BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership of Cetera Advisors LLC with FINRA	Notice Pursuant to Rule 19h-1 Securities Exchange Act of 1934 SD-2352 Date: April 8, 2024

I. Introduction

On December 9, 2022, Cetera Advisors LLC (the "Firm") submitted to FINRA a Membership Continuance Application ("MC-400A" or "the Application"). The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue its membership with FINRA. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(a), FINRA's Department of Member Supervision ("Member Supervision") recommended that the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, approve the Firm's continued membership with FINRA pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application.[1]

II. The Statutorily Disqualifying Event

The Firm is subject to a statutory disqualification because of an October 13, 2022 final judgment (the "Final Judgment") entered by the United States District Court for the District of Colorado. The Final Judgment, among other things, permanently enjoined the Firm from engaging in any transactions, practices, and courses of business that operate as a fraud or deceit upon any client or prospective client and from violating Section 206(4) of the Investment

[1] Contemporaneous with the filing of this notice, FINRA has filed a similar notice in connection with the continued membership of an affiliate of the Firm, Cetera Advisor Networks LLC ("Cetera Networks").

Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-7 thereunder.[2] Pursuant to the Final Judgment, which the Firm consented to without admitting or denying any allegations, the court ordered the Firm to pay a total of $7,605,470, composed of disgorgement of $5,614,509, prejudgment interest of $990,961, and a civil penalty of $1 million.[3] The Firm paid these amounts in full.

The Final Judgment is based on an April 2020 complaint filed against the Firm and Cetera Networks by the SEC (the "SEC Complaint"). The SEC Complaint alleged that the Firm breached its fiduciary duty to clients in connection with its activities as an SEC registered investment adviser in the following ways: (1) from at least September 2012 through December 2016, the Firm selected and held mutual fund investments that cost its clients more than other lower-cost identical investments in different share classes and failed to properly disclose this practice or the conflict of interest that this practice created; (2) from at least September 2012 through February 2016, the Firm received compensation from a third-party broker-dealer ("Clearing Broker") for investing its clients in certain mutual funds but failed to disclose adequately this process or the financial conflict stemming from its receipt of such compensation; (3) from at least September 2014 through March 2018, the Firm failed to disclose the conflict stemming from its receipt of at least $4.3 million in compensation that certain mutual funds paid to the Clearing Broker that the Clearing Broker then shared with the Firm; and (4) from at least September 2012 through March 2018, the Firm directed the Clearing Broker to markup certain fees that the Clearing Broker charged their advisory clients by up to 300%. The SEC Complaint also alleged that from 2012 through at least 2017, the Firm failed to implement its policies and procedures regarding the disclosure of material facts and conflicts of interests.

The Firm represented that it has taken remedial measures to address the issues underlying the Final Judgment. For example, in January 2017 it began to rebate to clients 12b-1 fees and began converting its advisory clients' holdings to lower-cost share classes. Also prior to the commencement of the SEC's action, the Firm amended its customer disclosure documents to more fully explain its practices with respect to the receipt of payments from third parties and subsequently made numerous updates to those documents, and it updated its

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[2] Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act"), which incorporates by reference Exchange Act Section 15(b)(4)(C), provides that a member firm is subject to statutory disqualification if it is enjoined from, among other things, engaging or continuing to engage in any conduct or practice as a broker-dealer or investment adviser, or in connection with the purchase or sale of any security.

[3] The order of disgorgement and prejudgment interest was payable jointly and severally with Cetera Networks.

written supervisory procedures ("WSPs") to include procedures for the creation and delivery of Form CRS, Form ADV, and other customer disclosures. Further, the Firm represents that it created a committee to review potential conflicts of interest arising out of compensation from investment product sponsors and added training for employees regarding their obligations under Regulation Best Interest. Finally, the Firm represents that it intends to terminate its investment adviser registration in early 2024, thereby ceasing many of the activities that resulted in the SEC Complaint.

III. Background Information

A. The Firm

The Firm is based in Greenwood Village, Colorado and has been a FINRA member since 1982.[4] According to the Firm's Central Registration Depository ("CRD"®) record, it has 1,030 branch offices. The Firm employs 2,292 registered representatives, 803 of whom are registered principals, and 2,216 non-registered fingerprinted individuals. The Firm does not currently employ any statutorily disqualified individuals.

B. Recent Examinations and Regulatory History

In the past two years, FINRA completed one routine examination and four non-routine examinations of the Firm.

