

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:19-cv-02461-MEH

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CETERA ADVISORS LLC, and  
CETERA ADVISOR NETWORKS LLC,

Defendants.

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**PLAN NOTICE**

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**TO: Persons, or their lawful successors, identified by the Distribution Agent based on its review and analysis of applicable records obtained by the Commission during its investigation who may have suffered a loss as a result of paying 12b-1 Fees or Markups to Defendants that the Commission alleged were not properly disclosed in connection with investment advisory or brokerage services during the Relevant Period.**

**I. Purpose of this Plan Notice.**

The purpose of this Plan Notice is to inform you that you may be entitled to a Distribution Payment from the Fair Fund established by the Court in the above-referenced matter (the “Cetera Advisors Fair Fund”). Epiq Class Action & Claims Solutions, Inc. (“Epiq”) has been appointed by the Court as the Distribution Agent (the “Distribution Agent”). Please read this Plan Notice and the Distribution Plan (the “Plan”) and the Plan of Allocation attached thereto carefully. You can access the Plan on the Fair Fund website ([www.CeteraAdvisorsFairFund.com](http://www.CeteraAdvisorsFairFund.com)). The enclosed Certification Form provides you with the opportunity to review and confirm or dispute your Excess Fee amounts so that you may receive your payment from the Cetera Advisors Fair Fund. Please be advised that you must either confirm or dispute your Excess Fee amounts and return this form to be eligible for a Distribution Payment.

**II. Background**

On October 11, 2019, the SEC filed its Amended Complaint against Cetera Advisors LLC and Cetera Advisor Networks LLC (collectively, “Defendants” or “Cetera”) alleging that Cetera invested and held clients in mutual fund share classes that charged 12b-1 Fees—which are recurring fees deducted from the fund’s assets—even when it knew these clients were eligible to invest in lower-cost shares of the same funds without 12b-1 Fees. Clients whom Cetera invested in the higher-cost, otherwise identical share classes, paid additional compensation to Cetera for as long as they held these investments. The Complaint also alleged that Cetera participated in a program offered by its clearing broker whereby it agreed to share with Cetera revenues and service fees it received from certain mutual funds. As a result, Cetera had an incentive to favor these mutual funds in the program over other investments when advising clients. The Complaint further alleged that Cetera directed its clearing broker to mark-up certain fees charged to Cetera’s advisory clients which Cetera then received indirectly from these same clients.

According to the Complaint, Cetera failed to adequately disclose to its advisory clients each of these practices and the conflicts of interest associated with them. As a result of these failures, the SEC alleged that Cetera generated over \$10 million in undisclosed compensation. The Complaint charged Cetera with violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder [15 U.S.C. §§ 80b-6(2), 80b-6(4), 80b-7 and 17 C.F.R. § 275.206(4)-7].

Defendants consented to the entry of a Final Judgment against them without admitting or denying the Complaint’s allegations, enjoining them from violating the provisions of the federal securities laws that are the subject of the allegations in the Complaint. The Court entered the Final Judgment on October 13, 2022. In the Final Judgment, the Defendants were ordered to pay disgorgement, prejudgment interest, and combined penalties totaling \$8,605,470. Defendants satisfied this obligation and made full payment to the Commission. The funds are being held in an SEC-designated account with the United States Department of the Treasury.

On July 14, 2023, the Court established a Fair Fund so that the penalties, disgorgement, and prejudgment interest collected can be distributed to harmed investors. On the same day, the Court appointed Heffler, Radetich & Saitta, LLP as Tax Administrator for the Fair Fund. On November 16, 2023, the Court appointed Epiq as Distribution Agent for the Fair Fund. The Court approved the Plan on January 23, 2024.

### **III. Eligibility Criteria and the Distribution Methodology.**

To qualify for a payment from the Cetera Advisors Fair Fund, you must satisfy certain eligibility criteria that are described in detail in the Plan. The Plan is available on the Cetera Advisor Fair Fund's website at [www.CeteraAdvisorsFairFund.com](http://www.CeteraAdvisorsFairFund.com) and on the Commission's public website at <https://www.sec.gov/enforcement/information-for-harmed-investors/cetera>. You can also request a copy of the Plan by calling the Distribution Agent at 877-267-0136 or by emailing at [info@CeteraAdvisorsFairFund.com](mailto:info@CeteraAdvisorsFairFund.com).

