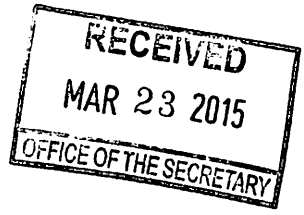
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16047

In the Matter of **THE ROBARE GROUP, LTD., MARK L. ROBARE, AND JACK L. JONES JR.,** **Respondents.**	**DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In the above-referenced matter, the Division of Enforcement hereby submits its proposed Findings of Fact and Conclusions of Law.

I.
FINDINGS OF FACT

1. The Robare Group ("TRG") has operated as a registered investment adviser in Houston, Texas, since 2003. TRG is a Texas limited partnership. [Stipulation of Fact (hereinafter "Stip.") 1; Stip. 5.]

2. Respondent Mark L. Robare ("Robare"), a Texas resident, founded TRG, is its majority limited partner, and serves as its Chief Compliance Officer. [Stip. 2.]

3. Robare is also president of Robare Asset Management, Inc. ("RAM"), TRG's managing general partner. Robare owns approximately 83% of TRG, directly or through his ownership in RAM. Robare is registered with the State of Texas as an investment adviser representative and is associated with TRG. [Stip. 2.]

4. Robare is also actively engaged in providing securities recommendations and other advisory services to clients and is compensated for those services. [*See* Tr. 514:14-515:18.]

5. Robare has been a registered representative associated with various Commission-registered broker dealers since 1987. [Resp. Ex. 110, at 6 of 13.]

6. Respondent Jack L. Jones, Jr. ("Jones") a Texas resident, is Robare's son-in-law and a limited partner of TRG. [Stip. 3.]

7. Jones owns 17% of TRG, either directly or through his ownership in RAM. Jones is registered with the State of Texas as an investment adviser representative and is associated with TRG. Jones has been a registered representative associated with Commission-registered broker-dealers since 1994. [Stip. 3.]

8. TRG offers investment portfolio management services, primarily to retail clients and high net-worth individuals. [Stip. 4.]

9. As of August 26, 2013, TRG served as an investment adviser to approximately 350 separately managed discretionary accounts and had approximately $150 million in assets under management. [Stip. 1.]

10. Robare testified that TRG has "just under 300 households" as clients, on its investment adviser side of its business. [Tr. 301:23-24.]

11. From TRG's inception as an independent registered investment advisory firm in 2003, TRG has used Fidelity Investments ("Fidelity") for execution, custody, and clearing services for TRG's advisory clients. [Stips. 4, 5.]

12. TRG offers advisory clients seven different model portfolios, largely comprised of mutual fund investments available through Fidelity's online investment platform. [Stip. 4.]

13. As a registered investment adviser ("RIA"), TRG manages its clients' assets on a discretionary basis. [Tr. 417:3-9.]

14. TRG invests a significant portion of its advisory clients' assets in non-Fidelity NTF mutual funds offered on Fidelity's platform. [Stip. 4.]

15. Robare and Jones also provide brokerage services to clients. [Tr. 425:14 - 426:10.]

16. Approximately half of TRG's business is brokerage business and half is investment advisory business. [Tr. 425:9-19.]

17. TRG is not a registered broker-dealer; it executes brokerage transactions through Triad Advisors, Inc. ("Triad"), a Commission-registered broker-dealer. [Tr. 420:8-25; Stip. 8.]

18. Robare and Jones, individually, are each registered-representatives of Triad. [Stip. 7.]

19. In early 2004, Triad's president informed Respondents that Fidelity had a "revenue sharing arrangement" to help its adviser-clients with their business. [Tr. 312:2 – 313-4.]

20. Respondents contacted Fidelity to discuss entering into such an arrangement. [Tr. 312:7 – 313:4; 428:8 – 429:3.]

21. Respondents learned that Fidelity did have a program whereby it pays servicing fees to registered investment advisers in connection with (1) the placement of advisory client assets into non-Fidelity NTF mutual funds; and (2) the provision of certain services to those end clients. [Tr. 33:12-23; 34:18 – 35:21.]

