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IN REPLYING PLEASE QUOTE FW-3749

RECEIVED

February 26, 2015

By Electronic Mail and United Parcel Service Overnight mail

The Honorable James E. Grimes Administrative Law Judge Securities & Exchange Commission 100 F Street NE Washington, D.C. 20549-2557

FEB 27 2015
OFFICE OF THE SECRETARY

Re:

In the Matter of The Robare Group, Ltd., et al.,

AP File No. 3-16047.

Dear Judge Grimes:

Pursuant to the Court's Post-Hearing Orders, dated Feb. 13, 2015, and Feb. 20, 2015, the Division of Enforcement hereby re-asserts its offer of DOE Ex. 84 (Ex. 84) (a copy of which is attached hereto). Respondents objected to Ex. 84 on the grounds of "foundation, misleading, and relevance." *See* Respondents' Objections to the Commission's Exhibit and Witness Lists, filed Jan. 20, 2015 ("Respondents' Objections"), and Respondents' Reply in Further Support of Its Objections, filed January 30, 2015 ("Respondents Further Reply").

Ex. 84 is a simple chart comparing hypothetical costs of an investment in a No Transaction Fee ("NTF") mutual fund to the costs of an investment in a Transaction Fee ("TF") mutual fund. TF mutual funds frequently have lower expense ratios than NTF mutual funds, as Respondent Mark Robare admitted at the hearing. (Tr. p. 485, lines 7-22.)

As a preliminary matter, the Court's October 7, 2014, Order Setting Prehearing Schedule and General Prehearing Order ("Prehearing Order") made clear that "unless genuine authentication or reliability issues exist, it is generally unnecessary for a party to lay a foundation for the admission of an exhibit or to call a document custodian as a witness." Prehearing Order, at 3. SEC employee John Farinacci created the chart, as the Division stated in its Response to Respondents' Objections to Division's Witnesses and Exhibits, filed Jan. 27, 2015 ("Division's Response"). As there were no issues of genuine authentication or reliability with Ex. 84, the Division was not required to call Farinacci as a witness. If Respondents had a genuine authentication or reliability issue with Ex. 84, they could have called Farinacci to the stand to question him about it.

Respondents also objected to this exhibit on the grounds of it being misleading and irrelevant. Respondents complained that their investment strategy was not an issue in this case. In the Division's Response, the Division agreed: the suitability or benefit of Respondents' strategy of investing their clients' funds in NTF mutual funds was not an issue.

Copies of transcript pages referenced in this letter are attached.

The Honorable James E. Grimes February 26, 2015 Page Two

Yet it is Respondents who have continually made their investment strategy an issue. For example, in Respondents' Pre-hearing Brief, filed Jan. 26, 2015 ("Respondents' Brief"), Respondents stated that they used NTF funds in their model portfolios because they allowed Respondent The Robare Group ("TRG") "to control the amount of fees incurred by its clients and, in turn, increase their ultimate return on their investment. Fee control is a primary pillar of the Robare Group's approach to investing and selection of client investments." Respondents' Prehearing Brief, at 3. In Respondents' Further Reply, filed Jan. 30, 2015, Respondents argued that TRG's business model and approach to investing would necessarily include a description of the NTF mutual funds "and why the firm uses them", without explaining why its business model and investing approach would be relevant evidence to any issue in the case. At the hearing, Robare testified more than once that they used the NTF funds, in lieu of the TF funds, because they were "cheaper" to use. (Tr. p. 307, lines 11-14; p. 308, lines 7-10.)

Thus, it is because Respondents continually "opened the door" on this issue that the Division was prompted to offer Ex. 84. Ex. 84 demonstrates that NTF mutual funds are not necessarily the "cheaper" option for clients: NTF funds generally have higher expense ratios, which Robare admitted. (Tr. p. 485, lines 7-22.) If TRG rebalances its investors' portfolios only one to two times a year (Tr. p. 306, lines 4-9), and if the transaction fees were \$35 per buy or sell (see Tr. p. 485, line 23 – p. 486, line 14), rebalancing transactions costs would only be \$70 to \$140 per year per mutual fund. Those minimal transaction fees per fund, combined with the lower expense ratios of TF funds, would make a TF mutual fund investment less expensive than the NTF mutual fund.

Finally, the Court already determined the relevance of whether NTF or TF funds might be "cheaper" for investors. On cross-examination, Robare conceded that this was possible. (Tr. p. 489, line 5 – p. 490, line 3.) But before Robare answered the question, his attorney objected, on the grounds of relevance. The Court overruled the objection. (Tr. 489, lines 5-17.)

Ex. 84 mathematically expresses what Robare testified to, over objection. Ex. 84 is, therefore, well-founded, relevant, and not misleading and ought to be in the record.

