity is considered equity, the Company will not make any equity investments in any borrower or any other person, whether through convertible promissory notes, warrants or other equity vehicles.

LEGAL ANALYSIS

We are requesting that the Division confirm that it will not recommend enforcement action against the General Partner if the General Partner does not license as an investment adviser with the Division. Persons who fall within the definition of "investment advisers" under the Act are required to be licensed with the Division.[1] An investment adviser is defined[2] as any

[1] *See* Section 61-1-3(3) of the Act.
[2] *See* Section 61-1-13(q) of the Act.

person or entity who: (A) for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities; or (B) for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

The General Partner will not provide advice to the investors of the Company based on their individual investment objectives. However, the General Partner will advise the Company itself as to the advisability of making loans, will identify potential borrowers and will perform due diligence on the real property. Accordingly, there are three critical questions in determining if the General Partner is an investment adviser under the Act. First, is the General Partner "engag[ed] in the business of advising others" with respect to securities? Second, does the Preferred Equity meet the definition of a "security" under the Act? Third, should the secured promissory notes evidencing the loans be treated as "securities" under the Act? If the General Partner is not engaged in the business of advising others with respect to securities, if the Preferred Equity does not meet the definition of a security, and if the secured promissory notes would not be treated as securities, then the General Partner should not be treated as an investment adviser and should not be required to be licensed with the Division.

We respectfully submit that the General Partner should not be treated as an investment adviser for the reasons set forth below.

A. Engaged in the Business of Advising Others

Similar to the proposed transaction and entity in the No-Action Letter issued by the Division on May 2, 2012[3], the General Partner would not be "engag[ed] in the business of advising others" as to the advisability of investing in certain securities and the General Partner would not hold itself out as an investment adviser. The General Partner's responsibility as the general partner of the Company would be limited to arranging, negotiating and managing loans. The General Partner would not have the discretion to arrange loans for the Company except as described in this letter, nor would the General Partner have the discretion to pursue equity investments, such as convertible promissory notes, warrants or other equity investments. In light of these facts, the General Partner's business would not be advising others as to investing in securities; rather, the General Partner's business would be similar to any other real estate lender.

B. Definition of a Security

The Act provides that "Security" means a stock.[4] Also, the Act should be "construed as to effectuate its general purpose . . . to coordinate the interpretation and administration of [Utah's securities laws] with the related federal regulation."[5]

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[3] AP Primus, LLC File #B01093768, May 2, 2012.
[4] *See* Section 61-1-13(1)(ee)(i)(B) of the Act.

In *United Housing Foundation v. Forman*,[6] the Court rejected the suggestion that an instrument called stock "must be considered a security transaction simply because the statutory definition of a security includes the words 'any . . . stock.'"[7] Instead, the Court followed the economic characteristics test outlined in *Tcherepnin v. Knight*,[8] which held that "in searching for the meaning and scope of the word 'security' in the [Securities] Act[s], form should be disregarded for substance and the emphasis should be on economic reality."[9]

In *United Housing*, the Court found that the most common economic feature of stock was "the right to receive dividends contingent upon an apportionment of profits."[10] Additionally, the Court found that the other characteristics of stock included negotiability, the capacity to be pledged or hypothecated, the conveyance of a voting right in proportion to the number of shares owned, and the ability of the stock to appreciate in value.[11] These characteristics ultimately lead to the "inducement of purchase" which in the case of stock would be to "invest for profit."[12]

Comparing the characteristics of the Preferred Equity with the characteristics of stock as outlined in *United Housing*, it is apparent that the Preferred Equity is not a security in a number of ways. The Company, as the holder of the Preferred Equity, is not, absent a borrower default, entitled to receive distributions. Moreover, like in *United Housing* and the Division's Interpretive Letter issued on August 5, 1997[13] (the "Ace Hardware Letter"), the Preferred Equity cannot be pledged or hypothecated and cannot increase in value. Additionally, the Preferred Equity has no voting rights. The rights the Company has as a holder of the Preferred Equity spring into place only following a borrower's default and include the limited rights to remove and replace management of a borrower and to direct payment of distributions to the Company until the loan has been repaid in full. After the loan made by the Company has been paid back, the Preferred Equity is automatically redeemed and relinquished and the Company is not entitled to any additional appreciation from such Preferred Equity.

In summary, we believe that based on the *United Housing* case, as well as the Ace Hardware Letter, the Preferred Equity would not be treated as a security.

