

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4378/November 21, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-17253

In the Matter of

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

ORDER ON TRANSCRIPT
 CORRECTIONS

On November 18, 2016, the parties submitted their stipulated transcript corrections. After reviewing the submission, I ORDER the following transcript corrections bracketed in bold below and request that the Division of Enforcement coordinate with the court reporter to issue a full amended transcript.

Original	Corrected
23:10 Q And when, if ever, did Mr. Winkelmann 23:11 tell you that the Missouri securities regulator 23:12 had on December 29th, 2011, barred Mr. Binkholder 23:13 from being an investment advisor? 23:14 A That subject never came up. I did not 23:15 know that. And through these proceedings, it was 23:16 quite disturbing to me because it -- Mr. 23:17 Binkholder was barred before I even did with Blue 23:18 Ocean Portfolios.	23:10 Q And when, if ever, did Mr. Winkelmann 23:11 tell you that the Missouri securities regulator 23:12 had on December 29th, 2011, barred Mr. Binkholder 23:13 from being an investment advisor? 23:14 A That subject never came up. I did not 23:15 know that. And through these proceedings, it was 23:16 quite disturbing to me because it -- Mr. 23:17 Binkholder was barred before I even did [business] with Blue 23:18 Ocean Portfolios.
58:19 Q And where did that exam take place, that 58:20 on-site portion of the exam? 58:21 A That was at Blue Ocean's office. 58:22 Q Here in St. Louis? 58:23 A Yeah, Chesterfield I believe directly.	58:19 Q And where did that exam take place, that 58:20 on-site portion of the exam? 58:21 A That was at Blue Ocean's office. 58:22 Q Here in St. Louis? 58:23 A Yeah, Chesterfield I believe [actually] .
62:15 Q And could you just generally describe 62:16 the concerns you're writing about in that 62:17 paragraph? 62:18 A Yeah. The concern there is the -- is	62:15 Q And could you just generally describe 62:16 the concerns you're writing about in that 62:17 paragraph? 62:18 A Yeah. The concern there is the -- is

Original	Corrected
<p>62:19 the statement we saw in the offering memoranda for</p> <p>62:20 offerers three and four, definitive statement</p> <p>62:21 about, you know, when investors could, you know,</p> <p>62:22 should expect the bulk of their returns. And we</p> <p>62:23 had concerns with that based on our projections of</p> <p>62:24 how quickly investors would be paid back.</p> <p>62:25 Q And what did your projections show?</p> <p>63:1 A As you can see there, it's depending on</p> <p>63:2 the offering. It's anywhere from 22 years to 57</p> <p>63:3 years before they would be paid back.</p>	<p>62:19 the statement we saw in the offering memoranda for</p> <p>62:20 [offerings] three and four, definitive statement</p> <p>62:21 about, you know, when investors could, you know,</p> <p>62:22 should expect the bulk of their returns. And we</p> <p>62:23 had concerns with that based on our projections of</p> <p>62:24 how quickly investors would be paid back.</p> <p>62:25 Q And what did your projections show?</p> <p>63:1 A As you can see there, it's depending on</p> <p>63:2 the offering. It's anywhere from 22 years to 57</p> <p>63:3 years before they would be paid back.</p>
<p>64:11 Q Can you please go, Byron, to page 6 of</p> <p>64:12 the PDF and the section Roman numeral III. And</p> <p>64:13 can you add the first three bullet points from the</p> <p>64:14 next page, please.</p> <p>64:15 So I'm going to read from that second</p> <p>64:16 paragraph. You mentioned: "A registrant, among</p> <p>64:17 other things, invested resources in radio</p> <p>64:18 advertising. The staff notes that among the</p> <p>64:19 advertising materials we reviewed during the</p> <p>64:20 examination were scripts authored by registrant to</p> <p>64:21 be aired publicly on the Charlie Brennan radio</p> <p>64:22 show." The script. What script are you referring</p> <p>64:23 to?</p>	<p>64:11 Q Can you please go, Byron, to page 6 of</p> <p>64:12 the PDF and the section Roman numeral III. And</p> <p>64:13 can you add the first three bullet points from the</p> <p>64:14 next page, please.</p> <p>64:15 So I'm going to read from that second</p> <p>64:16 paragraph. ["You mentioned that registrant, among</p> <p>64:17 other things, invests its resources] in radio</p> <p>64:18 advertising. The staff notes that among the</p> <p>64:19 advertising materials we reviewed during the</p> <p>64:20 examination were scripts authored by registrant to</p> <p>64:21 be aired publicly on the Charlie Brennan radio</p> <p>64:22 show [The script.]" What script are you referring</p> <p>64:23 to?</p>
<p>67:15 Q And can I ask you, Byron, to go to page</p> <p>67:16 4 of the PDF. And can I ask you to blow up that</p> <p>67:17 paragraph that says "withdrawals by principal</p> <p>67:18 owner."</p> <p>67:19 And this is part of the response letter,</p>	<p>67:15 Q And can I ask you, Byron, to go to page</p> <p>67:16 4 of the PDF. And can I ask you to blow up that</p> <p>67:17 paragraph that says "withdrawals by principal</p> <p>67:18 owner."</p>