22. Fidelity offers Fidelity and non-Fidelity mutual funds on its platform. [Tr. 29:9 – 30:2.]

23. Fidelity offers two types of non-Fidelity mutual funds: transaction fee ("TF") and non-transaction fee ("NTF") mutual funds on its platform. [Tr. 29:9 – 30:2.] An NTF mutual fund does not charge the purchasing investor a transaction fee. [Stip. 13.]

24. Fidelity's fee program was initially called the "servicing fee program" and is now called the "custodial support services program." [Tr. 32:24 – 33:11.] The 2004 Agreement has also been variously referred to throughout this case as the "SFA," the "CSSA," the "servicing fee agreement," the "custodial support services agreement," and the "Fidelity agreement." [Tr. 32:24 – 33:8.]

25. Fidelity has never advertised this program to its RIA customers; advisers must ask for it. [Tr. 99:1 – 100:1.]

26. Only about 40 of Fidelity's roughly 2,700 RIA customers participate in the servicing fee program. [Tr. 32:20-23; 37:4-10.]

27. The purpose of the servicing fee was (and is to compensate investment advisers for placing end-customers into non-Fidelity NTF mutual funds and for providing certain administrative services to those customers. [Tr. 33:12 – 34:8; 35:8 – 36:6.]

28. Respondents asked to join Fidelity's fee program. [Tr. 428:8 – 429:3.]

29. Fidelity, TRG, and Triad executed the agreement titled "Investment Adviser Commission Schedule and Servicing Fee Agreement" ("2004 Agreement") in or around April 2004. [Tr. 47:3-20; DOE Ex. 9; Stip. 11.]

30. Robare and Jones each knew of the terms of the 2004 Agreement. [Stip. 14.]

31. The 2004 Agreement provided in a section titled "Servicing Fee Revenue," that Fidelity would pay basis points to TRG for all of TRG's investor assets invested in non-Fidelity no-transaction fee ("NTF") mutual funds. [DOE Ex. 9.]

32. Pursuant to the 2004 Agreement, Fidelity paid TRG the servicing fee when TRG placed its clients' assets over which it had discretionary control in non-Fidelity NTF mutual funds. [Tr. 49:8-18.]

33. Pursuant to the 2004 Agreement, the basis points Fidelity paid on TRG's client-asset volumes increased as the volume of those assets placed in non-Fidelity NTF mutual funds increased. [Tr. 48:6 – 49:7; DOE 9, at 1; Stip. 16.]

34. Robare stated that Fidelity Arrangement could have a "tendency to slant our portfolios to maximize CSSA revenue." [Tr. 335:14-21.]

35. Because Respondents were incentivized, consciously or unconsciously, to place their advisory clients' assets into non-Fidelity NTF mutual funds, the Fidelity Arrangement created a conflict of interest they were required to disclose and which they admit they were required to disclose. [Stip. 20; Tr. 719:10 – 720:24.]

36. The 2004 Agreement provided that the payments Fidelity paid for the placement of TRG's advisory clients' assets into the non-Fidelity NTF mutual funds on its platform would be paid to Triad Advisers. [DOE Ex. 9.]

37. Triad and TRG agreed that Triad would retain 10% of the Fidelity's payments paid under the 2004 Agreement and that Triad would pass through the remaining 90% to TRG. [Stips. 11, 18, 19.]

38. Melissa Morganti-Zizza, with Fidelity, was a credible witness. She has been employed with Fidelity for more than 25 years and serves as Fidelity's Senior Vice President in charge of business management within Institutional Wealth Services ("IWS"), the Fidelity division that supports registered investment advisors like TRG. [Tr. 25:8 – 26-6.]

