

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

In the Matter of

Case No. S-20-0028

GEORGE C. MERHOFF,
Respondent.

FINAL ORDER TO CEASE AND
DESIST, DENYING USE OF
EXEMPTIONS, ASSESSING CIVIL
PENALTIES, PERMANENTLY
BARRING FROM INDUSTRY, AND
CONSENT TO ENTRY OF ORDER

The Division of Financial Regulation (the “Division”), acting on behalf of the Director of the Department of Consumer and Business Services for the State of Oregon (the “Director”), conducted an investigation of George C. Merhoff (“Respondent”). The Division determined that Respondent violated provisions of Oregon Revised Statutes (“ORS”) 59.005 to 59.505, 59.991 and 59.995 (the “Oregon Securities Law”) and the Oregon Administrative Rules (“OAR”) promulgated under those laws. The Director issues the following Findings of Fact, Conclusions of Law, Order to Cease and Desist, Order Denying Use of Exemptions, and Order Assessing Civil Penalties.

Respondent, without either admitting or denying the Findings of Fact or Conclusions of Law contained herein, wishes to resolve and settle this matter with the Director.

Now, therefore, as evidenced by the signature(s) subscribed herein, Respondent hereby CONSENTS to entry of this Order.

FINDINGS OF FACT

The Director FINDS that:

1. Cetera Advisors, LLC (“Cetera Advisors”) (Central Registration Depository (“CRD”) number 10299) is a broker-dealer and investment advisor based in Denver,

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350 Winter Street NE, Suite 410
Salem, OR 97301-3881
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1 Colorado.

2 2. Respondent (CRD number 2918171) was an investment advisor representative
3 and a registered representative with Cetera Advisors from February 28, 2012 until April 3,
4 2019.

5 3. On March 30, 2017, the Division entered a final order by consent against
6 Respondent and Cetera Advisors. On August 11, 2017, the Division entered an amended
7 final order by consent with those parties (the “2017 Final Order”).

8 4. In the 2017 Final Order, the Division found, among other things, that
9 Respondent and Cetera Advisors engaged in unfair practices in violation of ORS 59.205(2)
10 by negligently failing to ensure that their clients understood the long-range implications of
11 the investment strategies that Respondent used on behalf of some of his clients. The
12 Division issued an Order to Cease and Desist and assessed \$70,000 in civil penalties against
13 Respondent and Cetera Advisors, \$35,000 of which was suspended provided that all parties
14 complied with the terms of the 2017 Final Order. One of the terms of the 2017 Final Order
15 included an agreement that Respondent would cease and desist from violating the Oregon
16 Securities Law. Specifically, the 2017 Final Order stated: “Failure to comply with the terms
17 of this Final Order, including Compliance with the Oregon Securities Law, will make the
18 entire balance of the civil penalties due and owed.”

19 5. On or about February 21, 2019, a coworker of Respondent contacted Cetera
20 Advisors to inform the firm that Respondent was “reimbursing some clients for losses” and
21 that Respondent had “made payments with cash in a FED EX envelope to some clients.”

22 6. On or about March 1, 2019, Cetera Advisors interviewed Respondent to inquire
23 about the alleged payments he was making to clients. Internal notes from that interview
24 indicate that Respondent admitted to having made payments to multiple clients.
25 Respondent further acknowledged making payments via electronic account transfer and in
26 cash via Federal Express.



1 7. Respondent informed Cetera Advisors that he had begun making payments to
2 one client, identified herein as GP¹, beginning in or around 2006 or 2007. He claimed to
3 have “helped [GP] financially for over a decade” after GP lost much of her investment
4 holdings, stating that he had paid GP approximately \$30,000 per year since that time.
5 Between December 2016 and November 2017, Respondent made at least nine payments to
6 GP in the amount of \$2,500 per payment, for a total of \$22,500, from one of Respondent’s
7 personal bank accounts. Respondent indicated that he began making these payments
8 following significant losses in GP’s investment account, which GP originally funded with
9 approximately \$200,000 and which Respondent estimated held only \$20,000 at the time he
10 was interviewed.