For these reasons, the Division respectfully requests that the Court overrule Respondents' objections to Division's Exhibit 84 and admit the exhibit.

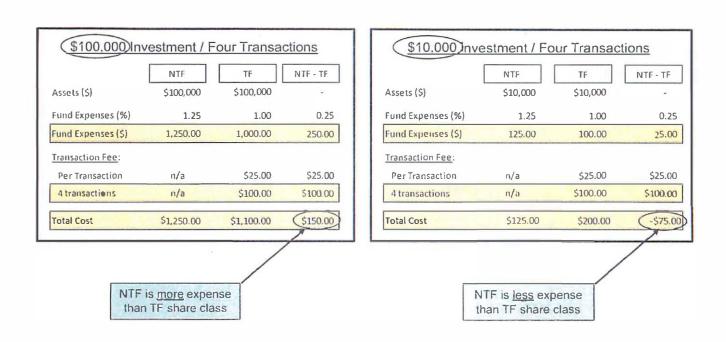
Very truly yours,

Janie L. Frank

Senior Trial Counsel

Alan Wolper CC: Heidi VonderHeide

Hypothetical Costs of No-Transaction fee (NTF) versus Transaction Fee (TF) Share Classes



DOE Exhibit 84

Page 306 Page 308 1 that that puts that portfolio back into the original 1 we did the historical trading on those portfolios and 2 balance or risk parameters that the portfolio was 2 found that even if you could get a transaction fee fund 3 designed to be in. 3 on every one of those, that the transactions created Q How frequently do you go about the process of 4 4 probably three times the cost that the differential 5 rebalancing these eight to ten portfolios that y'all 5 between a no transaction fcc fund and a transaction fee 6 6 fund would have as an internal expense. 7 A Typically, it can be once a year, sometimes 7 Q Okay. But you made a conscious decision to В twice a year, depending upon the movements in the В populate your portfolios with NTF funds, nontransaction 9 9 fee funds, because that was cheaper for your clients? 10 Q Okay. Now, you use in your portfolios NTF 10 A That's exactly why we did it. 11 funds, right? 11 Q Do you care about that, Mark? Is it 12 A Correct. 12 important to you that you offer something to your 13 Q Nontransaction fees funds, correct? 13 client that you believe to be cheap? 14 A We do always have. 14 A It is important. I mean, I read every one of 15 Q Exclusively or predominantly? 15 the prospectuses. I know what the expense ratios are 16 A I would say exclusively. Now, a client can 16 and what the share alternatives are. So when we're 17 come to us with a portfolio where they've already got 17 closing funds for clients, we're choosing the best 18 some investments. They might have some of their 18 funds in the clients' best interests. 19 company stock that they got through NUA. They may have 19 Q Let's get something out of the way. You have 20 other investment pieces and there may not be a reason 20 knowledge that as an investment advisor you have a 21 to sell those pieces or they may want to hang on to 21 fiduciary obligation to your customers? 22 those pieces. So we will put the portfolio together 22 A I do. 23 around that core holding. 23 Q And that means to operate in their best 24 So to give you an example, if somebody had 24 interest? 25 Chevron stock and other large companies, we might call 25 A Yes, that does mean that. Page 307 Page 309 1 that large cap core. So in our mutual fund portfolio, 1 Q You acknowledge and accept that 2 responsibility? 2 we might have less large cap core as it's represented 3 in the stock that they already own. 3 A 1 do. 4 4 Q Okay. Notwithstanding the fact, you use NRS Q Okay. So I appreciate the diversion. We 5 were talking about transaction fee funds versus NTF 5 and other consultants to help you? 6 A That's correct. 6 funds. And you started talking about the differences 7 7 Q So this is your obligation to make sure that practically that a customer experiences based upon --8 you just mentioned rebalancing, and that's when I В you do this very well? 9 9 A Yes. stopped you. 10 A Yeah. Rebalancing. 10 Q All right. Now, you're familiar with the 11 document or documents that are sort of at the root of 11 So you use NTF funds in your portfolio? 12 this case, the two agreements with Fidelity, the one 12 A Yes. 13 O Why? 13 from 2004 and the one from 2012, right? A Because they're cheaper to use. 14 A Yes, I am. 14 MR. WOLPER: All right. Can you pull up 15 O Why? 15 16 Respondents' Exhibit 1. 16 A Well, there's a number of reasons why. One 17 is, if you looked at the funds that were available on 17 BY MR. WOLPER: 18 the NTF platform, many of them don't even have a TF 18 Q Now, there's Respondents' Exhibit 1, commission schedule and servicing fee agreement. 19 19 equivalent, and those that do most of the time, it's a 20 20 Are you familiar with this document?

> 21 22

> 23

24

25

right?