39. Triad was included in the 2004 Agreement as an "administrative choice." [Tr. 141:15 – 142:15; 195:18 – 196:3.]

40. The inclusion of Triad as a third-party to the 2004 Agreement was unique or unusual. [Tr. 53:21-24.]

41. Payments made under the Fidelity Arrangement were for TRG's benefit. [Tr. 53:18-20.]

42. The Fidelity servicing fees were not commissions or selling compensation. [Tr. 36:16-22.]

43. The Fidelity servicing fees are not 12b-1 fees. [Tr. 31:14-15; 63:25 – 64:3; Tr. 91:19-21.

44. The Fidelity servicing fees were not paid in connection with any distribution or marketing by TRG. [Tr. 63:8-10.]

45. Fidelity's relationship with TRG is strictly in connection with TRG's investment advisory business. [Tr. 54:16-18.]

46. Triad did not approve the transactions TRG made in the managed advisory accounts. [Tr. 535:25 – 536:4.]

47. Triad did not select the mutual funds in which TRG would invest its advisory clients' assets, in the accounts over which TRG had discretionary authority. [Tr. 536:5-8.]

48. Triad did not process any of the transactions when TRG purchased specific mutual funds to place in its advisory clients' managed accounts, as those transactions were processed on Fidelity's trading platform. [Tr. 536:9-13.]

49. Triad did not have the ability or authority to place TRG's advisory clients' funds into the NTF funds or to invest TRG's advisory clients' assets. [Tr. 755:25 – 726:24.]

50. Triad did not provide investment advice to TRG's advisory clients. [Tr. 757:1-3.]

51. Triad did not participate in any way in the "facilitation" of the securities transactions involved in the placing of the TRG advisory clients' assets into the non-Fidelity NTF mutual funds [Tr. 807:3 – 808:3.]

52. Timothy Fahey, with Fidelity, was a credible witness. He was employed with Fidelity for more than 10 years, left, and returned in February 2011, becoming at that time a relationship manager in the Institutional Wealth Services Division. He was the relationship manager for Fidelity who had responsibility for its relationship with TRG. [Tr. 103:20 – 105:13.]

53. On December 1, 2011, Respondents' relationship manager at Fidelity, Tim Fahey, telephoned Jones and told him that, after reviewing TRG's Form ADV, Fidelity observed that TRG failed to disclose the arrangement TRG had with Fidelity pursuant to the 2004 Agreement (hereinafter referred to as the Fidelity Arrangement). [Tr. 112:15 – 113:4; 122:7-11.]

54. Fahey followed that call with a confirming email the next day. [Tr. 115:11 – 116:7; DOE Ex. 41.]

55. Fidelity imposed a deadline for TRG to update its Form ADV to disclose the Fidelity Arrangement. [Tr. 120:21-24; DOE Ex. 43.]

56. Fahey testified that he informed Respondents that Fidelity would terminate its fee payments if TRG failed to disclose the Fidelity Arrangement on TRG's Form ADV. [Tr. 121:10 - 122:1.]

57. Other emails confirm that Robare and Jones knew Fidelity would terminate the servicing fees if Respondents did not update their Form ADV. [DOE Exs. 46, 47.]

58. Jones urged TRG's compliance consultant, Renaissance Regulatory Services, to file the updated December 2011 Form ADV immediately, so that Fidelity would not hold up TRG's compensation. [DOE Ex. 46.]

59. Neither Robare nor Robare questioned, disputed, or objected to Fidelity's assessment that TRG's Form ADV failed to disclose the Fidelity Arrangement. [Tr. 122:18 – 123:7.]

60. Neither Robare nor Jones brought to Fidelity's attention any other document in which they claimed to have disclosed the Fidelity Arrangement. [Tr. 123:8-11.]

61. On December 9, 2011, Fahey emailed Jones a second time to advise him that Fidelity had accelerated the deadline for TRG to update its Form ADV to December 16, 2011. [DOE Ex. 43.]

