

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 72950 / September 2, 2014**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3907 / September 2, 2014**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31237 / September 2, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16047**

**In the Matter of**

**THE ROBARE GROUP,  
LTD., MARK L. ROBARE,  
AND JACK L. JONES JR.,**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 15(b)(6) OF THE SECURITIES  
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 HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against The Robare Group, Ltd. (“Robare Group”), Mark L. Robare (“Robare”) and Jack L. Jones Jr. (“Jones”), (collectively “Respondents”).

**II.**

After an investigation, the Division of Enforcement alleges that:

## **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.

## **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.

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.

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.

## **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.

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.<sup>1</sup> 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<sup>2</sup> 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.<sup>3</sup>

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.

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 . . . ."

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

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<sup>1</sup> The Servicing Fee Agreement did not cover any proprietary funds advised by affiliated persons of the Broker, even though the Broker also offered some of these funds as NTFs.

<sup>2</sup> A basis point is 1/100th of 1% or 0.0001. Correspondingly, 12 basis points means 0.12%, or 0.0012.

<sup>3</sup> Under the Servicing Fee Agreement, the Broker paid servicing fees to Robare Group through a registered broker-dealer with which Robare and Jones were associated persons.

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.

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.<sup>4</sup> 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.

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.

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

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<sup>4</sup> Part 2 of Form ADV was amended in 2010. See IA-3060 (July 28, 2010), <http://www.sec.gov/rules/final/2010/ia-3060.pdf>.

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.

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.

#### **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.

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.

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."

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents Robare and Jones pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent Robare Group pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents Robare and Jones pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

E. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

F. Whether, pursuant to Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1), 206(2), and 207 of the Advisers Act, whether Respondents should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 203 of the Advisers Act.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness

or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson  
Assistant Secretary