A That's correct.

Q If you go to page 3, you can see the

signatures on there. That's you at the upper right,

million-dollar minimum deposit.

So the NTF alternative is not even an

availability. We actually did some back testing on

Fidelity would charge our clients per transaction, and

clients that had the same portfolio for the last ten

years, applied the 35-dollar transaction fee that

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	Page 484		Page 486
1	A I know that Fidelity have an advisor class	1	35-dollar purchase.
2	that are transaction fees and pay a 12b-1.	2	Q That's the agreement with Fidelity, right?
3	Q Fidelity?	3	A Yes.
4	A Fidelity does.	4	Q Okay. So if you had an advisory client that
5	Q Okay. Non-Fidelity funds, non-Fidelity	5	wanted to buy a transaction fee fund as part of their
6	mutual funds, are those when they're nontransaction	6	advised asset or not the client because you're the
7	fee, those are the ones that have a 12b-1 fee but not	7	one picking the fund.
8	the transaction fee; is that right?	В	So if you were going to do that for a client
9	A Okay. State that question again.	9	and you picked a transaction fee fund, the client would
10	Q Yeah, it was a pretty bad one.	10	have to pay \$35 for you to buy that fund in their
11	Sometimes one mutual fund can have two share	11	account; is that correct?
12	classes; is that right?	12	A That's correct.
13	A Multiple share classes.	13	Q Then the \$35 would go to Fidelity?
14	Q Multiple share classes. They have a share	14	A That's correct.
15	class where you pay a trans action fee. They can also	15	Q Okay.
16	have a share class where there is no transaction fee;	16	A That's assuming that a transaction fee fund
17	is that right?	17	would be available for that client.
18	A Yes, and others.	18	Q Right. But I'm talking about a mutual fund
19	Q And others, right. There's a lot of share	19	that has both share classes so that you could pick
20	classes, but those are two categories of mutual fund	20	A No. You can have both share classes. It
21	shares?	21	doesn't mean that that client qualifies for both share
22	A That's two of many.	22	classes.
23	Q Of, like, the same fund, I mean, it could be	23	Q Okay.
24	one fund, and they've got these different classes of	24	A In many of those transaction fee funds, the
25	shares?	25	minimum deposit is a million dollars before you can
	(6.		·
	Page 485		Page 487
1	Page 485	1	Page 487 purchase a transaction fee fund.
1 2		1 2	
	A Correct.		purchase a transaction fee fund.
2	A Correct. Q So when you're looking at the fund and what	2	purchase a transaction fee fund. Q But that's not true for all transaction fee
2	A Correct. Q So when you're looking at the fund and what its investment strategy is, that investment strategy	2	purchase a transaction fee fund. Q But that's not true for all transaction fee funds, is it?
2 3 4	A Correct. Q So when you're looking at the fund and what its investment strategy is, that investment strategy would apply to the whole fund, but then you can pick which share class you want to buy out of that fund?	2 3 4	purchase a transaction fee fund. Q But that's not true for all transaction fee funds, is it? A In the NTF universe, when we're looking at
2 3 4 5	A Correct. Q So when you're looking at the fund and what its investment strategy is, that investment strategy would apply to the whole fund, but then you can pick which share class you want to buy out of that fund? A Within certain parameters, that's true.	2 3 4 5	purchase a transaction fee fund. Q But that's not true for all transaction fee funds, is it? A In the NTF universe, when we're looking at NTF funds and the share classes within those NTF funds,
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A Correct. Q So when you're looking at the fund and what its investment strategy is, that investment strategy would apply to the whole fund, but then you can pick which share class you want to buy out of that fund? A Within certain parameters, that's true. Q Okay. And so looking at those kinds of funds, the fund that has different share classes, if there is a 12b-1 fee, it's generally going to be affiliated or come into play in the NTF share class; is that right? A Generally, that's true. Q Okay. And because of that, that's going to have the tendency to make expense ratios for the NTF funds higher than the transaction fee funds? A Typically, but it has no transaction cost, either. Q Okay. So that's one feature as to which way you pick the funds to buy is you can pay the transaction fee, but you get a lower expense ratio with that fund; is that right?