Original	Corrected
<p>67:20 correct? 67:21 A Yes, it is. 67:22 Q So "Blue Ocean's rights to you, 67:23 withdrawals by principal owner. A chart detailing 67:24 the distributions in 2012 and 2013 to 23 Glen 67:25 Abbey Partners is attached as Exhibit 2. The 68:1 purpose of these distributions was to compensate 68:2 Mr. Winkelmann, as founder/CEO of Blue Ocean 68:3 Portfolios, for his service to the company. Mr. 68:4 Winkelmann did not take any salary in 2011 or 68:5 2012. And in 2013, Mr. Winkelmann only took a 68:6 salary of \$900 a month -- per month. Blue Ocean 68:7 Portfolios's regular distributions to 23 Glen 68:8 Abbey Partners were made in lieu of Mr. 68:9 Winkelmann's salary in 2011 or 2012 or a larger 68:10 salary in 2013. These distributions were not 68:11 excessive given the services he rendered to Blue 68:12 Ocean Portfolios." 68:13 And do you see how that references in 68:14 Exhibit 2?</p>	<p>67:19 And this is part of the response letter, 67:20 correct? 67:21 A Yes, it is. 67:22 Q So [Blue Ocean's writes to you, 67:23 "] withdrawals by principal owner. A chart detailing 67:24 the distributions in 2012 and 2013 to 23 Glen 67:25 Abbey Partners is attached as Exhibit 2. The 68:1 purpose of these distributions was to compensate 68:2 Mr. Winkelmann, as founder/CEO of Blue Ocean 68:3 Portfolios, for his service to the company. Mr. 68:4 Winkelmann did not take any salary in 2011 or 68:5 2012. And in 2013, Mr. Winkelmann only took a 68:6 salary of \$900 a month -- per month. Blue Ocean 68:7 Portfolios's regular distributions to 23 Glen 68:8 Abbey Partners were made in lieu of Mr. 68:9 Winkelmann's salary in 2011 or 2012 or a larger 68:10 salary in 2013. These distributions were not 68:11 excessive given the services he rendered to Blue 68:12 Ocean Portfolios." 68:13 And do you see how that references in 68:14 Exhibit 2?</p>
<p>98:14 Q Okay. What about the information for -- 98:15 Byron, can you please get rid of the blowback? 98:16 Thank you. 98:17 What about the annual revenue and 98:18 advertising spend data for January and February 98:19 2012? Where did that come from? 98:20 A That's based on Blue Ocean's own 98:21 internal document. And if you could close that, I 98:22 could site it. 98:23 Q Could you get rid of the blowback, 98:24 please. 98:25 A BO5639.</p>	<p>98:14 Q Okay. What about the information for -- 98:15 Byron, can you please get rid of the blowback? 98:16 Thank you. 98:17 What about the annual revenue and 98:18 advertising spend data for January and February 98:19 2012? Where did that come from? 98:20 A That's based on Blue Ocean's own 98:21 internal document. And if you could close that, I 98:22 could [cite] it. 98:23 Q Could you get rid of the blowback, 98:24 please. 98:25 A BO5639.</p>

