

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-02461-MEH

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CETERA ADVISORS, LLC, and
CETERA ADVISOR NETWORKS LLC,

Defendants.

**PLAINTIFF’S MOTION FOR AN ORDER APPOINTING A DISTRIBUTION AGENT
AND AUTHORIZING THE SEC TO APPROVE PAYMENTS OF FEES AND
EXPENSES OF THE DISTRIBUTION AGENT WITHOUT FURTHER COURT ORDER**

Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) respectfully moves this Court for an Order: (i) appointing Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as distribution agent (“Distribution Agent”) for the Fair Fund, and (ii) authorizing the Commission to approve and arrange for payment of fees and expenses of the Distribution Agent from the Fair Fund without further Court order. The Commission submits a proposed order contemporaneously herewith.

Background

On October 11, 2019, the SEC filed its Amended Complaint against Cetera Advisors, LLC and Cetera Advisor Networks LLC (collectively, “Defendants” or “Cetera”). [Dkt. No. 11]. According to the Complaint, 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]. [Dkt. No. 11].

Defendants consented to the entry of a Final Judgment against them, 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. [Dkt. No. 119]. In the Final Judgment, the Defendants were ordered to jointly or severally pay disgorgement of \$5,614,509; prejudgment interest of \$990,961; and combined penalties of \$2,000,000. The total amount ordered to be paid by all Defendants was \$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. [Dkt. 124]. On the

same day, the Court appointed Heffler, Radetich & Saitta, LLP as Tax Administrator for the Fair Fund. *Id.*

A. The Court Should Appoint Epiq as Distribution Agent

The Commission requests an Order appointing Epiq as the Distribution Agent for the Fair Fund to facilitate the development of a distribution plan and the ultimate handling of any distribution in this case. If appointed, Epiq will work with the Commission's staff in formulating a distribution plan and obtaining the Court's approval of the plan, as well as determining the identities of injured investors and investor harm, establishing a claims process to evaluate and verify claims, fielding inquiries from investors and overseeing the ultimate distribution of the Fair Fund. Once a distribution plan is approved, Epiq will submit quarterly progress reports to the Commission staff. In addition, Epiq will account to the Commission staff for all monies in the Distribution Fund, including the status of all distribution payments. When the distribution of funds has been completed, a final accounting report in a format to be provided by Commission staff will be submitted for court approval.

Epiq is well-qualified for the tasks required of a distribution agent and will be fair, efficient, cost-effective, and timely in its efforts. Epiq has over 50 years of experience in the administration and distribution of securities class action cases and has handled numerous large distributions for the Commission in the past. Epiq has extensive experience in drafting and finalizing distribution plans, defining eligibility and the measure of damages, collecting, and validating information from claimants, remitting payments and handling all related audit, review and reporting processes.

B. The Court Should Authorize the Commission to Pay Distribution Agent Fees and Expenses

In an effort to make timely payment to the Distribution Agent for services provided, the Commission further requests that the Commission staff be authorized to approve and arrange for payment of fees and expenses of the Distribution Agent from the Fair Fund without further Court order. The Commission staff follows a rigorous process for reviewing and approving invoices before payment is made. The Commission's Office of Distributions requires and reviews, in a multi-step process, detailed invoices from the Distribution Agent that describes the work performed, the billing rate, and the time expended on each task. If the Court authorizes the Commission staff to approve and arrange for payment of all future Distribution Agent fees and expenses from the Fair Fund without further Court order, the Commission staff will use its expertise in distributions and knowledge of this specific distribution to review all proposed charges. The SEC staff will approve and arrange for payment only of appropriate and properly documented fees and expenses of the Distribution Agent. All payments of Distribution Agent fees and expenses will be reported to this Court in the final accounting of the Fair Fund once the distribution is complete.

WHEREFORE, for all the foregoing reasons, the SEC respectfully requests that this Court enter the attached proposed Order and grant such other relief as the Court deems just and proper.

Dated: November 6, 2023

Respectfully submitted,

s/ Amy A. Sumner

Amy A. Sumner
Attorney for Plaintiff
Securities and Exchange Commission
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
Telephone: (303) 844-1089
Facsimile: (303) 295-0538
Email: sumnera@sec.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-02461-MEH

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CETERA ADVISORS, LLC, and
CETERA ADVISOR NETWORKS LLC,

Defendants.

**ORDER APPOINTING A DISTRIBUTION AGENT AND AUTHORIZING THE SEC TO
APPROVE PAYMENTS OF FEES AND EXPENSES OF DISTRIBUTION AGENT
WITHOUT FURTHER COURT ORDER**

The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission (“Commission” or “SEC”) to Appoint a Distribution Agent and Authorize the SEC to Approve Payments of Fees and Expenses of the Distribution Agent without Further Court Order (the “Motion”) and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is GRANTED.
2. Epiq Class Action & Claims Solutions, Inc. (“Epiq”) is appointed Distribution Agent for the Fair Fund to assist in overseeing the administration and the distribution plan to be approved by this Court. Epiq shall coordinate with the Court-appointed Tax Administrator, Heffler, Radetich & Saitta, LLP (“HRS”), to ensure that the Fair Fund, a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations, 26 C.F.R. §§ 1.468B-1 through 5, complies with all related legal and regulatory requirements,

including but not limited to, satisfying any reporting or withholding requirements imposed on distributions from the QSF. Epiq may be removed *sua sponte* at any time by the Court or upon motion of the Commission and replaced with a successor. In the event Epiq decides to resign, it will first give written notice to the Court and to the Commission's counsel of such intention, and the resignation, if permitted, will not be effective until the Court appoints a successor.

3. The Commission is authorized to approve and arrange payment of all fees and expenses of the Distribution Agent directly from the Fair Fund without further order of this Court. All payments of the fees and expenses of the Distribution Agent shall be reported to the Court in a final accounting.

IT IS SO ORDERED.

Dated:

United States District Court Judge