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	purchase a transaction fee fund. Q But that's not true for all transaction fee funds, is it? A In the NTF universe, when we're looking at NTF funds and the share classes within those NTF funds, that's more true than it's not true. Q But there are funds out there where the transaction fee fund purchase does not have a million dollar minimum requirement, right? I'm just saying in the realm of the 6600 mutual funds that you look at. A Of those 6600 funds? Q Yes. A Very rare. Q But they exist? A Yeah, they exist. Q Okay. Yesterday you mentioned there was an analysis that you did to determine that the costs to your clients were lower if they went with the no transaction fee funds? A That's correct.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A Correct. Q So when you're looking at the fund and what its investment strategy is, that investment strategy would apply to the whole fund, but then you can pick which share class you want to buy out of that fund? A Within certain parameters, that's true. Q Okay. And so looking at those kinds of funds, the fund that has different share classes, if there is a 12b-1 fee, it's generally going to be affiliated or come into play in the NTF share class; is that right? A Generally, that's true. Q Okay. And because of that, that's going to have the tendency to make expense ratios for the NTF funds higher than the transaction fee funds? A Typically, but it has no transaction cost, either. Q Okay. So that's one feature as to which way you pick the funds to buy is you can pay the transaction fee, but you get a lower expense ratio with that fund; is that right? A Correct.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	purchase a transaction fee fund. Q But that's not true for all transaction fee funds, is it? A In the NTF universe, when we're looking at NTF funds and the share classes within those NTF funds, that's more true than it's not true. Q But there are funds out there where the transaction fee fund purchase does not have a million dollar minimum requirement, right? I'm just saying in the realm of the 6600 mutual funds that you look at. A Of those 6600 funds? Q Yes. A Very rare. Q But they exist? A Yeah, they exist. Q Okay. Yesterday you mentioned there was an analysis that you did to determine that the costs to your clients were lower if they went with the no transaction fee funds? A That's correct. Q When was that analysis done?
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the CFA in our office. Q It wasn't the one that did Respondents' Exhibit 48, was he? A No, it was not. Q Day was know who did Respondents' Exhibit 40? A I believe – I don't know for sure. I believe – I don't know for sure. I believe hat that was Jack. I'm not for sure. Q Olway. A I know that Jordan did the other one because I directly asked him to do it as a part of this now. Q And you asked him to do it as a part of this case; is that right? A Yes. Q And you was how whether or not the examined – olway. I'm sorry. I think you said that that was the first time that analysis had ever been done by anyone at your office? A Right. Q O you know whether or not that analysis examined every single one of your cileats and every single fund? A No. It examined one portfolio during the duration. Page 489 Q Okay. A So that was at the portfolio level which would be like any other client that two long that it has a sorre first first that analysis had ever been done by anyone at your office? A No. It examined one client. That client who would have had the same portfolio during the duration. Page 489 Q Okay. A So that was at the portfolio level which would be like any other client that twas pretry much in the same portfolio during the duration. Page 489 Q Okay. Would you agree that it is possible that stance clients with agree mutats flund holdings that a transaction free fund. Q Obay. Would you agree that it is possible that they are picking not transaction fee fund. Gould be less expensive for them in the long run? MK WOLPER: Let me object to the relations that was pretry much in the same portfolio. BY DUE GRMES: What's the relevance? MS FRANK: They have raised this issue that they are picking not transaction fee fund. Gould be less expensive for them in the long run? MK CDEC GRMES: Flanker: Q Pun Just wondering, sin't it possible that they are picking not transaction fee fund could, in fact, be less expensive because the cost is chepper and it's not always chapter and it's not always chapter and i		Page 488		Page 490
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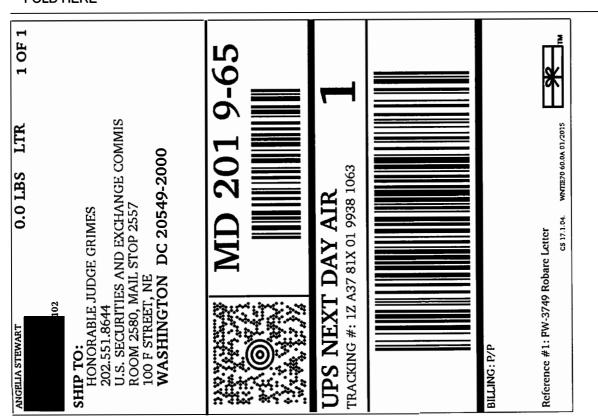
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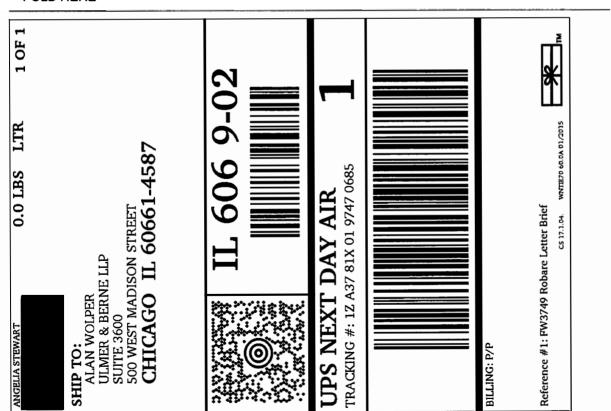
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