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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of: **THE ROBARE GROUP, LTD., MARK L. ROBARE, AND JACK L. JONES, JR.** **Respondents.**	ADMINISTRATIVE PROCEEDING File No. 3-16047 **RESPONDENTS' ANSWER AND DEFENSES TO THE ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS**

Respondents Robare Group, Ltd., Mark L. Robare, and Jack L. Jones, Jr. ("Respondents"), by and through their attorneys, hereby answer the Commission's Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b)(6) of the Securities and Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 and Notice of the Hearing (the "Order") as follows.

INTRODUCTION

This action arises from certain Form ADV disclosures made by Respondents over a seven-year period relating to two agreements entered into between certain Respondents and the custodian ("Custodian") of their customers' assets: (1) a 2004 Services Fee Agreement ("SFA"), and (2) a 2012 Commission Schedule and Servicing Fee Agreement ("CSSA") (collectively referred to as the "Agreements"). Under the terms of the Agreements, the parties agreed that in the event Respondents invested a customer in a qualifying NTF mutual fund offered through Custodian's platform, Custodian would pay a small amount of compensation to Respondents' broker-dealer which, in turn, would then pay a portion of that compensation to Respondents.[1]

[1] Under the 2012 CSSA, the funds were paid directly from Custodian to Robare Group.

The SFA was executed in late 2004. Because this agreement anticipated possible payments from a non-client and could, potentially, create a conflict of interest between Respondents and their customers, Respondents were required to disclose the relationship created by the SFA in response to Question 13A on Form ADV (which asked whether Respondents were part of any arrangements pursuant to which they were paid cash or received any economic benefit – including commissions – from a non-client in connection with giving advice to clients). Respondents checked "yes" in response to Question 13A and added two substantial explanations to the answer on Schedule F:

> 13A: Certain investment adviser representatives of ROBARE, when acting as registered representatives of a broker-dealer, may receive selling compensation from such broker-dealer as a result of the facilitation of certain securities transactions on Client's behalf through such broker dealer...
>
> These other arrangements may create a conflict of interest.

Item 13A of 2005 ADV Part II.

From 2005 until 2011, the SFA remained in place, as did the above explanation. The language in Schedule F explaining Respondents' 13A disclosure was reviewed numerous times over the years by Respondents themselves as well as by two separate and independent consulting firms, both of which found them to be adequate. Also during this time period – specifically, in 2008 – the staff of the SEC conducted a lengthy examination of Respondents' disclosures – including the Item 13A disclosure. Notably, no deficiency was identified and no issues were raised. These facts, in conjunction with the extremely limited guidance offered by the SEC to Investment Advisory firms on the topic of Item 13A disclosures, caused Respondents firmly to believe their disclosures were reasonable and appropriate.

On July 28, 2010, the SEC adopted the amendments to Form ADV, which, in relevant part, created the current "brochure" format that provided for more narrative disclosures. Part 2 of the revised Form ADV included a General Instructions page which set forth the expectation for the disclosures contained in therein. Those instructions directed firms:

> Plain English. The items in part 2 of Form ADV are designed to promote effective communication between you and your clients. Write your brochure and supplements in plain English, taking into consideration your clients' level of financial sophistication. Your brochure should be concise and direct. In drafting your brochure and brochure supplements, you should: (i) use short sentences; (ii) use definite, concrete, everyday words...(v) avoid legal jargon or highly technical business terms unless you explain them or believe that your clients will understand them...

Respondents dutifully filed a revised Form ADV in March 2011 and, responding to Item 14A of that revised Form, they continued to disclose their relationship with the Custodian:

> **Item 14 – Client Referrals and Other Compensation**
>
> Certain of our IARs, when acting as registered representatives of [broker-dealer] may receive selling compensation from [broker-dealer] as a result of the facilitation of certain securities transactions on your behalf through [broker dealer]. Such fee arrangements shall be fully disclosed to clients.

