

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Cetera Advisors, LLC, and
George Merhoff,

Respondents.

Case No. S-17-0007 - Amended

**AMENDED FINAL ORDER TO
CEASE AND DESIST; ORDER
ASSESSING AND SUSPENDING, IN
PART, THE CIVIL PENALTY
PROVIDED VOLUNTARY
HEIGHTENED SUPERVISION
PLAN IS MAINTAINED; AND
CONSENT TO ENTRY OF ORDER.**

THIS IS A FINAL ORDER

The Director of the Department of Consumer and Business Services ("DCBS") for the State of Oregon (the "Director") has determined that Respondent Cetera Advisors, LLC ("Cetera") did not comply with the supervision rule (Oregon Administrative Rule ("OAR") 441-205-0210(3)(b)), with respect to certain discretionary accounts managed by Respondent George Merhoff ("Merhoff"), a registered representative of Cetera. The Director also determined Merhoff did not comply with the requirements of fair dealing under ORS 59.205(2).

Respondents submit to the Director's jurisdiction and agree to waive their right to notice and an administrative hearing under ORS 59.295, and without admitting or denying the factual allegations herein, wish to resolve this matter by consenting to entry of this Final Order.

Now, therefore, as evidenced by the authorized signatures subscribed on this document, the Director issues the following Final Order:

I. FINDINGS OF FACT

The Director FINDS that at all times relevant to this Final Order:

a. Respondents

1. Cetera Advisors, LLC, is a broker-dealer and investment advisor firm based in Denver, Colorado (Central Registration Depository ("CRD") Number 10299).





2. George Merhoff (CRD #2918171), is a registered representative and investment adviser representative associated with Cetera, whose office is in Klamath Falls, Oregon.

b. DCBS Examination

3. In December 2015, two of Merhoff's clients, both of whom were retired, complained to DCBS that they did not understand the risk they were assuming when Merhoff advised them to purchase securities concentrated in the energy-sector, a sector correlated with the price of oil. The clients said their retirement accounts had lost substantial value when the price of oil did not recover; in June 2014 oil traded at \$110 per barrel, by December 2015 oil traded below \$40.

4. In February 2016, DCBS examined Merhoff's office in Klamath Falls, Oregon. As part of the examination, DCBS reviewed client information on risk tolerance and suitability, client account holdings and trade detail, and Cetera records related to supervision, past audits, and exception reports. DCBS also interviewed Merhoff.

5. After analyzing the information gathered, DCBS determined:

- The majority of Merhoff's clients reported having a moderate risk tolerance;
- Merhoff had discretionary authority over most client accounts;
- Merhoff applied a one-percent (1%) fee on assets under management;
- Account holdings were concentrated in the energy-sector, which raised concerns about diversification;
- Merhoff does not publicly advertise investment advisory or broker-dealer services.

6. DCBS found that Merhoff used an investment strategy based on value investing; meaning Merhoff purchased energy-sector securities based on a belief that the sector was undervalued. Merhoff's strategy also included holding undervalued stock when a sector traded



1 below a lower than average value. This holding pattern resulted in little to no trading in client
2 accounts that were concentrated in energy-sector securities; in fact, Cetera's exception reports on
3 low volume trading (LVT), showed that in 2015, Merhoff effected 0-2 trades in hundreds of
4 accounts.

5 7. DCBS also determined that, while Merhoff had discretionary authority to trade,
6 Cetera had access to trading detail and account holdings via TD Ameritrade, the clearing
7 custodian that Merhoff used.

8 8. In May 2016, DCBS provided its examination concerns to Cetera. The
9 examination highlighted concerns related to suitability, risk tolerance, and supervision.
10 Subsequent communications discussed modifications to Cetera's Client Account Information
11 Form, correcting audit deficiencies, registering outside business activities ("OBA") and / or
12 "assumed business names" ("ABNs") designations with DCBS.

13 9. In May 2016, Cetera implemented a heightened supervision plan ("HSP") for
14 Merhoff related to concerns around suitability. In part, the HSP set limits on Merhoff's trading
15 activity while maintaining his discretion, and created a reset with clients around risk tolerance
16 and suitability. Cetera submitted a confidential, non-public copy of the HSP to DCBS. Such
17 confidentiality is authorized by ORS 192.502(4).

18 10. Between September 2016 and October 2016, Respondents agreed to correct
19 DCBS's concerns related to: registering OBA/ABNs, editing the Account Information Form, and
20 providing definitions for risk tolerance.

21 11. In October 2016, Cetera provided satisfactory information to DCBS on the
22 progress made under the HSP related to supervision and suitability.

23 II. CONCLUSIONS OF LAW

24 The Director CONCLUDES that:

25 1. Paragraphs 1-11 are incorporated.

26 2. The Director has jurisdiction over the Respondents. ORS 59.235.



3. Respondents' trading activity involved the purchase or sale of "securities," as that term is defined at ORS 59.015(19)(a).