Original	Corrected
<p>104:6 Q Okay. And factor overstated in offering</p> <p>104:7 memo by 14 percent? How did you get there?</p> <p>104:8 A Again, it would have been using the most</p> <p>104:9 conservative numbers. So here I used .77 minus</p> <p>104:10 .67, what was identified in the offering</p> <p>104:11 memorandum, divided by the .67.</p> <p>104:12 Q And how did you get to the 78 percent</p> <p>104:13 for the -- including Binkholder payments?</p> <p>104:14 A Would have been taken the lowest number,</p> <p>104:15 the 1.19 minus the .67 divided by .60.</p>	<p>104:6 Q Okay. And factor overstated in offering</p> <p>104:7 memo by 14 percent? How did you get there?</p> <p>104:8 A Again, it would have been using the most</p> <p>104:9 conservative numbers. So here I used .77 minus</p> <p>104:10 .67, what was identified in the offering</p> <p>104:11 memorandum, divided by the .67.</p> <p>104:12 Q And how did you get to the 78 percent</p> <p>104:13 for the -- including Binkholder payments?</p> <p>104:14 A Would have been [taking] the lowest number,</p> <p>104:15 the 1.19 minus the .67 divided by .60.</p>
<p>108:17 Q Okay. And are you referencing an August</p> <p>108:18 1st, 2012, email to a Mark or an</p> <p>108:19 mfunspin@hotmail.com?</p> <p>108:20 A Yes, I am.</p>	<p>108:17 Q Okay. And are you referencing an August</p> <p>108:18 1st, 2012, email to a Mark or an</p> <p>108:19 [mfunfsinn@hotmail.com]?</p> <p>108:20 A Yes, I am.</p>
<p>109:1 Q Okay. And the largest paragraph near</p> <p>109:2 the bottom beginning with "our business is</p> <p>109:3 growing." And that's an email -- whose that</p> <p>109:4 email</p> <p>109:5 from?</p> <p>A That's from Mr. Winkelmann.</p>	<p>109:1 Q Okay. And the largest paragraph near</p> <p>109:2 the bottom beginning with "our business is</p> <p>109:3 growing." And that's an email -- [who's] that</p> <p>109:4 email</p> <p>109:5 from?</p> <p>A That's from Mr. Winkelmann.</p>
<p>110:11 Q And then can we go to Exhibit 455,</p> <p>110:12 please.</p> <p>110:13 And Exhibit 455, I believe, is in</p> <p>110:14 evidence per stipulation.</p> <p>110:15 And basically just tell us what each</p> <p>110:16 column in this summary exhibit represents.</p> <p>110:17 A Yeah, so it's a summary of the</p> <p>110:18 investors</p> <p>110:19 in the different offerings. So you have the</p> <p>110:20 name</p> <p>110:21 of the investor, state of residency, whether or</p> <p>110:22 not they're a client, units purchased, total</p> <p>110:23 purchase amount, date purchased, base</p> <p>number</p> <p>110:22 support for that data purchase, units</p> <p>110:23 purchased in</p> <p>110:23 cumulative per offering, amount raised</p>	<p>110:11 Q And then can we go to Exhibit 455,</p> <p>110:12 please.</p> <p>110:13 And Exhibit 455, I believe, is in</p> <p>110:14 evidence per stipulation.</p> <p>110:15 And basically just tell us what each</p> <p>110:16 column in this summary exhibit represents.</p> <p>110:17 A Yeah, so it's a summary of the</p> <p>110:18 investors</p> <p>110:19 in the different offerings. So you have the</p> <p>110:20 name</p> <p>110:21 of the investor, state of residency, whether or</p> <p>110:22 not they're a client, units purchased, total</p> <p>110:23 purchase amount, date purchased, [Bates]</p> <p>number</p> <p>110:22 support for that [date of] purchase, units</p> <p>110:23 purchased in</p>