Robare ADV 14A (March 2011). Later in 2011, the Custodian suggested that Respondents further amend their Item 14A disclosure, to cite specifically to the SFA. Respondents heeded that suggestion and, in December 2011, again revised the Form ADV, amending the language of the disclosure to state:

> Additionally, we may receive additional compensation in the form of custodial support services from [Custodian] based on revenue from the sale of funds through [Custodian]. [Custodian] has agreed to pay us a fee on specified assets, namely no transaction fee mutual fund assets in custody with [Custodian]. This additional compensation does not represent additional fees from your accounts to us.

Robare ADV 14A (December 2011). Once again, this disclosure was reviewed and deemed appropriate by an independent outside consulting firm, Respondents' broker-dealer (which was also paid to provide compliance advice regarding Respondents' advisory services), as well as the

Custodian. Accordingly, Respondents, with no reason to suspect that their disclosures might be inadequate, continued to believe they were appropriate.

Further, over this time period (2005 through 2011), Respondents' Form ADV was not the only means by which the potential commission Respondents could receive from the Custodian was disclosed to customers. As Respondents were well aware, the Custodian was also disclosing the Agreements to Respondents' customers in its own client agreement:

> [Custodian] provides your investment advisor with a range of services and other benefits to help them conduct their business and serve you.... In limited circumstances, we may also make direct payments to your advisor.... These payments may create an incentive for your advisor to favor certain types of investments over others.... [Custodian's] provision of these services and other benefits to your advisor may be based on clients of your advisor placing a certain amount of assets in accounts with us within a certain period of time. Your advisor may be influenced by this in recommending or requiring that its clients establish accounts with us. These products and services may not necessarily benefit your account.

Each of Respondents' customers received a copy of this disclosure at the time their account was opened. As a result, customers were made fully aware of the existence of the relationship between Respondents and the Custodian and the fact that it may pose a conflict of interest with their adviser. Had the customers any concerns – and none did – they were well positioned to seek further information and make a reasoned decision.

The Commission alleges that these disclosures are deficient, and charges that they fail to disclose Respondents' "incentive to prefer" the eligible NTF funds over other investments. At all times, however, Respondents continued to make recommendations based solely on their clients' best interests, and not based on potential fees they might receive. Indeed, following the execution of the SFA by Respondents in 2004, there was no increase in the percentage of eligible NTF funds held in their customer accounts. To the contrary, the percentage actually decreased over the years. Had Respondents truly been motivated by their receipt of fees from the Custodian, undoubtedly they would have striven to maximize the presence of eligible NTF funds in their customers' accounts. This did not occur.

Further, the fees at issue here were paid by the Custodian, and not by Respondents' customers. In fact, customers did not pay *any* fees at all with regard to eligible transactions, as the "incentivized" funds at issue here are "no transaction fee" funds.[2] Rather, the compensation Respondents received originated from the mutual fund companies themselves, which paid the Custodian in exchange for having their funds listed on the Custodian's platform.

Accordingly, at all times, Respondents acted reasonably and in good faith. In short, there is no basis for any sanction against Respondents, and certainly no grounds for the relief sought by the Commission.

II.

A. SUMMARY

1. This matter involves an investment adviser's failure to disclose compensation it received through agreements with a registered broker-dealer ("Broker") and conflicts arising from that compensation. In 2004, the Broker agreed to pay adviser Robare Group, of Houston, Texas, a specified amount for all client assets that Robare Group invested in certain mutual funds. The agreement created incentives for Robare Group to favor particular mutual funds over other mutual funds or other investments and to favor the Broker's platform when giving investment advice to its clients. Robare Group failed to disclose this agreement and the resulting conflicts of interest to its clients for years, and then only provided inadequate disclosure about it and a subsequent agreement with the Broker. By doing so, Robare Group and its principal Mark L. Robare willfully violated Sections 206(1), 206(2) and 207 of the Advisers Act. In addition, Jack L. Jones, Jr., also a principal of Robare Group, aided and abetted and caused Robare Group's and Robare's violations of Sections 206(1) and 206(2) of the Advisers Act and willfully violated Section 207 of the Advisers Act.

Response: Respondents deny the allegations contained in paragraph 1.

