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**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

**FINAL ORDER TO CEASE AND
DESIST; ORDER ASSESSING AND
SUSPENDING, IN PART, THE
CIVIL PENALTY PROVIDED
VOLUNATRY 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 suitability rule (OAR 441-205-0140).

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).

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



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

3 **b. DCBS Examination**

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

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

14 5. After analyzing the information gathered, DCBS determined:

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

23 6. DCBS found that Merhoff used an investment strategy based on value investing;
24 meaning, Merhoff purchased energy-sector securities based on a belief that the sector was
25 undervalued. Merhoff's strategy also included holding undervalued stock when a sector traded
26 below a lower than average value. This holding pattern resulted in little to no trading in client





1 accounts that were concentrated in energy-sector securities; in fact, Cetera’s exception reports on
2 low volume trading (LVT), showed that in 2015, Merhoff effected 0-2 trades in hundreds of
3 accounts.

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

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

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

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

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

22 II. CONCLUSIONS OF LAW

23 The Director CONCLUDES that:

- 24 1. Paragraphs 1-11 are incorporated.
- 25 2. The Director has jurisdiction over the Respondents. ORS 59.235.
- 26 3. Respondents’ trading activity involved the purchase or sale of “securities,” as that



1 term is defined at ORS 59.015(19)(a).

2 3. Cetera is a “broker-dealer.” ORS 59.015(1).

3 4. Merhoff is an “associated person” of Cetera. OAR 441-175-0010.

4 5. A broker-dealer must reasonably supervise associated persons. ORS 59.205(13).

5 The duty to supervise includes exercising diligent supervision over the securities activities of
6 associated persons, which includes the frequent examination of customer accounts to detect and
7 prevent unsuitable recommendations. OAR 441-205-0210(3)(b).

8 6. In making a securities recommendation, broker-dealers and their associated
9 persons must have reasonable grounds to believe that the recommendation is suitable for the
10 client on the basis of information provided by the client and after reasonable inquiry is made
11 regarding the client’s financial situation. OAR 441-205-0140.

12 7. Pursuant to ORS 59.245(4), the Director is authorized to issue an order to cease
13 and desist against any person for violating the Oregon Securities Law, ORS 59.005 to 59.451,
14 59.991, and 59.995.

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

17 **III. FINAL ORDER**

18 The Director ORDERS that:

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

21 2. Respondents are joint and severally liable to pay the CIVIL PENALTY of
22 Seventy Thousand Dollars (\$70,000 US) for violating OAR 441-205-0210(3)(b) and OAR 441-
23 205-0140:

24 a) Thirty Five Thousand Dollars (\$35,000 US) is due and payable to the
25 Department of Consumer and Business Services within **30 days** from the
26 date this Final Order is signed the Director. A payment coupon will be

1 issued with this Final Order;

- 2 b) The balance of \$35,000 is SUSPENDED and will not be collected upon,
3 provided Respondents continue to comply with the Heightened
4 Supervision Plan until June 1, 2018, or an earlier time, if agreed to by the
5 Director. Therefore, the Heightened Supervision Plan is incorporated and
6 made part of this Final Order;
- 7 c) Failure to comply with the terms of this Final Order, including compliance
8 with Oregon Securities Law, will make the balance of the civil penalty due
9 and owed in its entirety.

10
11 3. Respondents stipulate and agree that the civil penalty is not dischargeable under
12 11 U.S.C. 523(a)(7).

13 4. This Order is a "Final Order" under ORS 183.310(6)(b). It is not subject to
14 judicial review under ORS Chapter 183. The entry of this Order does not limit other remedies
15 that are available to the Director under Oregon law.

16 IT IS SO ORDERED.

17 Dated this 30th day of March, 2017.

18 PATRICK M. ALLEN, Director
19 Department of Consumer and Business Services

20
21 /s/ David Tatman
22 David C. Tatman, Chief of Enforcement
23 Division of Financial Regulation
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CONSENT TO ENTRY OF ORDER

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I, Bernard A. Breton, state that I am and was at all relevant times to this Final Order, the CCO 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: /s/ Bernard A. Breton Date: March 20, 2017.

Approved as to form:

/s/ Amir Tadjedin
Amir Tadjedin
Attorney for Respondent

State of Colorado

County of Denver

Subscribed and sworn before me on March 20, 2017.

/s/ Rhonda Bryceland
Notary Public

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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: /s/ George Merhoff Date: 3/ 17/, 2017

Approved as to form:

/s/ Amir Tadjedin
Amir Tadjedin
Attorney for Respondent

State of Oregon

County of Klamath

Subscribed and sworn before me on March 17, 2017.

/s/ Stacy M. Osborn
Notary Public

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