

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5832 / August 25, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20475**

**In the Matter of**

**JONATHAN ROBERTS**  
**ADVISORY GROUP, INC. d/b/a**  
**J.W. COLE ADVISORS, INC.,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 203(e) AND  
203(k) OF THE INVESTMENT ADVISERS  
ACT OF 1940, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND  
A CEASE-AND-DESIST ORDER**

**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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Jonathan Roberts Advisory Group, Inc. d/b/a J.W. Cole Advisors, Inc. (“JWCA” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Summary

1. These proceedings arise out of breaches of fiduciary duty by JWCA, a registered investment adviser, in connection with JWCA's mutual fund share class selection practices that resulted in an unaffiliated broker-dealer, J.W. Cole Financial, Inc. ("JWCF"), receiving three types of fees as a result of JWCA's advisory clients' investments at times from January 2014 through March 2021. The fees that JWCF received resulted in a benefit to JWCA due to an expense sharing agreement between JWCA and JWCF (the "Expense Sharing Agreement"). The Expense Sharing Agreement, described herein, had the effect of reducing the amount JWCA paid to JWCF under that agreement when JWCA placed its clients in certain investments that paid higher fees to JWCF. These fees included: (1) fees JWCF received when JWCA purchased, recommended, or held for clients mutual fund share classes that paid fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees") instead of lower-cost available share classes for the same funds that did not charge these fees; (2) fees JWCF received from its unaffiliated clearing broker (the "Clearing Broker") as a result of JWCA's advisory clients' investments in share classes of mutual funds for which the Clearing Broker paid revenue sharing instead of lower-cost available share classes for the same funds that were not eligible for such payments; and (3) fees JWCF received from its Clearing Broker as a result of JWCA sweeping its advisory clients' cash into certain money market mutual funds ("money market funds") instead of lower-cost share classes for the same money market funds that were available to clients that did not result in the payment of fees to JWCF.

2. First, from January 2014 through November 2016 (the "Relevant 12b-1 Period"), JWCA purchased, recommended, or held for advisory clients mutual fund share classes that charged 12b-1 fees instead of lower-cost share classes of the same funds that were available to the clients. Both JWCF and its registered representatives, many of whom were also investment advisory representatives ("IARs") of JWCA, received 12b-1 fees in connection with these investments. JWCF's receipt of these 12b-1 fees had the effect of benefiting JWCA, but JWCA did not adequately disclose this conflict of interest in its Forms ADV or otherwise. JWCA, although eligible to do so, did not self-report this 12b-1 fee related conflict of interest to the Commission pursuant to the Division of Enforcement's (the "Division") Share Class Selection Disclosure Initiative ("SCSD Initiative").<sup>2</sup>

3. Second, from January 2014 through March 2021 (the "Relevant Revenue Sharing Period"), JWCA purchased, recommended, or held for advisory clients mutual fund share classes for which JWCF received revenue sharing payments pursuant to JWCF's agreement with its Clearing Broker, instead of lower-cost share classes of the same mutual funds that were available to the clients for which the Clearing Broker would have paid no or lower revenue sharing to JWCF. JWCF's periodic receipt of revenue sharing had the effect of benefiting JWCA, but JWCA did not disclose this conflict of interest in its Forms ADV or otherwise.

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<sup>2</sup> See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, *Share Class Selection Disclosure Initiative*, <https://www.sec.gov/enforce/announcement/scsd-initiative> (last modified Feb. 12, 2018).

4. Third, from September 2016 through March 2020 (the “Relevant Cash Sweep Period”), JWCF received revenue sharing payments from its Clearing Broker based on the amount of JWCA client assets invested in certain share classes of money market funds used as cash sweep vehicles. During the Relevant Cash Sweep Period, JWCF’s agreement with the Clearing Broker provided options for JWCA to sweep its advisory clients’ cash into share classes of the same money market funds that had lower costs to fund investors and did not pay revenue sharing. JWCA selected higher-cost revenue sharing money market fund share classes instead of lower-cost share classes of the same mutual funds that were available to advisory clients and did not pay revenue sharing to JWCF. JWCF’s receipt of revenue sharing had the effect of benefiting JWCA, but JWCA did not adequately disclose this conflict of interest in its Forms ADV or otherwise.

5. From at least January 2014, JWCA also, by causing certain advisory clients to invest in more expensive share classes of mutual funds and money market funds that paid 12b-1 fees or resulted in revenue sharing payments when fund share classes were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, breached its duty to seek best execution for those transactions.

6. During each of the Relevant Periods, JWCA also failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class and cash sweep selection practices.