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[2] The Commission argues that Respondents were "incentivized" to place customers in the NTF funds in order to receive a fee. To the contrary, Respondents had been placing customers in NTF funds long before they entered into the Agreements, and continued to do so afterwards – with equal frequency – because those funds (which were otherwise suitable) did not charge a commission on the transaction. Thus, purchasing NTF funds allowed Respondents' customers to *avoid* paying unnecessary fees or commissions.

B. RESPONDENTS

2. **The Robare Group, Ltd.** is a registered investment adviser located in Houston, Texas. As of August 26, 2013, Robare Group served as investment adviser to approximately 350 separately managed discretionary accounts and had assets under management of approximately $150 million.

Response: Respondents admit the allegations of paragraph 2.

3. **Mark L. Robare** founded and is a limited partner of Robare Group, and he is the president of Robare Asset Management, Inc., the managing general partner of the adviser. Robare owns approximately 83% of Robare Group, either directly or through his ownership in Robare Asset Management, Inc. Robare is also a person associated with Robare Group and is registered with the State of Texas as an investment adviser representative for Robare Group. Since 1985, Robare has been a registered representative associated with broker-dealers registered with the Commission. Robare, 62, is a resident of Cypress, Texas.

Response: Respondents admit the allegations of paragraph 3.

4. **Jack L. Jones, Jr.** is a limited partner of Robare Group. Jones owns approximately 17% of Robare Group, either directly or through his ownership in Robare Asset Management, Inc. Jones is also a person associated with Robare Group and is registered with the State of Texas as an investment adviser representative for Robare Group. Since 1994, Jones has been a registered representative associated with broker-dealers registered with the Commission. Jones, 43, is a resident of Spring, Texas, and is Robare's son-in-law.

Response: Respondents admit the allegations of paragraph 4.

C. FACTS

5. Robare Group offers portfolio management services, primarily to retail and other high net worth individuals. From its inception, Robare Group has used the Broker for execution, custody and clearing services for its advisory clients. It also recommended that its clients invest in many mutual funds offered on the Broker's platform. Robare Group offers approximately seven different model portfolios, largely comprised of mutual fund investments available through the Broker's platform. Robare Group invests a significant portion of its client assets in No Transaction Fee ("NTF") mutual funds that are offered on the Broker's platform.

Response: Respondents admit the allegations of paragraph 5.

6. In 2004, Robare Group and the Broker entered into a Commission Schedule and Servicing Fee Agreement ("Servicing Fee Agreement"). According to the Servicing Fee Agreement, Robare Group "will in those situations where it deems it appropriate and in the best interests of its clients, refer clients to [Broker]." The parties anticipated that portfolios Robare Group referred to the Broker would in the aggregate hold, among other things, approximately 77% NTF funds unaffiliated with the Broker. In a section titled "Servicing Fee Revenue," the agreement contained a schedule "detail[ing] the fee payments between [Robare Group] and [the

Broker]" with respect to "such asset management fee based accounts." The agreement referred to the arrangement as a "servicing fee revenue program" and stated that the Broker would pay from 2 to 12 basis points as "eligible shareholder servicing fees on eligible NTF mutual funds" based on varying levels of NTF assets. Thus, under the Servicing Fee Agreement, the Broker paid Robare Group a percentage of every dollar that Robare Group's clients invested in NTF mutual funds unaffiliated with Broker. The percentage amount the Broker paid pursuant to the Servicing Fee Agreement increased when the amount of client assets Robare Group placed into eligible NTFs reached specified levels.

Response: The SFA referenced in paragraph 5 speaks for itself and Respondents refer to the document referenced for a true and complete statement of its entire contents. Further responding, Respondents admit that the SFA was a tri-party agreement among Robare Group, Mr. Robare's and Mr. Jones's broker-dealer, Triad Advisors, Inc. ("Triad"), and the Custodian, and that the SFA detailed a means for computing the amount and frequency of payments made thereunder. Pursuant to the terms of the SFA, the Custodian paid fees on eligible NTF funds to Triad, which, in turn, paid a portion of those fees to Mr. Robare. Triad characterized that payment to Robare as a "commission."