1. Routine Examination

In July 2021, in connection with the Firm's 2020 routine examination, FINRA issued the Firm a Cautionary Action. The Cautionary Action cited the Firm for the following deficiencies: failing to maintain adequate books and records in accordance with its WSPs concerning annuity transactions executed for customers of two branch offices; and failing to enforce its WSPs with respect to the receipt of customer funds and the timely forwarding of customer funds at three branch offices, advertising approval and ensuring that proper disclosures were made in an advertisement, and requiring designated supervisors who are responsible for reviewing and approving variable annuity transactions to complete training specific to variable annuities.[5] The Firm responded in writing to the

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[4] As set forth above, the Firm is currently dually registered as an SEC investment adviser, although it intends to terminate its registration. As of late September 2023, the majority of the Firm's registered representatives were also registered as investment adviser representatives with an affiliate of the Firm (Cetera Investment Advisers).

[5] The following exceptions were also referred to FINRA's Department of

[Footnote continued on next page]

deficiencies noted and represented that it took remedial steps to help ensure that the deficiencies do not reoccur.

2. Non-Routine Examinations

In July 2023, FINRA issued a Cautionary Action to the Firm, Cetera Networks, and another affiliate for failing to use reasonable diligence in connection with 19 corporate bond transactions to ascertain the best market so that the resultant price to their customers was as favorable as possible under prevailing market conditions. The Firm responded in writing and represented that it was updating its policies and procedures and paid restitution to customers.

In January 2022, FINRA issued a Cautionary Action to the Firm for failing to enforce its WSPs because it failed to provide the required annual business questionnaire to a registered representative and failed to analyze whether to impose restrictions on their outside business activities. The Firm responded in writing and represented that the officers responsible for conducting the analysis resigned from the Firm, the Firm terminated the registered representative, and the Firm reconfigured its supervisory reporting structure.

In June 2021, FINRA issued a Cautionary Action to the Firm for failing to maintain reasonable supervisory procedures regarding: (1) reviewing and approving transactions in alternative mutual funds; and (2) due diligence and approving new alternative mutual funds and the suitability and supervision of alternative mutual fund transactions. [6] The Firm represented that, among other things, it revised its WSPs to address these deficiencies.

In June 2021, FINRA issued a Cautionary Action to the Firm for causing registered representatives whom the Firm was recruiting to take nonpublic personal customer information from the representatives' firms and disclose such information to a third-party vendor without the knowledge or consent of the firms or customers. The Firm represented that it made numerous changes to its practices relating to the use of nonpublic personal information when onboarding representatives.

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Enforcement as a result of this examination: failing to establish and enforce an adequate system to reasonably monitor the deposit and liquidation of low-priced securities; failing to establish and enforce an adequate supervisory process to surveil for inappropriate rates of variable annuity exchanges; and failing to ensure that a principal reviewed several recommended variable annuity transactions to detect that they were unsuitable. These matters are pending.

6 FINRA issued Cetera Networks a similar Cautionary Action.

3. Recent Regulatory History

Other than the Final Judgment, the Firm has been the subject of one recent regulatory matter.

In August 2021, the SEC issued an order against the Firm, Cetera Networks, and other affiliates. The order found that the Firm willfully violated Advisers Act Section 206(4) and Rule 206(4)-7 thereunder, and Rule 30(a) of Regulation S-P, because it failed to adopt written policies and procedures reasonably designed to protect customer records and information and procedures for reviewing communications sent to impacted customers. Specifically, the order found that in November and December 2017, unauthorized third parties took over the Firm's email accounts, which exposed customers' personal identifiable information. The SEC censured the Firm, ordered it to cease and desist from committing future violations, and ordered it and its affiliates to pay, jointly and severally, a civil monetary penalty of $300,000.[7] The Firm paid the penalty and represented that it enhanced its cybersecurity after the entry of this order.

IV. The Firm's Proposed Continued Membership with FINRA and Proposed Plan of Heightened Supervision

The Firm seeks to continue its membership with FINRA notwithstanding the Final Judgment, which renders the Firm statutorily disqualified. The Firm has therefore agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA:

1. The Firm must comply with the Final Judgment entered on October 13, 2022, by the U.S. District Court for the District of Colorado issued in connection with *Securities and Exchange Commission v. Cetera Advisors, LLC and Cetera Advisor Networks, LLC*, Case No. 19-cv-02461-MEH, and in particular Section IV of the Final Judgment.