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[5] Section 61-1-27 of the Act.
[6] 421 U.S. 837 (1975). Although no Utah court has expressly applied *United Housing's* "economic characteristics" test to a case involving Utah's Blue Sky Laws, the Utah Supreme Court has cited to *United Housing* and its principle that all stock transactions are not necessarily protected under securities law. *See* Payable Accounting Corp. v. McKinley, 667 P.2d 15, 19 (Utah 1993) (claiming that the primary purpose of the 1933 and 1934 acts was to eliminate abuses in the securities market that do not have the protections of other regulatory agencies).
[7] Id. at 848.
[8] 389 US 332, 336 (1967).
[9] Id.
[10] *United Housing*, 421 U.S. at 851.
[11] Id.
[12] Id.
[13] Ace Hardware Corporation, File # A61204-50, August 5, 1997.

C. Application of Reves *Test*

Like stock, the term "notes" is included within the definition of "security" under the Act. However, the term "note" is not interpreted literally to mean every note. The leading case with respect to the determination of whether "notes" constitute "securities" under the Securities Act is *Reves v. Ernst & Young*.[14] The Reves Court adopted a "family resemblance" test to determine whether a promissory note was a security.

The *Reves* test presumes that every note is a security.[15] The *Reves* Court concluded that: ". . . in determining whether an instrument denominated a 'note' is a 'security,' courts are to apply the version of the 'family resemblance' test that we have articulated here: A note is presumed to be a 'security,' and that presumption may be rebutted only by a showing that the note bears a strong resemblance (in terms of the four factors we have identified) to one of the enumerated categories of instrument. If an instrument is not sufficiently similar to an item on the list, the decision whether another category should be added is to be made by examining the same factors." [16]

The "enumerated categories" cited by the *Reves* Court as being categorically excluded from the definition of a security were the following types of notes identified as not being securities by the Second Circuit Court of Appeals in *Exchange National Bank of Chicago v. Touche Ross & Co.*[17] and *Chemical Bank v. Arthur Andersen & Co.*[18]: (1) consumer financing notes; (2) notes secured by a mortgage on a home; (3) short-term notes secured by a lien on a small business or some of its assets; (4) notes evidencing "character" loans to bank customers; (5) short-term notes secured by an assignment of accounts receivable; or (6) notes which simply formalize an open-account debt incurred in the ordinary course of business.

If the note in question does not fit into one of the categories above, the *Reves* test then examines four factors to determine whether it bears a strong resemblance to one of the foregoing types of notes. The four factors are utilized in an effort to explore the "economic realities" of the transaction.[19] The purpose of the *Reves* test is to avoid "subjecting routine commercial transactions to federal securities regulation."[20] The four factors of the *Reves* test are:

1. the motivations that would prompt a reasonable seller and reasonable buyer to enter into a transaction;

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[14] 494 U.S. 56, 63 (1990); *see also*, State of Utah v. Burkinshaw, 2010 UT App. 245, n. 3 (2010) (applying the *Reves* test in the context of determining whether a note is a security under the Utah Act, but noting that the court is not formally deciding whether Utah should adopt the *Reves* test).
[15] 494 U.S. 56, 65.
[16] 494 U.S. at 67.
[17] 544 F.2d 1125, 1138 (2d Cir. 1976)
[18] 726 F.2d 930, 939 (2d Cir. 1984)
[19] 494 U.S. at 61.
[20] Singer v. Livoti, 741 F.Supp. 1040, 1048 (S.D.N.Y. 1990).

2. the plan of distribution of the instrument;

3. the reasonable expectations of the investing public; and

4. the existence of another regulatory scheme or other feature that significantly reduces the risk of the instrument.[21]

We believe that, on balance, the application of the *Reves* test, and in particular the fourth factor, weighs strongly against treating the secured promissory notes as securities. The fourth factor asks whether some other feature of the instrument reduces its risk. The Court in *Reves* indicated that this fourth prong, standing alone, may be dispositive in certain cases since it considers whether some feature of the instrument "significantly reduces the risk of the instrument, thereby rendering application of the [Securities Act and the Securities Exchange Act of 1934, as amended] unnecessary."[22] The Court in *Reves* also indicated that in applying the fourth factor, the existence of collateral is a feature that can reduce an instrument's risk.[23] In the matter in question, the Company's level of risk associated with the secured promissory notes would be greatly reduced since the amount of the loans will be less than 100% of the value of the real estate collateral at the time the loan is made or less than 80% of the expected final sales price of the real property, based on the General Partner's analysis.