7. The Servicing Fee Agreement remained in effect until late 2012, when Robare Group and the Broker entered into a new agreement, titled "Investment Advisor Custodial Support Services Agreement" ("Custodial Support Services Agreement"), that similarly provided for servicing fee payments by the Broker to Robare Group. The Broker currently pays 10 basis points annually on Robare Group's client assets in NTF funds unaffiliated with Broker.

Response: The Investment Advisor CSSA speaks for itself and Respondents refer to the document referenced for a true and complete statement of its entire contents. Further responding, Respondents admit that in late 2012, Robare Group and Custodian entered into the CSSA.

8. According to the Servicing Fee Agreement, Robare Group was "responsible for reviewing and determining whether additional disclosure is necessary in the Form ADV . . . with respect to the terms and conditions of this Agreement . . . ." Similarly, in the Custodial Support Services Agreement, Robare Group represented that "it has, prior to entering into this Agreement, made and will continue to make all appropriate disclosures to Clients . . . with regard to any conflicts of interest that may arise" from the agreement, "including . . . any incentive arising in connection with [Robare Group's] receipt (or prospective receipt) of fees on Non-[Broker] no transaction-fee ("NTF") mutual funds to favor those types of investments over others . . . ."

Response: The SFA speaks for itself and Respondents refer to the document referenced for a true and complete statement of its entire contents.

9. From 2005 until Robare Group filed its December 2011 Form ADV, Robare Group failed to disclose in its Forms ADV filed with the Commission, the existence of the Servicing Fee Agreement. During this period, Robare Group also failed to disclose to its clients through means other than Form ADV the existence of the Servicing Fee Agreement. In addition, Robare Group failed to disclose that it had an incentive to prefer certain NTF funds as a result of the arrangement. Robare Group also failed to disclose an incentive to favor the Broker's platform when giving investment advice. Clients were thus unaware that Robare Group might have a bias in favor of the NTF mutual funds on the Broker's platform over other investments that would not generate revenue for Robare Group under the servicing fee deal with the Broker, leading to potentially conflicted investment advice. Item 13.A. of former Form ADV Part II specifically requires investment advisers to disclose any arrangement where they receive direct or indirect compensation in connection with giving advice to clients. Robare Group's Item 13.A. disclosures do not disclose the Servicing Fee Agreement or the servicing fee arrangement with the Broker.

Response: Item 13A of Form ADV Part II speaks for itself and Respondents refer to the document referenced for a true and complete statement of the question posed to advisors. Further responding, Respondents deny the allegations of paragraph 9.

10. Item 14.A of Form ADV Part 2A, in effect for Robare Group as of March 2011, requires advisers to disclose compensation from non-clients received for providing investment advisory services to clients, as well as the resulting conflicts and how the adviser addresses them. Robare Group's Item 14.A. disclosures on its Form ADV filed in March 2011 do not disclose the Servicing Fee Agreement or the compensation it received under the servicing fee arrangement with the Broker. Consequently, the disclosure failed to identify Robare Group's incentive to recommend clients to invest in non-broker NTF funds because of the fees Robare Group received from the broker.

Response: Item 14.A of Form ADV Part 2A speaks for itself and Respondents refer to the document referenced for a true and complete statement of the question posed to advisors. Further responding, Respondents deny the allegations of paragraph 10.

11. Beginning in December 2011, Robare Group inadequately disclosed, in its Forms ADV filed with the Commission or otherwise, the Servicing Fee Agreement and later the Custodial Support Services Agreement and still failed to disclose that it had an incentive to prefer certain NTF funds as a result of the arrangement. In December 2011, Robare Group revised its Form ADV Part 2A to disclose the Servicing Fee Agreement. Robare Group's revised disclosure, however, continued to fail to identify that the arrangement created potential conflicts of interest for Robare Group. In addition, the revised disclosure is inadequate because it states that Robare Group may receive compensation from Broker when it was, in fact, receiving payments from Broker.