11 8. In that same March 1, 2019, interview with Cetera Advisors, Respondent
12 further acknowledged making similar payments to another client, identified herein as MM.²
13 Respondent disclosed making monthly payments of \$1,200 to MM for approximately 12-
14 14 months and indicated that he did so because MM was “upset,” but Respondent denied
15 MM was upset with him. Respondent stated that he paid MM in cash. At no prior time had
16 Respondent reported that MM was “upset” or had otherwise made any complaints against
17 Respondent or relating to MM’s investment account, whether verbally or in writing.

18 9. Respondent informed Cetera during the interview that he had made a series of
19 payments to at least two other clients, one of whom he claimed needed money for a child’s
20 college fund and another of whom he claimed needed money to pay her mortgage.

21 10. Cetera Advisors maintains a registered representative manual that contains a
22 number of policies and procedures that apply to its representatives (the “Policies and
23 Procedures”).

24 11. Section 4.13.4 of the Policies and Procedures states: “Registered
25

26 ¹ GP held a joint account with her spouse. For purposes of this document, GP is identified as a single client.
² MM also held a joint account with a spouse but is identified herein as a single client.



1 Representatives may not act as a payee or intermediary for a customer. All payments and
2 disbursements must flow directly from the clearing firm or product vendor to the customer,
3 account owner, or payee authorized in writing by the Account Information Form or
4 product’s contract.”

5 12. Section 4.13.13 of the Policies and Procedures states: “With the limited
6 exception of immediate family members, the Firm prohibits Registered Representatives
7 from borrowing or lending money or securities to any prospect or customer, including non-
8 Firm prospects/customers. Registered Representatives are also not permitted to accept any
9 gifts from customers other than a nominal gift, and cash gifts are prohibited.”³

10 13. Section 6.5 of the Policies and Procedures states, in part, that a “complaint is
11 defined as any statement by a customer...alleging a grievance in connection with the
12 solicitation or execution of any transaction or the disposition of securities or funds of that
13 customer.” That policy further states: “If a Registered Representative receives a customer
14 complaint...he or she must immediately notify the Firm’s Compliance Department and
15 his/her Designated Supervisor. Registered Representatives are prohibited from attempting
16 to negotiate or settle any customer complaint without having the Firm’s Compliance
17 Department involved, and only then when prior written approval is received by the Firm’s
18 Compliance Department.” This policy notes that these requirements apply equally to
19 written and oral complaints. Failure to comply with this policy constitutes “grounds for
20 disciplinary action, up to and including termination.”

21 14. The Financial Industry Regulatory Authority (“FINRA”) is a self-regulatory
22 authority registered under the Securities Exchange Act of 1934 and regulates securities
23 firms doing business in the United States.

24 15. On April 5, 2019, Cetera Advisors filed a Uniform Termination Notice for

25 _____
26 ³ Section 8.2.8 of the Policies and Procedures require all of Cetera Advisors’ associated persons to maintain
a log of all gifts given or received and requires any such gifts given or received to be reported to the firm.
There is no evidence that Respondent maintained such a log

1 Securities Industry Registration, also known as a Form U5, with FINRA to report its
2 termination of Respondent (the “Form U5”). On the Form U5, Cetera Advisors stated that
3 it discharged Respondent on April 3, 2019, “due to violating firm’s policies and procedures
4 by making undisclosed payments to a customer of the firm.” The Form U5 further noted
5 that the discharge was for “violating investment-related statutes, regulations, rules or
6 industry standards or conduct.”

7 16. On June 14, 2019, FINRA accepted a Letter of Acceptance, Waiver, and
8 Consent (the “AWC”) from Respondent in case number 2018057331001. The AWC found
9 that Respondent failed to provide documents and information requested by FINRA in
10 connection with its review of his issuance of consolidated account reports to customers and
11 his making of undisclosed payments to customers. As a result, FINRA permanently barred
12 Respondent from all capacities of associating with any FINRA member.

13 17. As of September 3, 2020, Respondent has 41 customer complaint disclosures
14 according to CRD, all of which were reported between March 2016 through July 2020.

15 18. By failing to comply with the terms of the 2017 Final Order, including the
16 agreement to comply with the Oregon Securities Law, the \$35,000 of civil penalties that
17 was suspended in that case is now due and owed.

