

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4189/September 23, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17253

In the Matter of

JAMES A. WINKELMANN, SR. and
BLUE OCEAN PORTFOLIOS, LLC

ORDER FOLLOWING FINAL
PREHEARING CONFERENCE

The final telephonic prehearing conference was held yesterday, attended by the Division of Enforcement and counsel for Respondents. During the conference, I addressed several pending motions of both the Division and Respondents as follows, for the reasons enumerated during the conference:

- I GRANTED the Division's September 19, 2016, motion to exclude Respondents' proposed exhibits 93 through 100, which are letters and emails from Respondents' investors. I GRANTED Respondents the opportunity to amend their witness list by September 29, 2016, to add any of these investors as potential witnesses.
- I DENIED Respondents' objection to Division proposed exhibit 84 and will admit the exhibit. I also DENIED Respondents' objection to Division proposed exhibits 367-390, which are multiple copies of the same email sent to different investors, but will admit only the copies used during witness testimony.
- I deferred ruling on the remainder of the Division's objections to Respondents' proposed exhibits and the remainder of Respondents' objections to the Division's proposed exhibits.
- I considered Respondents' motion in limine to exclude expert testimony, investor testimony, and to strike trial exhibits pertaining to settlement discussions and DENIED it in part.
 - I will allow the Division's expert witness to testify as to the customs and practice of the industry but will not consider his opinions as to ultimate conclusions of law. I deferred ruling on Respondents' concerns regarding the accuracy of the information considered by the expert and its materiality.

- I deferred ruling on Respondents' request to strike the Division's exhibits relating to settlement discussions between the Division and Respondents.
- I DENIED Respondents' motion to exclude investor testimony regarding materiality.
- I heard from the parties regarding Respondents' September 21, 2016, request for certification of production of all material exculpatory evidence, and the Division provided a sufficient certification regarding its production of exculpatory materials under *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The Division represented that it only anticipated providing Jencks Act disclosures for one witness, which it will provide to Respondents by September 29, 2016. Also on that date, the Division will confirm with Respondents that it does not have any additional Jencks material to provide and that its production is complete. If the Division discovers any Jencks material as to any other witness, it will notify Respondents.

Also during the prehearing conference, the Division raised an objection regarding Respondents' recently filed rebuttal expert report, arguing that the report does not appear to rebut the Division's initial expert report but presents new testimony. I declined to exclude the report at this point, on condition that by September 23, 2016, Respondents will provide the Division with a list of the specific documents and materials relied on by the expert in pages 4-5 of the report. If the Division needs anything else, it will notify Respondents by September 26, 2016.

In order to streamline the hearing process, by September 30, 2016, the parties will notify each other of the exhibits to which they do not intend to object. The hearing will start on October 4, 2016, at 9:00 a.m. Central.

Jason S. Patil
Administrative Law Judge