Furthermore, beginning in December 2011, Robare Group falsely represented in its Form ADV that the firm does not receive any economic benefit from a non-client for providing investment advice. In addition, from December 2011 until it entered into the Custodial Support Services Agreement, Robare Group incorrectly referred to the arrangement as relating to custodial support services. It was not until the Form ADV Part 2A was filed in June 2013 that Robare Group disclosed the Custodial Support Services Agreement in Item 14A and the conflict of interest associated with the firm's arrangement with the Broker and even then, it disclosed only the incentive to use the Broker as a custodian, and made no mention of the incentive to recommend purchasing and holding unaffiliated NTF funds through the Broker platform or the magnitude of the conflict.

Response: Respondents admit that they revised their Form ADV Part 2A in 2011. That revision speaks for itself and Respondents refer to the document referenced for a true and complete statement of its contents. Further responding, under the terms of the Agreements, Respondents were only entitled to compensation on eligible NTF mutual funds. They did not receive a fee on any other investments. As a result, while some customer accounts included eligible NTF funds and generated a payment by Custodian, other customer accounts did not include such funds, and, thus, did not generate any payment. Accordingly, because it was not a fact certain that Respondents would receive *any* compensation from Custodian as a result of transactions made on a prospective client's behalf, Respondents properly and accurately disclosed on form ADV only the possibility that they "may" receive such compensation.

Respondents further admit that the Form ADV Part 2A filed in June 2013 contained additional revisions to the disclosure in Item 14A. In late 2012, the SEC began examining Respondents and asking numerous questions regarding Forms ADV. Although Respondents did not yet know what language in the Form ADV had captivated the staff's interest, they made several amendments over this time period, adding additional detail to their disclosures. With regard to Item 14A, Respondents added language stating:

> Additionally, we may receive additional compensation in the form of back-office, administrative, custodial support and clerical services from [Custodian] based on revenue from the sale of funds through [Custodian]. [Custodian] has agreed to pay us a fee on

> specified assets, namely no transaction fee mutual fund assets in custody with [Custodian]. Similar to the luncheons and events described above, this arrangement may give rise to conflicts of interest, or perceived conflicts of interest, with the Firm's decision to utilize [Custodian] as our Custodian. However, Robare's commitment to its clients and the policies and procedures it has adopted are designed to limit any interference with Robare's independent decision making when choosing the most appropriate custodian for our clients. In addition, this additional compensation does not represent additional fees from your accounts to us, and we are committed to utilizing these fees to enhance our services to you.

This disclosure more clearly detailed Respondents' relationship with the Custodian, including the fact that (2) the Custodian would pay Respondents a fee if specific no transaction fee mutual fund assets were held in a customer's account and, (2) that the arrangement may give rise to conflicts of interest.

Further responding, Respondents deny the allegations of paragraph 11.

12. From 2005 through May 2013, Robare and Jones knew about the Servicing Fee Agreement and Custodial Support Services Agreement and the payments they generated for Robare Group on NTF funds unaffiliated with Broker. Throughout this period, Robare reviewed and authorized Robare Group's Form ADV filings with the Commission with knowledge of their contents. Throughout this period, except for the Form ADV filed by Robare Group in March 2005, Jones signed the Form ADV filings with knowledge of their contents. Robare and Jones each knew the Form ADV filings failed to disclose or failed to adequately disclose the Servicing Fee Agreement and Custodial Support Services Agreement and the conflicts of interest they presented.

Response: Respondents admit that from 2005 through May 2013, Messrs. Robare and Jones knew about the SFA and CSSA. Respondents further admit that Messrs. Robare and Jones knew that payments were generated on eligible NTF funds as provided under the terms of those Agreements. Respondents admit that they reviewed and authorized Robare Group's Form ADV filings with the Commission with knowledge of their contents. Respondents admit that, except for the Form ADV filed by Robare Group in March 2005, Mr. Jones signed the Form ADV filings with knowledge of their contents. Beyond that, Respondents deny the allegations of paragraph 12.

13. From September 2005 through September 30, 2013, Robare Group received approximately $441,000 from the Broker pursuant to the Servicing Fee Agreement and Custodial Support Services Agreement.

Response: Respondents admit that from September 2005 through September 30, 2013, Custodian paid certain amounts pursuant to the SFA and CSSA. Beyond that, Respondents deny the allegations of paragraph 13.