A Preliminary Claimant means a Person, or their lawful successors, identified by the Distribution Agent based on its review and analysis of applicable records obtained by the Commission during its investigation, who may have suffered a loss as a result of paying 12b-1 Fees or Markups to Defendants that the Commission alleged were not properly disclosed in connection with investment advisory or brokerage services during the Relevant Period. The Relevant Period is defined as follows:

- (a) For claims relating to Cetera Advisors:
  - i. September 8, 2012 through December 31, 2016, inclusive, for conduct involving 12b-1 Fees.
  - ii. September 8, 2012 through March 29, 2018, inclusive, for conduct involving Markups.
- (b) For claims relating to Cetera Advisor Networks:
  - i. April 20, 2014 through December 31, 2016, inclusive, for conduct involving 12b-1 Fees.
  - ii. April 20, 2014 through March 29, 2018, inclusive, for conduct involving Markups.

The enclosed Certification Form sets forth your total excess 12b-1 Fee and Markup Fee amounts, upon which your Distribution Payment will be calculated. You are required to provide your confirmation or dispute the Excess Fee amounts set forth in the Certification Form not later than April 22, 2024. If you fail to respond to the Certification Notice by April 22, 2024, you will be deemed an Unresponsive Preliminary Claimant and will not be eligible for a Distribution Payment.

**The Recognized Loss amount attributable to a Preliminary Claimant means the total excess 12b-1 Fees and/or Markups paid calculated in accordance with the Plan of Allocation. The methodology used to determine eligibility and calculate Distribution Payments is set forth in Paragraph 44 of the Plan and the Plan of Allocation which is set forth in Exhibit A attached thereto. The Recognized Loss is not the amount of the Distribution Payment you will receive. Instead, in accordance with the Plan, you will receive a *pro rata* portion of the Fair Fund.**

### **IV. Certification Forms.**

A CERTIFICATION FORM IS BEING MAILED TOGETHER WITH THIS NOTICE TO ALL PRELIMINARY CLAIMANTS KNOWN TO THE DISTRIBUTION AGENT. IF YOU DO NOT RECEIVE A CERTIFICATION FORM IN THE MAIL AND BELIEVE THAT YOU SHOULD BE INCLUDED AS A PRELIMINARY CLAIMANT, YOU MUST CONTACT THE DISTRIBUTION AGENT PRIOR TO MAY 7, 2024, TO ESTABLISH THAT YOU SHOULD BE CONSIDERED A PRELIMINARY CLAIMANT.

**THE DEADLINE TO SUBMIT A CERTIFICATION FORM AT THE ADDRESS BELOW IS APRIL 22, 2024—IF YOU FAIL TO SUBMIT A COMPLETED CERTIFICATION FORM ON OR BEFORE APRIL 22, 2024, YOU WILL BE BARRED FROM RECEIVING A PAYMENT FROM THE CETERA ADVISORS FAIR FUND. IF YOU CHOOSE TO DISPUTE YOUR RECOGNIZED LOSS AMOUNT YOUR CERTIFICATION FORM SHOULD BE ACCOMPANIED BY APPROPRIATE SUPPORTING DOCUMENTS FOR EACH FEE YOU ARE DISPUTING.**

### **V. Final Determination Notices.**

The Distribution Agent will mail a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

**VI. Instructions for Submitting a Claim Form.**

**YOU MUST COMPLETE AND SIGN THE CERTIFICATION FORM AND SUBMIT IT TO THE DISTRIBUTION AGENT EITHER ELECTRONICALLY VIA THE FAIR FUND WEBSITE AT [WWW.CETERAADVISORSFAIRFUND.COM](http://WWW.CETERAADVISORSFAIRFUND.COM) OR VIA EMAIL TO [INFO@CETERAADVISORSFAIRFUND.COM](mailto:INFO@CETERAADVISORSFAIRFUND.COM) SO THAT IT RECEIVED NO LATER THAN APRIL 22, 2024, OR BY MAIL SO THAT IT IS POSTMARKED NO LATER THAN APRIL 22, 2024, AT THE ADDRESS LISTED BELOW IN ORDER TO BE CONSIDERED FOR ELIGIBILITY TO RECEIVE A DISTRIBUTION PAYMENT FROM THE CETERA ADVISORS FAIR FUND:**

**Cetera Advisors Fair Fund  
Distribution Agent  
P.O. Box 2676  
Portland, OR 97208-2676**

**VII. Additional Information.**

Additional information regarding the Cetera Advisors Fair Fund may be found at [www.CeteraAdvisorsFairFund.com](http://www.CeteraAdvisorsFairFund.com). You may obtain additional information or request copies of Certification Forms and Plan Notices by calling the Cetera Advisors Fair Fund's toll-free number at 877-267-0136, or by emailing [info@CeteraAdvisorsFairFund.com](mailto:info@CeteraAdvisorsFairFund.com).

**PLEASE CHECK THE WEBSITE [WWW.CETERAADVISORSFAIRFUND.COM](http://WWW.CETERAADVISORSFAIRFUND.COM) FREQUENTLY FOR UPDATES.**