Original	Corrected
<p>cumulative 110:24 per offering, amount raised cumulative.</p>	<p>110:23 cumulative per offering, amount raised cumulative 110:24 per offering, amount raised cumulative.</p>
<p>114:10 Q And where did you get the information 114:11 from in -- that you used to put into Exhibit 446? 114:12 A I was -- I guess straight from my review 114:13 of US banking, Enterprise Bank statements, and 114:14 copies of checks.</p>	<p>114:10 Q And where did you get the information 114:11 from in -- that you used to put into Exhibit 446? 114:12 A I was -- I guess straight from my review 114:13 of US [Bank and] Enterprise Bank statements, and 114:14 copies of checks.</p>
<p>118:7 Q And how did the revenue in those 0.75 118:8 months compared to the revenue for the .25 months? 118:9 A The revenue was much lower.</p>	<p>118:7 Q And how did the revenue in those 0.75 118:8 months [compare] to the revenue for the .25 months? 118:9 A The revenue was much lower.</p>
<p>121:17 Q Okay. You were described as a staff 121:18 accountant. What's the difference between a staff 121:19 accountant and a CPA? 121:20 A It's really not a formal, you know, I 121:21 don't have a formal accounting designation. It's 121:22 kind of a more internal designation I would say. 121:23 It's not a professional classification. 121:24 Q You work with Mr. Benson and Mr. Hanauer 121:25 to prepare for this proceeding, correct?</p>	<p>121:17 Q Okay. You were described as a staff 121:18 accountant. What's the difference between a staff 121:19 accountant and a CPA? 121:20 A It's really not a formal, you know, I 121:21 don't have a formal accounting designation. It's 121:22 kind of a more internal designation I would say. 121:23 It's not a professional classification. 121:24 Q You [worked] with Mr. Benson and Mr. Hanauer 121:25 to prepare for this proceeding, correct?</p>
<p>125:10 JUDGE PATIL: Mr. Collins, what, if 125:11 anything, do you know about where that 45 to 100 125:12 ratio came from? Or if you don't know, let us 125:13 know. 125:14 THE WITNESS: Yeah, that specific 125:15 number, I believe, would have been 125:16 calculated by 125:17 enforcement staff. I did not calculate that 125:18 directly. 125:19 JUDGE PATIL: And sorry, if you can 125:20 recall for -- what was your assessment with 125:21 respect to the ratio for that period for the first offering memorandum? It wasn't 22 to 200. It was</p>	<p>125:10 JUDGE PATIL: Mr. Collins, what, if 125:11 anything, do you know about where that 45 to 100 125:12 ratio came from? Or if you don't know, let us 125:13 know. 125:14 THE WITNESS: Yeah, that specific 125:15 number, I believe, would have been 125:16 calculated by 125:17 enforcement staff. I did not calculate that 125:18 directly. 125:19 JUDGE PATIL: And sorry, if you can 125:20 recall for -- what was your assessment with respect to the ratio for that period for the first</p>

Original	Corrected
<p>125:22 something larger. That was something we reviewed 125:23 in one of your exhibits earlier, correct? 125:24 THE WITNESS: Correct. Yeah, we 125:25 compared my calculation to what's represented 126:1 here.</p>	<p>125:21 offering memorandum? It wasn't 22 to [100]. It was 125:22 something larger. That was something we reviewed 125:23 in one of your exhibits earlier, correct? 125:24 THE WITNESS: Correct. Yeah, we 125:25 compared my calculation to what's represented 126:1 here.</p>
<p>137:1 MR. HANAUER: The Division would like to 137:2 lodge an objection under amended rule 235B, it's 137:3 permissible for an adverse party to use the other 137:4 adverse party's investigative testimony adhering 137:5 but not for an own party to introduce their prior 137:6 sworn statements as evidence at a proceeding.</p>	<p>137:1 MR. HANAUER: The Division would like to 137:2 lodge an objection under amended rule 235B, it's 137:3 permissible for an adverse party to use the other 137:4 adverse party's investigative testimony [at hearing] 137:5 but not for an own party to introduce their prior 137:6 sworn statements as evidence at a proceeding.</p>
<p>167:23 Q Okay. And my question on that is let's 167:24 just -- it's reasonable, but as an SEC staff 167:25 accountant -- and you obviously included these in 168:1 your chart because you thought there was an import 168:2 to these payments made to Binkholder and your 168:3 chart is how it misrepresented advertising 168:4 conversion ratios. So my question, I guess, is do 168:5 you have any authority that underlines the 168:6 assumption that Mr. Binkholder's payment should 168:7 have been included on this chart at all? 168:8 A I believe based on what I just testified 168:9 that was my belief for, you know, why the payments</p>	<p>167:23 Q Okay. And my question on that is let's 167:24 just -- it's reasonable, but as an SEC staff 167:25 accountant -- and you obviously included these in 168:1 your chart because you thought there was an import 168:2 to these payments made to Binkholder and your 168:3 chart is how it misrepresented advertising 168:4 conversion ratios. So my question, I guess, is do 168:5 you have any authority that [underlies] the 168:6 assumption that Mr. Binkholder's payment should 168:7 have been included on this chart at all? 168:8 A I believe based on what I just testified 168:9 that was my belief for, you know, why the payments 168:10 to him should have been classified as advertising.</p>
<p>174:3 Q So in terms of the relevant authority 174:4 considered in determining whether Mr. Binkholder's</p>	<p>174:3 Q So in terms of the relevant authority 174:4 considered in determining whether Mr. Binkholder's</p>