### **Respondent**

7. Respondent Jonathan Roberts Advisory Group, Inc. d/b/a J.W. Cole Advisors, Inc. (“JWCA”) is a Florida corporation headquartered in Tampa, Florida. JWCA has been registered with the Commission as an investment adviser since November 2001. In its Form ADV dated March 31, 2021, JWCA reported that it had approximately \$3.93 billion in regulatory assets under management, including approximately \$2.5 billion from 17,379 individual (not high net worth individual) clients and approximately \$1.3 billion from 953 high net worth individual clients. JWCA provides advisory services through its IARs, many of whom are registered representatives of JWCF.

### **Related Party**

8. J.W. Cole Financial, Inc. (“JWCF”) is a Florida corporation headquartered in Tampa, Florida. JWCF has been registered with the Commission as a broker-dealer since April 2003.

### **Expense Sharing Agreement**

9. During each of the Relevant Periods, JWCA and JWCF entered into an Expense Sharing Agreement, which JWCA disclosed in its Form ADV Part 2A brochure to its advisory clients as follows: “JWCA has an expense sharing agreement with [JWCF] in connection with providing us with office space, office equipment, and administrative services in return for JWCA

directing securities transactions for execution and clearing to [JWCF and the Clearing Broker]. This agreement provides a financial benefit to JWCA which does not directly benefit you.” During each of the Relevant Periods, JWCA purchased, recommended or held for clients share classes of mutual funds and money market funds that paid 12b-1 fees or resulted in revenue sharing payments to JWCF. JWCF’s receipt of 12b-1 fees and revenue sharing resulting from JWCA’s advisory clients’ holdings in higher-cost mutual fund and money market fund share classes instead of lower-cost share classes of the same funds that paid less or no fees or revenue sharing to JWCF had the effect of reducing the amount JWCA paid to JWCF pursuant to the Expense Sharing Agreement. Therefore, these payments created an incentive for JWCA to purchase, recommend or hold for advisory clients mutual fund and money market fund share classes that paid 12b-1 fees or resulted in revenue sharing payments to JWCF, which JWCA did not disclose in its discussion of the Expense Sharing Agreement or elsewhere. During each of the Relevant Periods, JWCA either did not disclose or did not adequately disclose to its advisory clients that its advice regarding mutual fund and money market fund share classes resulted in higher expenses to the clients and lower expenses for JWCA.

### **Mutual Fund Share Class Selection and 12b-1 Fees**

10. Mutual funds typically offer investors different types of shares or “share classes.” Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure.

11. For example, some mutual fund share classes charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. These recurring fees, which are included in a mutual fund’s total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund’s assets on an ongoing basis and paid to the fund’s distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

12. Many mutual funds also offer share classes that do not charge 12b-1 fees (e.g., “Institutional Class” or “Class I” shares (collectively, “Class I shares”)).<sup>3</sup> An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will generally earn higher returns – than one who holds a share class of the same fund that charges 12b-1 fees. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

13. During the Relevant 12b-1 Period, JWCA purchased, recommended or held<sup>4</sup> for clients mutual fund share classes that charged 12b-1 fees when lower-cost share classes of those

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<sup>3</sup> Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry, such as “Class F2,” “Class Y” and “Class Z” shares. As used in this Order, the term “Class I shares” refers generically to share classes that do not charge 12b-1 fees.

<sup>4</sup> In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares without cost or tax consequences to the client.

same funds were available to those clients. JWCF received 12b-1 fees that it would not have collected had JWCA's advisory clients been invested in the available lower-cost share classes. JWCF shared a portion of these fees with its registered representatives, many of whom were IARs of JWCA.

14. The payments JWCF received from the Clearing Broker benefited JWCA under the Expense Sharing Agreement and therefore created an incentive for JWCA to recommend that its advisory clients buy or hold share classes that paid 12b-1 fees over other share classes of the same mutual funds that did not pay 12b-1 fees when rendering investment advice to its clients. In November 2016, JWCA converted clients to share classes of mutual funds that did not pay 12b-1 fees.

### **Clearing Broker Revenue Sharing Payments**

15. During the Relevant Revenue Sharing Period, the Clearing Broker had a "no transaction fee" ("NTF") program ("NTF Program"), in which it did not charge a transaction fee for the purchase or sale of share classes of mutual funds that participated in the program. The Clearing Broker generally charged fund families a higher recurring fee for a mutual fund to be part of the NTF Program as compared to being sold outside of that program. As a result, mutual fund share classes sold through the NTF Program generally had higher expense ratios than mutual fund share classes sold outside that program. JWCF had a revenue sharing contract with its Clearing Broker pursuant to which JWCF received certain revenue from the Clearing Broker based on the amount of customer assets invested in share classes of certain mutual funds when lower-cost share classes of those same funds were available to those clients. JWCA's clients indirectly paid the revenue sharing when it was reflected in the expense ratios of the mutual funds and share classes in which they invested. JWCA purchased, recommended or held for advisory clients mutual fund shares in higher-cost share classes that resulted in revenue sharing payments to JWCF from the Clearing Broker that were greater than payments, if any, JWCF would have collected had JWCA's advisory clients been invested in the lower-cost share classes for the same mutual funds that were available.