In summary, we believe that under the *Reves* test the secured promissory notes would not be treated as securities.

CONCLUSION

The General Partner should not be required to license with the Division as an investment adviser. First, the General Partner would not be engaged in the business of advising others with respect to securities and would not hold itself out as an investment adviser. Second, the Preferred Equity issued to the Company would not match the characteristics commonly associated with a security. Third, the secured promissory notes to be issued to the Company in consideration for business loans should not be treated as securities under the Act.

As required by Rule 164-25-5 of the Utah Administrative Code, the General Partner and the Company affirm that there is no legal action, judicial or administrative, which relates directly or indirectly to the facts set forth here, and that the actions described in this letter have not been commenced.

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[21] *Reeves*, 494 U.S. at 66-67.
[22] Id. at 67; *see also*, Lebrun v. Kuswa, 24 F.Supp.2d 641, 646 (E.D. La 1998).
[23] Id. at 69; *see also*, Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1539 (10th Cir. 1993) ("We find that the existence of collateral is a risk-reducing factor that favors finding [the instruments] are not securities.").

We ask that the Division contact Alexander Pearson at (801) 321-4864 with any comments or questions before issuing an official response. We also respectfully request that we have the right to withdraw our request in the event that the Division determines that it cannot issue the requested no-action letter.

Sincerely,

KIRTON McCONKIE

Alexander N. Pearson

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah
Department of Commerce
Division of Securities

FRANCINE A. GIANI
Executive Director

THOMAS A. BRADY
Deputy Director

KEITH WOODWELL
Director, Division of Securities

July 21, 2016

Alexander N. Pearson
KIRTON McCONKIE
50 East South Temple
Salt Lake City, UT 84111

Re: Cambia Management, LLC
Request for No-Action Position
Investment Advisor Licensing
File #B01479270

Dear Mr. Pearson:

The Utah Division of Securities ("Division") has reviewed your June 9, 2016 request for a no-action letter concerning Cambia Management, LLC ("Cambia") and Cambia Real Estate, LP ("the Fund"). Your request for a no-action letter from the Division is authorized by Section 61-1-25(5) of the Utah Uniform Securities Act ("Act") and Utah Administrative Code Rule R164-25-5.

Your letter requests that the Division take a no-action position with respect to Cambia's anticipated role as General Partner of the Fund. Specifically, you request that the Division staff recommend no enforcement action if Cambia acts as General Partner of the Fund without first being licensed as an investment adviser.

Based upon the representations made in your letter and in discussions with Division staff, we will not recommend any enforcement or administrative disciplinary action, should the activities proceed in Utah as outlined in your request.

In making this determination, we note several points. First, Cambia will not be in the business of advising others as to securities and will not otherwise hold itself out as an investment adviser. Second, while a Rule 506 offering will be made to accredited investors in order to raise funds for the secured lending business of the Fund, neither the Fund nor Cambia will have any discretion in using the funds, apart from the secured lending activities described in the accompanying correspondence and subject to the limitations set forth therein. Third, each loan will be fully collateralized by real estate in an amount less than 100% of the value of the real estate collateral at the time the loan is made or less than 80% of the expected final sales price of the real property. Finally, any co-lenders joining with Cambia on its lending transactions will be

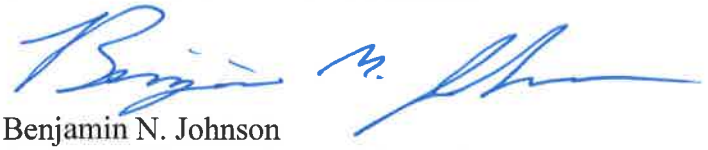
persons having the necessary commercial expertise to evaluate the merits of such transactions and will be acting for commercial, rather than investment purposes.

The Division renders no opinion as to whether the notes memorializing the loans or any other instruments referenced in your request are securities under Section 13 of the Act.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this no-action letter relates only to the activities described above and will not apply to future similar factual circumstances. This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the position of the Division staff on enforcement or administrative actions. Finally, the issuance of a no-action letter does not absolve any party from complying with the anti-fraud provisions contained in Section 61-1-1 of the Act.

Very truly yours,

UTAH DIVISION OF SECURITIES



Benjamin N. Johnson
Director of Registration and Licensing