2. For a term of five years from the date of the SEC's Letter of Acknowledgement in this matter ("LOA"), the Firm must annually review and update, as necessary, its written policies and

[7] As a result of the order, the Firm is statutorily disqualified under Exchange Act Sections 3(a)(39)(F) and 15(b)(4)(D) (providing that a firm is statutorily disqualified if it has willfully violated federal securities laws). The Firm, however, was not required to file a membership continuance application under FINRA's rules as there were no sanctions in effect once the Firm paid the civil penalty. *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at *11-12 (Apr. 2009).

procedures with respect to disclosure of conflicts of interest, disclosure of affiliated entities, mutual fund share class selection and mutual fund recommendations (including disclosure of fees and conflicts of interest related to mutual fund share classes), and securities recommendations under the "reasonably available alternatives" component of Regulation Best Interest's care obligation applicable to broker-dealers. The Firm must document its review and any updates made. The Firm must segregate and maintain the documentation for ease of review by FINRA staff.

3. For a term of five years from the date of the LOA, the Firm must annually review its training materials with respect to disclosure of conflicts of interest, disclosure of affiliated entities, mutual fund share class selection and mutual fund recommendations (including disclosure of fees and conflicts of interest related to mutual fund share classes), and securities recommendations under the "reasonably available alternatives" component of Regulation Best Interest's care obligation applicable to broker-dealers. The Firm must also incorporate any changes as necessary. The Firm must document its review and any updates made. The Firm must segregate and maintain the documentation for ease of review by FINRA staff.

4. For a term of five years from the date of the LOA, if any updates are made to the above training materials, in respect to disclosure of conflicts of interest, disclosure of affiliated entities, mutual fund share class selection and mutual fund recommendations (including disclosure of fees and conflicts of interest related to mutual fund share classes), and securities recommendations under the "reasonably available alternatives" component of Regulation Best Interest's care obligation as applicable to broker-dealers, the Firm must incorporate the updates into its annual training which must be mandatory for all Firm sales and trading personnel and other relevant FINRA registered personnel. New Sales and Trading personnel and other relevant FINRA registered personnel must complete said training within 120 days of date of hire. If updates are made to the training, as it relates to the above, the Firm must maintain and segregate the training materials, along with documentation of the completion of the training by the above covered persons for ease of review by FINRA staff.

5. All requested documents and certifications under this Supervision Plan must be sent directly to FINRA's Statutory Disqualification Group ("SD Group") at SDMailbox@finra.org.

6. The Firm must obtain written approval from the SD Group prior to changing any provision of this Supervision Plan.

7. The Firm must submit any proposed changes or other requested information under this Supervision Plan to the SD Group at SDMailbox@finra.org.

If the Firm's request to continue its membership in FINRA is approved, Member Supervision represents that FINRA intends to utilize its examination and surveillance processes to assess the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

V. Discussion

Member Supervision recommends approving the Firm's request to continue its membership in FINRA. After carefully reviewing the entire record in this matter, we approve the Application.

In evaluating an application like this, we assess whether the statutorily disqualified firm seeking to continue its membership in FINRA has demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, Sec. (3)(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Factors that bear on our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, and whether there has been any intervening misconduct.

We recognize that the Final Judgment involved serious violations of securities rules and regulations. We note, however, the Final Judgment did not expel or suspend the Firm. Nor did the Final Judgment restrict or limit the Firm's securities activities beyond enjoining the Firm from violating the Advisers Act and requiring the Firm to adopt and implement policies and procedures designed to prevent such violations, and the Firm has complied with all terms of the Final Judgment.

Moreover, the Firm represented that it has taken numerous steps to help ensure that the misconduct underlying the Final Judgment does not reoccur (including certain steps before the Final Judgment was entered). For example, in January 2017 the Firm began to rebate to clients 12b-1 fees and began converting its advisory clients' holdings to lower-cost share classes, and prior to the SEC Complaint the Firm amended its customer disclosure documents to more fully explain its practices with respect to receipt of payments from third parties and subsequently made numerous updates to those documents. Further, the Firm represents that it updated its WSPs to address customer disclosures, formed a

committee to review potential conflicts of interest arising out of compensation from investment product sponsors, and added training for employees regarding their obligations under Regulation Best Interest. These steps, coupled with the provisions of the heightened supervisory plan, should help ensure that similar misconduct does not reoccur.

We further agree with Member Supervision that the Firm's regulatory history should not prevent the continuance of the Firm as a FINRA member. The Firm took corrective actions in response to the regulatory actions taken against it, and it represented that it addressed the deficiencies noted in FINRA examinations. At this time, we are satisfied, based in part upon the Firm's representations, Member Supervision's representations, the heightened supervisory plan, and the record currently before us, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, we approve the Firm's Application to continue its membership in FINRA as set forth herein.[8] In conformity with the provisions of Exchange Act Rule 19h-1, the approval of the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the SEC, unless otherwise notified by the SEC.

On Behalf of the National Adjudicatory Council,

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Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary

[8] FINRA certifies that the Firm meets all qualification requirements and represents that it is a member the Municipal Securities Rulemaking Board.