16. The payments JWCF received from the Clearing Broker benefited JWCA under the Expense Sharing Agreement and therefore created an incentive for JWCA to recommend that its advisory clients buy or hold share classes that paid revenue sharing over other share classes of the same mutual funds that did not pay revenue sharing when rendering investment advice to its clients. In March 2021, JWCF stopped receiving mutual fund revenue sharing payments from JWCA's advisory client holdings.

### **Cash Sweep Share Class Selection and Revenue Sharing Payments**

17. A sweep account ("Sweep Account") is a money market mutual fund or bank account used by broker-dealers to hold uninvested cash (*e.g.*, incoming cash deposits, dividends, or certain investment returns) until the investor or the investor's adviser decides how to invest the money. During the Relevant Cash Sweep Period, JWCA recommended that clients choose certain money market fund share classes to hold uninvested cash in the clients' Sweep Accounts. A

money market fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used in Sweep Accounts as cash sweep vehicles. The investment yields and expense ratio of a money market fund will differ from fund to fund.

18. During the Relevant Cash Sweep Period, the Clearing Broker agreed to share with JWCF a portion of the revenue the Clearing Broker received in connection with certain share classes of money market funds offered to Sweep Accounts. Another share class of the same money market funds was available to JWCA's clients that did not pay JWCF any revenue sharing for client assets and had lower expenses for JWCA's clients than the revenue sharing money market fund share classes.

19. The amount of revenue sharing JWCF received from the Clearing Broker differed depending on the share class of the money market fund that JWCA recommended to its clients and the amount of assets JWCA's clients, who were JWCF brokerage customers, held in the share class. During the Relevant Cash Sweep Period, even though a share class of the same money market fund that did not result in revenue sharing payments was always available to JWCA's clients, JWCA purchased, recommended or held for clients share classes of money market funds for cash sweep vehicles that paid JWCF revenue sharing rather than those that did not.

20. The payments JWCF received from the Clearing Broker for higher-cost revenue sharing money market fund share classes benefited JWCA under the Expense Sharing Agreement with JWCF and therefore created an incentive for JWCA to recommend its clients purchase or hold a money market fund share class that paid revenue sharing over share classes of the same money market funds that did not pay revenue sharing. In March 2020, JWCF stopped receiving money market fund revenue sharing payments from JWCA's advisory client holdings.

### **Disclosure Failures**

21. As an investment adviser, JWCA was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and its clients, that could affect the advisory relationship and how those conflicts could affect the advice JWCA provided its clients. To meet this fiduciary obligation, JWCA was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that they could understand the conflicts of interest concerning JWCA's advice about investing in different share classes of mutual funds or money market funds, and could have an informed basis on which advisory clients could consent to or reject the conflicts.

22. During the Relevant 12b-1 Period, JWCA's Form ADV Part 2A brochure disclosed that its IARs "...may receive 12b-1 distribution fees and other commissions," and that "many mutual funds pay shareholder servicing fees (12b-1 fees) to brokerage firms and their registered representatives in consideration of their services to the fund's shareholders. As described below, our IARs may be registered representatives of [JWCF], and, as such, may receive this type of compensation with respect to client assets invested in these funds..." As described above, during

the Relevant 12b-1 Period, JWCA also disclosed in its Form ADV Part 2A that it had an expense sharing agreement with JWCF whereby JWCF paid certain of JWCA's expenses in return for JWCA "directing securities transaction for execution and clearing to [JWCF and third-party clearing brokers, and] [t]his agreement provides a financial benefit to JWCA which does not directly benefit [JWCA's clients]." However, JWCA did not adequately disclose its receipt of these fees and did not disclose the conflicts of interest that arose when it invested advisory clients in a mutual fund share class that would generate 12b-1 fee revenue for JWCF and JWCA's IARs, while share classes of the same funds were available that did not pay 12b-1 fees.