62. Fahey's December 9, 2011 email repeated what he had been told by Fidelity's Legal-Risk-Compliance Department about the lack of reference to the 2004 Agreement in TRG's Form ADV, which was: "We recently looked at your firm's ADV and did not find this disclosure information. Please update your ADV on or before December 16, 2011 to ensure that the CSSA payments continue without interruption." [DOE Ex. 43.]

63. Fidelity provided Respondents sample language for disclosing the fee arrangement. [DOE Ex. 41.]

64. On December 11, 2011, Jones sent Fahey proposed language for TRG's disclosure. [DOE Ex. 44, at 1.]

65. Jones's proposed language in his December 11, 2011 email did not use the sample language that Fidelity had sent to him.

66. Fahey responded to Jones's December 11, 2011 email, stating that Fidelity "can't approve/disapprove" TRG's language, but indicated that the proposed language would be acceptable to Fidelity. [DOE Ex. 45, at 1.]

67. Fidelity considered TRG's language sufficient to satisfy Fidelity's requirement that the arrangement be disclosed, but Fidelity did not approve Jones's

proposed disclosure for the purposes of TRG's regulatory or fiduciary obligations. [Tr. 130:8 – 132:11.]

68. Respondents did not rely on Fidelity's email comment that Jones's proposed language was acceptable to Fidelity for regulatory or fiduciary purposes.

69. TRG filed its updated Form ADV on December 20, 2011, mentioning Fidelity for the first time.

70. Respondents would not have updated their Form ADV with information about Fidelity had Fidelity not prompted them to do so.

71. In November 2012, Fahey informed Respondents that Fidelity was updating its forms and asked TRG to sign a new contract related to the servicing fees, titled "Investment Advisor Custodial Support Services Agreement" (hereinafter the "2012 Agreement"). [Tr. 139:1-10; DOE Ex. 33.]

72. While the 2012 Agreement form was new, the underlying program of paying servicing fees to registered investment advisers, and the basis for making those payments, did not change. [Tr. 37:19 – 38:9; 56:11-14.]

73. The 2004 Agreement remained in effect until the 2012 Agreement was signed. [Stips. 21, 22.]

74. Robare did not sign the 2012 Agreement until May 23, 2013 [DOE Ex. 33.]

75. Fidelity fully executed the 2012 Agreement by July 30, 2013. [DOE Ex. 33.]

76. The effective date of the 2012 Agreement is November 21, 2012. [DOE Ex. 33.]

77. Robare and Jones knew the terms of the 2012 Agreement. [Stip. 26.]

78. Like the 2004 Agreement, the 2012 Agreement entitled TRG to fees when it invested its advisory clients' assets in non-Fidelity NTF mutual funds. [DOE Ex. 33.]

79. Fidelity still expected TRG to provide the same services to its end customers, as before. [Tr. 56:11-14; 57:11 – 58:1; DOE Ex. 33, at 7 of 11.]

80. The basis points and escalating volume targets in the 2004 Agreement and the 2012 Agreement were the same. [Tr. 58:2-7; DOE Exs. 9, 33.]

81. TRG was contractually obligated to disclose the Fidelity Arrangement under both the 2004 Agreement and the 2012 Agreement. [Tr. 58:8 – 60:18; DOE Ex. 9, 33.]

82. The 2012 Agreement did not include Triad as a party. [Stip. 23; DOE Ex. 33; Tr. 141:15 – 142:15; Stip. 23.]

83. Under the 2012 Agreement, Fidelity began paying the servicing fees directly to TRG and no longer paid the fees through Triad. [Stip. 24.]

84. After the 2012 Agreement was sent to Respondents but before they signed it, Fahey offered to direct the payments directly to TRG and not route the payments through Triad. [Tr. 141:15 – 142:15; *see also* 195:8 – 196:22.]

85. As of April 30, 2013, TRG had not signed the new 2012 Agreement. [DOE Ex. 33.]

86. Fahey told Jones that Fidelity would terminate the fees unless TRG executed the 2012 Agreement. [Resp. Ex. 92, at 5.]