18 CONCLUSIONS OF LAW

19 The Director CONCLUDES that:

20 19. Under ORS 59.015(8)(a), “investment adviser representative” means any
21 partner, officer, director or person occupying a similar status or performing a similar
22 function, or other individual, except clerical or ministerial personnel, who is employed by
23 or associated with a state investment adviser that is licensed or required to be licensed in
24 this state. Respondent is an “investment adviser representative” under ORS 59.015(8)(a).

25 20. Under ORS 59.015(18)(a), “salesperson” means a person, other than a broker-
26 dealer, who represents or purports to represent a broker-dealer, issuer or owner of securities

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1 in effecting or attempting to effect in any manner transactions in securities. Respondent is
2 a “salesperson” under ORS 59.015(18)(a).

3 21. Under ORS 59.205(2), it is unlawful to engage in dishonest, fraudulent, or
4 illegal practices or conduct in any business or profession or unfair or unethical practices or
5 conduct in connection with the purchase or sale of any security.

6 22. Under OAR 441-205-0010, as used in section (2) of ORS 59.205, the terms
7 “dishonest, fraudulent, or illegal practices or conduct,” and “unfair or unethical practices
8 or conduct,” separately or in any combination thereof, shall include, but not be limited to,
9 those acts defined herein as “manipulative, deceptive, or fraudulent device or contrivance”
10 or “fraudulent, deceptive or manipulative act or practice.”

11 23. Under OAR 441-205-0145(1), a person who is an Investment Adviser
12 Representative for a State Investment Adviser is a fiduciary and has a duty to act primarily
13 for the benefit of the Adviser’s clients. The provisions of this rule apply to state investment
14 advisers and their investment adviser representatives. While the extent and nature of this
15 duty varies according to the nature of the relationship between an investment adviser and
16 its clients and the circumstances of each case, a state investment adviser or its investment
17 adviser representatives shall not engage in unethical business practices.

18 24. Under OAR 441-205-0145(1)(f), an investment advisor representative breaches
19 his or her fiduciary duty and engages in unethical business practices if he or she borrows
20 money or securities from a client unless the client is a broker-dealer, an affiliate of the
21 investment adviser, or a financial institution engaged in the business of loaning funds.

22 25. Under OAR 441-205-0145(1)(g), an investment advisor representative
23 breaches his or her fiduciary duty and engages in unethical business practices if he or she
24 loans money to a client unless the investment adviser is a financial institution engaged in
25 the business of loaning funds or the client is an affiliate of the investment adviser.

26 26. Because Respondent borrowed and/or loaned money to one or more of his



1 clients, he breached his fiduciary duty and engaged in unethical business practices under
2 OAR 441-205-0145(1)(f) and (g).

3 27. Under OAR 441-205-0145(2), the conduct set forth in OAR 441-205-0145(1)
4 is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure,
5 or deceptive practices shall be deemed a dishonest, fraudulent or unethical business
6 practice.

7 28. In addition to borrowing and/or loaning money to clients, making monthly
8 payments to clients and failing to document, report, or otherwise substantiate the same with
9 Cetera Advisors or FINRA constitutes a dishonest practice or unethical practice under
10 OAR 441-205-0145(2).

11 29. Under ORS 59.245(4), if the Director has reason to believe that any person has
12 engaged, is engaging, or is about to engage in any violation of the Oregon Securities Law,
13 the Director may issue an order, subject to ORS 59.295, directed to the person to cease and
14 desist from the violation or threatened violation.

15 30. Because the Director has reason to believe that Respondent has violated
16 provisions of the Oregon Securities Law, including ORS 59.205 and OAR 441-205-0145,
17 the Director may issue an order directed to Respondent to cease and desist from such
18 violations under ORS 59.245(4).

19 31. Under ORS 59.045(2), the Director may by order withdraw, condition, or deny
20 the use of any exemption by a person if the Director has reason to believe that the person
21 has engaged in or is about to engage in an act or practice constituting a violation of the
22 Oregon Securities Law.

23 32. Because the Director has reason to believe that Respondent has violated
24 provisions of the Oregon Securities Law, including ORS 59.205 and OAR 441-205-0145,
25 the Director may deny the use of any exemption by Respondent under ORS 59.045(2).