3. Cetera is a "broker-dealer." ORS 59.015(1).

4. Merhoff is an "associated person" of Cetera. OAR 441-175-0010.

5. A broker-dealer must reasonably supervise associated persons. ORS 59.205(13). The duty to supervise includes exercising diligent supervision over the securities activities of associated persons, which includes the frequent examination of customer accounts to detect and prevent unsuitable recommendations. OAR 441-205-0210(3)(b).

6. Cetera and Merhoff engaged in an unfair practice in violation of ORS 59.205(2) by negligently failing to ensure that their clients understood the long-range implications of the investment strategies that Merhoff used on behalf of some of his clients.

7. Pursuant to ORS 59.245(4), the Director is authorized to issue an order to cease and desist against any person for violating the Oregon Securities Law, ORS 59.005 to 59.451, 59.991, and 59.995.

8. The Director is authorized to impose civil penalties for violations of the Oregon Securities Law. ORS 59.995(1).

9. ORS 59.205(2) includes references to "dishonest, fraudulent, or illegal" practices as well as "unfair" practices. The Director finds that the Respondents engaged in unfair practices only. Nothing in this order shall be construed as a conclusion that any "dishonest, fraudulent, or illegal" conduct occurred, and no such conclusions were reached.

III. FINAL ORDER

The Director ORDERS that:

1. The Director ORDERS the Respondents, and any successors or assigns, to CEASE AND DESIST from violating any provision the Oregon Securities Law.

2. Respondents are joint and severally liable to pay the CIVIL PENALTY of



1 Seventy Thousand Dollars (\$70,000 US) for violating OAR 441-205-0210(3)(b) and ORS
2 59.205(2):

- 3 a) Thirty Five Thousand Dollars (\$35,000 US) is due and payable to the
4 Department of Consumer and Business Services and the Director
5 acknowledges receipt of the \$35,000;
- 6 b) The remaining balance of \$35,000 is SUSPENDED and will not be
7 collected upon, provided Respondents continue to comply with the
8 Heightened Supervision Plan until June 1, 2018, or an earlier time, if
9 agreed to by the Director. Therefore, the Heightened Supervision Plan is
10 incorporated and made part of this Final Order;
- 11 c) Failure to comply with the terms of this Final Order, including compliance
12 with Oregon Securities Law, will make the entire balance of the civil
13 penalty due and owed.

14
15 3. Respondents stipulate and agree that the civil penalty is not dischargeable
16 under 11 U.S.C. 523(a)(7).

17 4. This amended Order serves as a replacement to the previous Order issued in this
18 matter dated March 30, 2017. This Order supersedes the previous order and serves to make it
19 void, once executed by all parties.

20 5. The Director expressly orders that this Order shall not serve to disqualify either
21 Respondent pursuant to the statutory disqualification provisions of Section 3(a)(39) of the
22 Exchange Act of 1934.

23 6. This Order is a "Final Order" under ORS 183.310(6)(b). It is not subject to
24 //

25 //
26

1 judicial review under ORS Chapter 183. The entry of this Order does not limit other remedies
2 that are available to the Director under Oregon law.

3 IT IS SO ORDERED.

4 Dated this 11th day of August, 2017.

5 Nunc Pro Tunc March 30, 2017.

6 PATRICK M. ALLEN, Director
7 Department of Consumer and Business Services

8 

9 David C. Tatman, Chief of Enforcement
10 Division of Financial Regulation

11
12 Approved as to form:

13
14 Amir Tadjedin
15 Attorney for Respondents

16
17
18
19
20
21
22
23
24
25
26
Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CONSENT TO ENTRY OF ORDER

I, Brian Halcy, state that I am the CHIEF COMPLIANCE OFFICER for Cetera Advisors, LLC. I am authorized to act in its behalf. I have reviewed the foregoing Final Order. Cetera Advisors, LLC, has been represented by counsel in this matter and voluntarily consents to enter into this Final Order. Cetera Advisors, LLC, understands that this Final Order is a public document.

By: [Signature]

Date: AUGUST 7, 2017.

State of Illinois

County of Cook

Subscribed and sworn before me on AUGUST 7, 2017.

Diana L. Debs
Notary Public

OFFICIAL SEAL
DIANA L. DEBS
Notary Public - State of Illinois
My Commission Expires Oct 29, 2018

CONSENT TO ENTRY OF ORDER

I, George Merhoff, have reviewed the foregoing Final Order. I have been represented by counsel in this matter or have had the opportunity to be represented in this matter. I voluntarily consent to enter into this Final Order. I understand that this Final Order is a public document and will become a reportable event on Form U-4.

By: [Signature]

Date: 8/10/2017, 2017

State of Oregon

County of Klamath

Subscribed and sworn before me on AUGUST 10, 2017.

Kimberly E. [Signature]
Notary Public

OFFICIAL STAMP
KIMBERLY ELIZABETH STROUP
NOTARY PUBLIC-OREGON
COMMISSION NO. 929712
MY COMMISSION EXPIRES JULY 02, 2018

