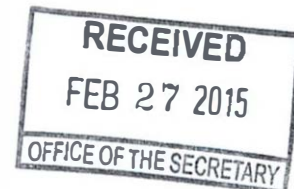


February 26, 2015



**VIA EMAIL AND OVERNIGHT MAIL**

Honorable Judge Grimes  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549  
[ALJ@sec.gov](mailto:ALJ@sec.gov)

Re: *In the Matter of the Robare Group, Ltd., et al.*  
AP File No. 3-16047

Dear Judge Grimes:

Pursuant to your Order dated February 19, 2015, please consider this correspondence Respondents' brief in support of their previously-asserted objections to Exhibit 84.

Exhibit 84 is entitled "Hypothetical Costs of No-Transaction fee (NTF) versus Transaction Fee (TF) Share Classes." Prior to the start of hearing in this matter, Respondents objected to the document on three grounds: (1) lack of foundation; (2) relevance, and (3) the misleading nature of the document. *See* Respondents' Objections to the Commission's Exhibit and Witness Lists, page 2. During the hearing, the Division did not introduce – or even attempt to introduce – Exhibit 84. It was not used or relied upon, or even mentioned, by any witness. Despite that, on February 20, 2015, the Division moved to admit the document into evidence. Respondents reassert and renew their objections, as explained herein.

**Lack of Foundation**

First and foremost, despite a three-day evidentiary hearing on the merits, and even though Respondents made their objection as to the foundation to Exhibit 84 well known prior to the hearing, the Division failed even to attempt to lay any foundation for Exhibit 84. This is particularly odd, given that its purported creator (identified by the Division in its prehearing briefings as Mr. Farinacci<sup>1</sup>) was identified on the Division's witness list and present in the courtroom for the duration of the hearing, yet not called to testify. Accordingly, neither the Respondents nor the Court were able to (1) examine the creator of the document, (2) determine how and when it was created, (3) assess the credibility of the creator and/or his metrics, (4)

<sup>1</sup> *See* Division's Response to Respondents' Objections ("Division's Response"), page 3.

Honorable Judge Grimes  
February 26, 2015  
Page 2

determine the accuracy of the representations contained in the “hypothetical”; or (5) determine what assumptions upon which the “hypothetical” was based.

For this reason alone, Exhibit 84 should not be admitted into evidence in this case.

#### Relevance

Lack of foundation is not the only reason Exhibit 84 should not be admitted, as the document also lacks relevance. As the Division and Respondents agree, the suitability of the investments Mr. Robare and Mr. Jones made on behalf of their clients is not at issue in this case. See Division’s Response, page 3. Nevertheless, Respondents predict that the Division will argue that Exhibit 84 is relevant in order somehow to “rebut” the testimony of Mr. Jones or Mr. Robare wherein they briefly discussed their decision to use NTF (“no transaction fee”) mutual funds in their customers’ accounts. The record will undoubtedly reflect that neither Mr. Jones nor Mr. Robare testified that NTF funds were *per se* “superior” to TF (“transaction fee”) funds. Instead, they simply testified why they used NTF Funds in their particular business model and why those funds were in alignment with their clients’ interests. Simply put, the Division is seeking to “rebut” a position that Respondents have never taken, and which has no relevance in determining the ultimate issues presented to this Honorable Court, which is simply whether Robare’s client disclosures were adequate.

Accordingly, because Exhibit 84 irrelevant, it should not be admitted into evidence.

#### Misleading Nature of the Document

Exhibit 84 is misleading as presented. For example, the document presumes that Robare was presented with two otherwise-equivalent options when selecting mutual funds for its clients: a TF version and an NTF version. This is false. As Messrs. Jones and Robare testified at the hearing, not every NTF fund has a TF equivalent. Further, they testified that even if an otherwise equivalent TF fund *did* exist, it carried a higher investment minimum – perhaps as high as \$1 million – which rendered it unavailable to most of Robare’s clients.

Had the Division offered – or even attempted to offer – Exhibit 84 into evidence during the hearing, and allowed the issues addressed herein to be explored via sworn testimony, it is conceivable that some of these defects may have been cured. For whatever reason, however, the Division elected not to do. It should not now, in post-hearing argument, be permitted to offer the unverified contents of the exhibit in an attempt to carry its burden of proof in this case.

For these reasons, Respondents request that the Court sustain the objections raised herein and not admit Exhibit 84 into the record.

ulmer | berne | llp

ATTORNEYS

Honorable Judge Grimes  
February 26, 2015  
Page 3

Yours very truly,

A handwritten signature in blue ink, appearing to read "Heidi E. VonderHeide", is written over the typed name. The signature is fluid and cursive.

Heidi E. VonderHeide

Enclosure

cc: Alan M. Wolper  
Janie Frank  
Jessica McGee  
Office of the Secretary (via facsimile with original and three copies overnight delivery).