Original	Corrected
<p>174:5 payments may be considered an advertising expense, 174:6 you considered 2064; is that correct? 174:7 A I would say there are several statutes.</p>	<p>174:5 payments may be considered an advertising expense, 174:6 you considered [206(4)]; is that correct? 174:7 A I would say there are several statutes.</p>
<p>177:14 Q And, again, your numbers in this chart 177:15 are based on those -- those documents that were 177:16 created at least as of December of 2012 and that 177:17 contained -- I apologize. Strike that. 177:18 And like the others, none of your -- 177:19 none of your projections are based on documents 177:20 that were in existence at or around the time of 177:21 the third offering which was sent of 2012; is that 177:22 correct?</p>	<p>177:14 Q And, again, your numbers in this chart 177:15 are based on those -- those documents that were 177:16 created at least as of December of 2012 and that 177:17 contained -- I apologize. Strike that. 177:18 And like the others, none of your -- 177:19 none of your projections are based on documents 177:20 that were in existence at or around the time of 177:21 the third offering which was [September] of 2012; is that 177:22 correct?</p>
<p>178:17 Q Okay. I'm trying not to retread ground 178:18 that we've sort of already covered, but I guess 178:19 what I'm trying to get at is when you were coming 178:20 up with your calculations for the advertising 178:21 factor for the third offering, did you consider a 178:22 document provided by the firm or that you 178:23 collected during your exam that showed the 178:24 numbers, the advertising spent or the revenue, as 178:25 of specifically September of 2012 at the time when 179:1 the offering was being prepared?</p>	<p>178:17 Q Okay. I'm trying not to retread ground 178:18 that we've sort of already covered, but I guess 178:19 what I'm trying to get at is when you were coming 178:20 up with your calculations for the advertising 178:21 factor for the third offering, did you consider a 178:22 document provided by the firm or that you 178:23 collected during your exam that showed the 178:24 numbers, the advertising [spend] or the revenue, as 178:25 of specifically September of 2012 at the time when 179:1 the offering was being prepared?</p>
<p>192:24 Q Mr. Collins, Exhibits 440 through 444, 192:25 am I accurately describing them that they lay out 193:1 discrepancies between the advertising ratios shown 193:2 in the offering memorandum and the advertising 193:3 ratios that you calculated based on Blue Ocean</p>	<p>192:24 Q Mr. Collins, Exhibits 440 through 444, 192:25 am I accurately describing them that they lay out 193:1 discrepancies between the advertising ratios shown 193:2 in the offering memorandum and the advertising 193:3 ratios that you calculated based on Blue</p>

Original	Corrected
<p>193:4 Portfolios's personal financial data? 193:5 A Could I just see the exhibits? I 193:6 don't -- 193:7 Q Oh, yeah. 193:8 Byron, can you pull up Exhibit 440? 193:9 A I just wanted to make sure we were 193:10 looking at the same thing. That's correct. 193:11 Q Talking about a discrepancy between the 193:12 .22 in the offering memorandum and the numbers you 193:13 calculated off of Blue Ocean's internal financial 193:14 data. 193:15 A That's correct. 193:16 Q And I'll represent to you that Exhibits 193:17 441 through 444, they're similar type exhibits but 193:18 for different offerings memorandum. Do you recall 193:19 that? 193:20 A I do. 193:21 Q And do you remember or do you recall at 193:22 Mr. Winkelmann's testimony that he was asked 193:23 questions about discrepancies that existed between 193:24 the ad ratios in the offering memorandum and 193:25 advertising ratios based on Blue Ocean's internal 194:1 financial data? 194:2 A I recall that.</p>	<p>Ocean 193:4 Portfolios's [internal] financial data? 193:5 A Could I just see the exhibits? I 193:6 don't -- 193:7 Q Oh, yeah. 193:8 Byron, can you pull up Exhibit 440? 193:9 A I just wanted to make sure we were 193:10 looking at the same thing. That's correct. 193:11 Q Talking about a discrepancy between the 193:12 .22 in the offering memorandum and the numbers you 193:13 calculated off of Blue Ocean's internal financial 193:14 data. 193:15 A That's correct. 193:16 Q And I'll represent to you that Exhibits 193:17 441 through 444, they're similar type exhibits but 193:18 for different offerings memorandum. Do you recall 193:19 that? 193:20 A I do. 193:21 Q And do you remember or do you recall at 193:22 Mr. Winkelmann's testimony that he was asked 193:23 questions about discrepancies that existed between 193:24 the ad ratios in the offering memorandum and 193:25 advertising ratios based on Blue Ocean's internal 194:1 financial data? 194:2 A I recall that.</p>
<p>194:13 Q And where, if anywhere, in Mr. 194:14 Winkelmann's Wells submission does he explain the 194:15 discrepancies between the numbers in the offering 194:16 memoranda for the ad ratios and the ad ratio 194:17 numbers based on the OP's internal financial data? 194:18 A I don't believe he discusses the</p>	<p>194:13 Q And where, if anywhere, in Mr. 194:14 Winkelmann's Wells submission does he explain the 194:15 discrepancies between the numbers in the offering 194:16 memoranda for the ad ratios and the ad ratio 194:17 numbers based on [BOP's] internal financial data?</p>