D. VIOLATIONS

14. As a result of the conduct described above, Robare Group and Robare willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for any investment adviser, by use of the mails or instrumentalities of interstate commerce, directly or indirectly, to employ any device, scheme or artifice to defraud any client or prospective client, or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

Response: Respondents deny the allegations contained in paragraph 14.

15. As a result of the conduct described above, Jones willfully aided and abetted and caused Robare Group's and Robare's violations of Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for any investment adviser, by use of the mails or instrumentalities of interstate commerce, directly or indirectly, to employ any device, scheme or artifice to defraud any client or prospective client, or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

Response: Respondents deny the allegations contained in paragraph 15.

16. As a result of the conduct described above, Robare Group, Robare, and Jones willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

Response: Respondents deny the allegations contained in paragraph 16.

III.

Respondents deny that it is necessary or appropriate in the public interest that public administrative cease-and-desist proceedings be instituted or that any penalties or disgorgement are appropriate.

AFFIRMATIVE DEFENSES

The foregoing matters do not support the relief sought by the Commission against Respondents. In addition, the following affirmative defenses nullify any potential liability.

First Affirmative Defense

Respondents did not receive any illegal or improper commissions or fees and thus no disgorgement can be ordered. The Commission has failed to allege the amount it seeks to disgorge from Respondents or the basis for any such amount. Without such allegations, Respondents are unable to properly respond to and defend against the disgorgement claim. Even if the Commission could allege Respondents' receipt of any illegal commissions, Respondents are entitled to an apportionment of that amount to reflect only the amounts it actually received. Since no amount of purported disgorgement has been specified, it is impossible to determine what to apportion. Any claim by the Commission for disgorgement of any amount more than what Respondents actually received would constitute a penalty, in which case Respondents are entitled to a jury trial.

Second Affirmative Defense

There is no basis to support a cease-and-desist order against Respondents. There is no risk of a future violation of the federal securities laws to warrant such an imposition. When the SEC raised concerns with the sufficiency of the disclosure in Item 14A of ADV Part 2, Respondents amended the disclosure to detail the fee arrangement even more thoroughly. No remedial purpose exists that would be served by the imposition of a cease-and-desist order against Respondents.

Third Affirmative Defense

The Commission's claims and the remedial action sought are neither necessary nor appropriate, and they are not in the public interest.

Fourth Affirmative Defense

The Commission's allegations and any relief sought thereby are barred by the applicable statutes of limitation. No relief may be sought for any activity which forms the basis of the Commission's allegations that occurred more than five years prior to the institution of this proceeding on September 2, 2014.

Fifth Affirmative Defense

Respondents did not willfully violate Section 206 Advisers Act. Respondents had no intent to defraud or to engage in any transaction, practice, or course of business which operates as a fraud or deceit.

Sixth Affirmative Defense

Respondents did not willfully violate Section 207 of the Advisers Act. Respondents had no intent to make any untrue statement of a material fact or to omit to state any material fact required to be stated.

Sixth Affirmative Defense

Respondent Jack Jones did not willfully aid and abet any violations of Section 206 of the Advisers Act.

Seventh Affirmative Defense

Any misrepresentations or omissions which form the basis for the claims asserted by the Commission were inadvertent or not material.

Eighth Affirmative Defense

Respondents did not act with the required scienter.

Ninth Affirmative Defense

The Commission cannot meet the applicable standards for any of the relief it is seeking in the Order.

Tenth Affirmative Defense

Respondents allege such other affirmative defenses as may be determined to be applicable during discovery.

Eleventh Affirmative Defense

The Commission's Order fails to state a claim upon which relief may be granted against any Respondent.

Twelfth Affirmative Defense

Respondents reasonably and in good faith relied upon others to determine the propriety of the disclosures.

Respectfully submitted this 24th day of September, 2014.

Ulmer & Berne LLP

Alan M. Wolper
awolper@ulmer.com
Heidi VonderHeide
hvonderheide@ulmer.com
500 West Madison Street, Suite 3600
Chicago, Illinois 60661
(312) 658-6500 – General
(312) 658-6565 – Fax

Counsel for Respondents