87. DOE Ex. 35 reflects the payments that Fidelity paid pursuant to the 2004 Agreement and the 2012 Agreement.

88. Of the amounts reflected on DOE Ex. 35 that Fidelity paid, TRG received 90% of the amounts shown from the beginning of this chart through April 30, 2013.

89. Of the amounts reflected on DOE Ex. 35 that Fidelity paid, TRG received 100% of the amounts shown from May 2013, through the end of the exhibit.

90. Based on the amounts reflected in DOE Ex. 35, TRG received $401,778.54 from September 2005 through September 2013.

91. In May 2013, Fidelity began paying TRG the servicing fees directly.

92. TRG filed, or was deemed to have filed, a Form ADV, Part II, and Schedule F, with the Commission, on or about each of the following dates:

March 8, 2005
August 18, 2005
January 6, 2006
January 30, 2008
April 24, 2008

[Stip. 31.]

93. The Commission amended Form ADV in 2010 and required most Commission-registered investment advisers to begin using, in early 2011, a separate client disclosure brochure that met the requirements of the new Part 2A. [Stip. 32.]

94. TRG filed a Form ADV, Part 2A and a Disclosure Brochure with the Commission on or about each of the following dates:

March 31, 2011
December 20, 2011
March 30, 2012
April 12, 2013
June 2, 2013
August 26, 2013

[Stip. 33.]

95. Robare reviewed all Forms ADV Part II, Schedules F, Forms ADV Part 2A, and Disclosure Brochures before they were filed or were deemed filed. He was aware of the disclosures made in all of the Forms ADV Part II, Schedules F, Forms ADV Part 2A, and Disclosure Brochures and approved them. [Stip. 34.]

96. Robare had ultimate authority over all the Form ADVs. [DOE Ex. 56:13-19.]

97. Jones reviewed all Forms ADV Part II, Schedules F, Forms ADV Part 2A, and Disclosure Brochures before they were filed or were deemed filed. He signed all of the Form ADVs on behalf of TRG from August 18, 2005, forward. He was aware of the disclosures made in all of the Forms ADV Part II, Schedules F, Forms ADV Part 2A, and Disclosure Brochures and approved them.

98. TRG's Form ADVs filed March 8, 2005 did not disclose the servicing fees TRG was receiving from Fidelity for placing its advisory clients' assets into non-Fidelity NTF funds, that these fees could provide an incentive to favor one investment over another, and that the fees posed an actual or potential conflict of interest. [DOE Ex. 12.]

99. TRG's Form ADV filed August 18, 2005 did not disclose the servicing fees TRG was receiving from Fidelity for placing its advisory clients' assets into non-Fidelity NTF funds, that these fees could provide an incentive to favor one investment over another, and that the fees posed an actual or potential conflict of interest. [DOE Ex. 10.]

100. TRG's Form ADVs filed January 6, 2006, January 30, 2008, and April 24, 2008 suffered from the same failure to disclose that the August 18, 2005 Form ADV suffered from. [DOE Exs., 13, 14; Resp. Ex. 9.]

101. TRG's Form ADV filed March 31, 2011 failed to disclose the servicing fees TRG was receiving from Fidelity for placing its advisory clients' assets into non-Fidelity NTF funds, that these fees could provide an incentive to favor one investment over another, and that the fees posed an actual or potential conflict of interest. It disclosed sales commissions TRG would receive for brokerage transactions. [DOE Ex. 23.]

102. TRG's Form ADVs filed December 20, 2011, March 30, 2012, April 12, 2013, June 2, 2013, and August 26, 2013 inaccurate and inadequately disclosed the servicing fees TRG

was receiving from Fidelity for placing its advisory clients' assets into non-Fidelity NTF funds, that these fees could provide an incentive to favor one investment over another, and that the fees posed an actual or potential conflict of interest. [DOE Exs. 25, 26,28, 29, 31.]

