

## Securities Regulation Daily Wrap Up, INVESTMENT ADVISERS—Adviser hid conflict of interest from clients, SEC alleges, (Sep. 2, 2014)

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By John Filar Atwood

The SEC charged Houston-based investment advisory firm Robare Group Ltd. and its co-owners with fraud for failing to disclose to clients a compensation arrangement tied to particular mutual funds. According to the Commission, the arrangement with a broker-dealer created an incentive for Robare Group and its co-owners Mark L. Robare and Jack L. Jones, Jr. to recommend the mutual funds over other investment opportunities without investors being aware of the arrangement (*In Re Robare Group Ltd.*, September 2, 2014).

**Fee agreement.** Robare Group is a Houston-based registered investment adviser with 350 separately managed discretionary accounts and assets under management of \$150 million. In 2004, Robare Group and the broker entered into a servicing fee agreement under which Robare Group referred clients to the broker. The broker paid Robare Group a percentage of every dollar that Robare Group's clients invested in certain mutual funds unaffiliated with the broker. The amount the broker paid under the agreement increased when the amount of client assets Robare Group placed into eligible no-transaction-fee funds reached specified levels.

The servicing fee agreement remained in effect until late 2012, when Robare Group and the broker entered into a new agreement that provided for servicing fee payments by the broker to Robare Group. In a press release, the Commission noted that Robare Group received nearly \$440,000 in payments from the broker during the entire eight-year period.

**Failure to disclose.** The SEC alleged that Robare Group failed to disclose the agreement and the resulting conflicts of interest to its clients for years, and then only provided inadequate disclosure about the 2004 and 2012 agreements with the broker. Specifically, the Commission claimed that Robare Group revised its Form ADV in December 2011 to disclose the compensation agreement, but this falsely stated that the firm did not receive any economic benefit from a non-client for providing investment advice. The disclosures also were inadequate because they stated that Robare Group may receive compensation from the broker when in fact the firm was definitively receiving payments, the SEC said.

The Commission also alleged that Robare Group did not disclose the conflict of interest associated with the 2012 agreement until June 2013. Even then it failed to disclose the incentive to recommend buying and holding certain mutual funds through the broker's platform or the magnitude of the conflict, the SEC stated.

**Violations.** The SEC charged Robare Group and Mark L. Robare with willfully violating Investment Advisers Act Sections 206(1), 206(2) and 207. It charged Jack L. Jones, Jr. with violating Section 207, and with aiding and abetting and causing Robare Group's and Robare's violations of Sections 206(1) and 206(2).

Companies: Robare Group Ltd.

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