23. During the Relevant Revenue Sharing Period, JWCA's Form ADV Part 2A brochures from January 2014 to March 2019 did not disclose conflicts of interest that arose when it invested advisory clients in a mutual fund that would generate revenue sharing for JWCF while share classes of the same funds were available that did not pay revenue sharing. Beginning March 2019, JWCA disclosed that its Clearing Broker offered a program under which JWCF would receive certain payments, but did not accurately disclose the revenue sharing arrangement, and did not disclose that conflicts of interest that arose when it invested advisory clients in a mutual fund share class that would generate revenue sharing for JWCF while share classes of the same funds were available that did not generate this revenue. Beginning March 31, 2021, JWCA disclosed that funds that paid revenue sharing to JWCF "generally contain higher internal expense than other share classes of the same mutual fund that are not part of the NTF Program."

24. During the Relevant Cash Sweep Period, JWCA's Form ADV Part 2A brochures from September 2016 to March 2019 did not disclose that JWCF received revenue sharing from the Clearing Broker for JWCA's clients' investments in share classes of money market funds that paid revenue sharing, or the resulting conflicts of interest. Beginning March 2019, JWCA disclosed that revenue sharing was paid, and that this posed a conflict of interest, but JWCA did not disclose that there were available share classes of the same money market funds that did not pay revenue sharing and which had lower costs to clients. On March 31, 2021, JWCA disclosed that clients could choose share classes of money market funds that did not result in revenue sharing with JWCF.

### **Best Execution Failures**

25. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.<sup>5</sup>

26. From at least January 2014, by causing certain advisory clients to invest in share classes of mutual funds and money market funds that paid 12b-1 fees or resulted in revenue sharing payments to when share classes of the same funds were available that presented a more favorable value under the particular circumstances in place at the time of the transactions, JWCA violated its duty to seek best execution for those transactions.

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<sup>5</sup> See, e.g., Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

### **Compliance Deficiencies**

27. During each of the Relevant Periods, JWCA failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class and Sweep Account selection and disclosure practices.

### **Disgorgement**

28. The disgorgement and prejudgment interest ordered in Section IV.C. is consistent with equitable principles and does not exceed Respondent's net profits, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

### **Violations**

29. As a result of the conduct described above, Respondent willfully<sup>6</sup> violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

30. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Undertakings**

31. Respondent has undertaken to:

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<sup>6</sup> "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).



- a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning mutual fund share class selection, cash sweep vehicle selection, 12b-1 fees and revenue sharing.
- b. Within 30 days of the entry of this Order, evaluate whether existing clients should be moved to a lower-cost mutual fund share class or lower-cost cash sweep vehicle and move clients as necessary.
- c. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondent's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with disclosures regarding mutual fund share class selection and cash sweep vehicle selection and in connection with making recommendations of mutual fund share classes or cash sweep vehicles that are in the best interests of Respondent's advisory clients.
- d. Within 30 days of the entry of this Order, Respondent shall notify affected investors (*i.e.*, those former and current clients who were financially harmed by the practices discussed above (hereinafter, "affected investors")) of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.
- e. Within 40 days of the entry of this Order, certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, MA 02110, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.
- f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

#### IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$1,957,053.11 as follows:

(i) Respondent shall pay disgorgement of \$988,865.28 and prejudgment interest of \$118,187.83, consistent with the provisions of this Subsection C.

(ii) Respondent shall pay a civil money penalty in the amount of \$850,000, consistent with the provisions of this Subsection C.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

(iv) Within ten (10) days of the entry of this Order, Respondent shall deposit the full amount of the disgorgement, prejudgment interest, and civil penalty (the "Fair Fund"), into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(v) Respondent shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(vi) Respondent shall pay from the Fair Fund to each affected investor an amount representing the affected investor's pro rata share of the 12b-1 fees attributable to the affected investor during the Relevant 12b-1 Period and the revenue sharing payments attributable to the affected investor during the Relevant Revenue Sharing Period and the Relevant Cash Sweep Period, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(vii) Respondent shall, within thirty (30) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) Respondent shall, within ninety (90) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum, (1) the name of each affected investor; (2) the exact amount of the payment to be made; and (3) the amount of any *de minimis* threshold to be applied.

(ix) Respondent shall complete the disbursement of all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xiii)

of this Subsection C. Respondent shall notify the Commission staff of the date and the amount paid in the initial distribution.

(x) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act when the distribution of funds is complete and before the final accounting provided for in Paragraph xii of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

(a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(c) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Jonathan Roberts Advisory Group, Inc., d/b/a J.W. Cole Advisors, Inc. as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, MA 02110, or such other address as the Commission staff may provide.

(xi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid out of the Fair Fund.

(xii) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, shall be sent to Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, MA 02110, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraph 31.a. – 31.e., above.

By the Commission.

Vanessa A. Countryman  
Secretary