103. TRG's Form ADVs filed December 20, 2011, March 30, 2012, April 12, 2013, June 2, 2013, and August 26, 2013 falsely stated that TRG did not receive any economic benefit from a non-client for providing investment advice or other advisory services to its clients. [DOE Exs. 25, 26,28, 29, 31.]

104. TRG's Form ADVs filed December 20, 2011, March 30, 2012, April 12, 2013, June 2, 2013, and August 26, 2013 stated that TRG "may" receive additional compensation in the form of custodial support services from Fidelity", which was misleading, as TRG had been and was in fact continuing to receive said compensation from Fidelity. [DOE Exs. 25, 26,28, 29, 31.]

105. TRG did not disclose its receipt of the servicing fees from Fidelity for placing its advisory clients' assets into non-Fidelity NTF mutual funds in any other document provided to its clients.

106. From 2003 through 2013, Respondents provided each of TRG's Form ADVs to its clients and to prospective clients.

107. Respondents knew they owed a fiduciary duty to their clients. [Stip. 36.]

108. Respondents knew their fiduciary duty required them to disclose conflicts of interest.

109. Respondents knew that the 2004 Agreement and the 2012 Agreement posed, at a minimum, a potential conflict of interest. [Stips. 20, 30.]

110. Respondents offered no evidence that they asked any of their consultants or Triad specifically how they ought to disclose the Fidelity Arrangement to their clients.

111. Respondents offered no evidence that provided the 2004 Agreement or the 2012 Agreement to their consultants with the specific purpose in mind of asking such consultant how they ought to disclose the Fidelity Arrangement to their clients.

112. The Division hereby incorporates any Conclusion of Law that is more appropriately considered to be a Finding of Fact.

II.
CONCLUSIONS OF LAW

1. TRG is a registered investment adviser. [Stip. 1.]

2. Because Robare is the controlling owner of TRG and is actively engaged in its business of providing securities recommendations and other advisory services to clients and is compensated for such services, he meets the definition of a registered investment adviser under Section 202(a)(11) of the Advisers Act.

3. Each Respondent owed TRG's advisory clients a fiduciary duty.

4. The 2004 Agreement and the 2012 Agreement each had an actual or potential effect of incentivizing investment advisers to place their clients' advisory assets into non-Fidelity NTF mutual funds.

5. The 2004 Agreement and the 2012 Agreement each created an actual or potential conflict of interest for each of the Respondents that was material and which was required to be disclosed. *Capital Gains Research Bureau, Inc. v. SEC*, 375 U.S. 180, 191-92 (1963).

6. Respondents were required to disclose the 2004 Agreement and the 2012 Agreement to their advisory clients.

7. Respondents failed to disclose to their advisory clients the 2004 Agreement and the 2012 Agreement and the conflict of interest each agreement created.

8. Respondents made materially false or misleading statements or omissions by failing to disclose to their clients the conflict of interest created by the 2004 Agreement and the 2012 Agreement in TRG's Form ADV or otherwise.

9. Respondents made materially false or misleading statements or omissions in their Form ADVs by stating that they did not receive an economic benefit from a non-client for providing investment advice or other advisory services to TRG's clients.

10. Respondents made materially false or misleading statements in their Form ADVs by stating that that "may" receive certain compensation from Fidelity, when in fact they had been received such compensation monthly from at least October 2004.

11. Respondents failed to disclose the Fidelity Arrangement in their Form ADVs filed from March 2005 through March 2011.

12. Respondents inadequately and inaccurately or misleadingly disclosed the Fidelity Arrangement in their Form ADV Disclosure Brochures filed December 2011 through August 2013.

13. Respondents' materially false or misleading statements or omissions made to their clients in their Form ADVs were made with *scienter*. Respondents either intended to mislead their clients or they were extremely reckless in making the misleading or false statements or omissions in TRG's Form ADVs.