26 33. Under ORS 59.995(1)(a), in addition to all other penalties and enforcement

1 provisions provided by law, any person who violates or who procures, aids or abets the
2 violation of ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995, or any rule or
3 order of the Director shall be subject to a penalty of not more than \$20,000 for every
4 violation, which shall be paid to the General Fund of the State Treasury.

5 **ORDERS**

6 The Director issues the following orders:

7 Order to Cease and Desist

8 34. Pursuant to ORS 59.245(4), the Director hereby orders Respondent, and all
9 entities owned or controlled by Respondent, his successors and assigns, to CEASE AND
10 DESIST from violating ORS 59.205(2), ORS 59.205(12), and OAR 441-205-0145(1).

11 Order Denying Use of Exemptions

12 35. Pursuant to ORS 59.045(2), the Director hereby DENIES Respondent the use
13 of any exemption that would otherwise be available under the Oregon Securities Law.

14 Order Assessing and Reinstating Civil Penalties and Permanent Industry Bar

15 36. Pursuant to the authority of ORS 59.995(1), the Director hereby assesses twenty
16 thousand dollars (\$20,000) in CIVIL PENALTIES against Respondent for violating ORS
17 59.205(2), ORS 59.205(12), and OAR 441-205-0145(1).

18 37. The Director hereby REINSTATES the thirty-five thousand dollar (\$35,000)
19 civil penalty that was suspended in the 2017 Final Order for failure to comply with the
20 terms of that order.

21 38. The Director SUSPENDS the foregoing fifty-five thousand dollar (\$55,000)
22 combined civil penalties, provided:

23 A. Respondent permanently refrains from applying for or filing any financial
24 services business license or registration regulated by the Division, including:
25 investment advisor, investment advisor representative, broker-dealer, or securities
26 salesperson license, or any other license or registration required or regulated by the



1 Division, including those related to insurance, consumer finance, collection
2 agencies, and mortgage lending;

3 B. Respondent further permanently refrains from engaging in all securities-
4 related business activities in Oregon, including but not limited to any such activities
5 that are otherwise exempt from licensing and registration requirements;

6 C. Respondent complies with all provisions of the Oregon Securities Law and
7 this Consent Order.

8 39. If Respondent commits any violation of Oregon Securities Law or fails to abide
9 by any terms of this Consent Order within a period of five (5) years from the date that this
10 becomes a final order, then the entire fifty-five thousand dollars (\$55,000) of civil penalties
11 will become immediately due and payable. If Respondent does not commit any violation
12 of the Oregon Securities Law and otherwise abides by all of the terms of this Consent Order
13 for five (5) years from the date that this becomes a final order, then the fifty-five thousand
14 dollars (\$55,000) of civil penalties will be considered satisfied.

15 **NONDISCHARGEABILITY**

16 40. Respondent agrees the facts and violations set forth above in this Order may be
17 taken as true without further proof in any bankruptcy case or subsequent civil litigation the
18 Director may pursue to enforce its rights to any payment or money judgment under the
19 terms of this Order, including but not limited to, any nondischargeability complaint in any
20 bankruptcy proceeding and that this Order shall have collateral estoppel effect in any
21 bankruptcy case.

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FINAL ORDER

41. This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that provision, entry of this Order in no way limits or prevents further remedies, sanctions, or actions which may be available to the Director under Oregon law to enforce this Order, for violations of this Order, for conduct or actions of Respondent that are not covered by this Order, or against any party not covered by this Order.

IT IS SO ORDERED.

Dated this 29th day of October, 2020.

ANDREW R. STOLFI, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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CONSENT TO ENTRY OF ORDER

I, George C. Merhoff, have read the foregoing Order and I know and fully understand the contents hereof. The factual allegations stated herein are true and correct. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. I voluntarily consent to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this order. I understand that the Director reserves the right to take further action against me to enforce this Order or to take appropriate action upon discovery that I have committed other violations of the Oregon Securities Law. I will fully comply with the terms and conditions stated herein.

I understand that this Order is a public document.

Signature: /s/ George Merhoff

State of Oregon

County of Klamath

Signed or attested before me on this 19th day of October, 2020

by George C. Merhoff.

/s/Stacy M. Osborn

Notary Public

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