14. To the extent that Respondents relied on their consultants' reviews of TRG's Form ADVs, Respondents did not do so in good faith: they failed to demonstrate that they asked any of the consultants specifically for their advice, or that they made a complete and comprehensive disclosure of all relevant facts, including providing the 2004 Agreement and the 2012 Agreement to their consultants, or that their consultants explicitly rendered an opinion on the particular

question as to whether their Form ADV made an adequate disclosure in light of the contracts and the relevant facts.

15. Respondents were negligent in making the materially false or misleading statements or omissions in their Form ADVs to their advisory clients.

16. Respondents acted willfully by intending to enter into the agreements with Fidelity to receive the servicing fees, by intending to make the disclosures they made in the 11 Form ADVs TRG filed from March 2005 through August 2013, and by intending for their advisory clients to see those disclosures.

17. TRG and Robare violated Section 206(1) of the Advisers Act.

18. TRG and Robare violated Section 206(2) of the Advisers Act.

19. Jones had a general awareness of his role in TRG's and Robare's violations of Sections 206(1) and 206(2) of the Adviser's Act. Jones reviewed the Form ADVs, was aware of all the disclosures that were contained therein, and signed all of them, except the one in March 2005.

20. Jones knowingly rendered substantial assistance in furtherance of TRG's and Robare's violations of Sections 206(1) and 206(2) of the Adviser's Act by assisting in the drafting and preparation of the Form ADVs from March 2005 through August 2013.

21. Jones caused TRG's and Robare's violations of Sections 206(1) and 206(2) of the Adviser's Act, as his review and preparation and signing of each of the deficient Form ADVs was a necessary cause of the violations and Jones knew or should have known that his actions would contribute to such violations.

22. Because each of the 11 Form ADVs filed from March 2005 through August 2013 failed to disclose TRG's arrangement with Fidelity to receive fees for placing advisory clients

assets in non-Fidelity NTF mutual funds, which was a conflict of interest that was required to be disclosed, each of the 11 Form ADVs contained untrue statements of material fact or willfully omitted to state material facts that were required to be stated therein. 15 U.S.C. § 80b-7.

23. Each of the Respondents violated Section 207 of the Advisers Act.

24. It is the public interest to order remedies in this case.

25. Disgorgement ought to be awarded to deprive Respondents of their unjust enrichment and to deter others from violating the securities laws in the future.

26. The sum of $401,778.54 is a reasonable approximation of the unjust enrichment Respondents received collectively.

27. Disgorgement of $401,778.54 ought to be awarded jointly and severally.

28. Prejudgment interest ought to be awarded, starting from the date of the last violation, August 26, 2013.

29. It is in the public interest to order a civil penalty in this case. The violations herein: (1) involved fraud and an intentional or reckless disregard of a regulatory requirement, that being Section 207, the requirement to file Form ADVs that are not false and misleading; (2) were egregious in that Respondents knew the Fidelity Arrangement posed a conflict of interest and yet they chose not to disclose it at all until December 2011, and thereafter made misleading and incomplete statements about the arrangement through August 2013; were repeated and occurred over an extended period of time, from March 2005 through August 2013. Respondents profited from their violations and were unjustly enriched, and their conduct harmed investors who did not receive the benefit of a fiduciary fully discharging his fiduciary duty by fully disclosing all material conflicts of interest. Further, there is a need to deter others from filing Form ADVs with false or misleading statements or omissions.

30. A cease-and-desist order ought to be issued. The violations at issue in this case are serious because they involve a breach of fiduciary duty, they were recurrent, not isolated in nature, and the investors were harmed by not having a fiduciary properly discharging his fiduciary duties. In addition, Respondents' state of mind necessitates a cease-and-desist order because Respondents intentionally chose to not provide details that they admit they could have provided in the disclosures. Respondents have an opportunity to commit future violations because they are still operating as investment advisers and still functioning as fiduciaries. In addition, they have not admitted or recognized the wrongful nature or their conduct and therefore have provided no assurances against future violations.

Dated: March 20, 2015.

Respectfully submitted,

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