Original	Corrected
194:19 discrepancies in the Wells submission.	194:18 A I don't believe he discusses the 194:19 discrepancies in the Wells submission.
202:12 Q And can we go to Exhibit RX85, please. 202:13 And what I'd like you to do is add up 202:14 the payments from BOB to Mr. Winkelmann and Glen 202:15 Abbey Partners for 2014. Can you do it on the 202:16 calculator? 202:17 A Sure. Total I get is 227,557.	202:12 Q And can we go to Exhibit RX85, please. 202:13 And what I'd like you to do is add up 202:14 the payments from [BOP] to Mr. Winkelmann and Glen 202:15 Abbey Partners for 2014. Can you do it on the 202:16 calculator? 202:17 A Sure. Total I get is 227,557.
221:4 MR. WOLPER: I think 440 might be one. 221:5 I'll try 440. If I'm wrong, I'll just randomly 221:6 move to another one. 221:7 All right. This is Division's Exhibit 221:8 440. And this was presented this morning. And 221:9 again, I'm not suggesting you should have been 221:10 paying attention to it, but I'll represent to you 221:11 that this is one of the documents that Mr. Collins 221:12 testified about. Indeed he testified that he was 221:13 a document that he created. Do you understand 221:14 that, sir? 221:15 A Yes, but I haven't seen this document 221:16 before and I really don't know what this 221:17 represents.	221:4 MR. WOLPER: I think 440 might be one. 221:5 I'll try 440. If I'm wrong, I'll just randomly 221:6 move to another one. 221:7 All right. This is Division's Exhibit 221:8 440. And this was presented this morning. And 221:9 again, I'm not suggesting you should have been 221:10 paying attention to it, but I'll represent to you 221:11 that this is one of the documents that Mr. Collins 221:12 testified about. Indeed he testified that [this] was 221:13 a document that he created. Do you understand 221:14 that, sir? 221:15 A Yes, but I haven't seen this document 221:16 before and I really don't know what this 221:17 represents.
229:23 Q But you don't know where -- if there's a 229:24 fiduciary duty, you don't know from whence it 229:25 might derive here because don't -- you said it 230:1 might derive from a promoter -- if a promoter is 230:2 involved here. But I asked you if you can tell me 230:3 specifically whether or not Mr. Winkelmann and 230:4 Mr. -- excuse me -- Mr. Winkelmann and Blue Ocean	229:23 Q But you don't know where -- if there's a 229:24 fiduciary duty, you don't know from whence it 229:25 might derive here because don't -- you said it 230:1 might derive from a promoter -- if a promoter is 230:2 involved here. But I asked you if you can tell me 230:3 specifically whether or not Mr. Winkelmann and

Original	Corrected
<p>230:5 had a fiduciary duty here and if so, from whence 230:6 it came. If I'm not mission taken, you said you 230:7 don't know. 230:8 A Right. I said to you I would need more 230:9 information before answering that question; so I 230:10 don't know.</p>	<p>230:4 Mr. -- excuse me -- Mr. Winkelmann and Blue Ocean 230:5 had a fiduciary duty here and if so, from whence 230:6 it came. If I'm not [mistaken], you said you 230:7 don't know. 230:8 A Right. I said to you I would need more 230:9 information before answering that question; so I 230:10 don't know.</p>
<p>241:1 Q The duty -- let me make sure I take this 241:2 incrementally. Is there a duty, Professor, on the 241:3 part of an investment visitor to disclose 241:4 conflicts of interest to prospective investors? 241:5 A For investment advisors you asked? Yes. 241:6 Q No. An issuer. I'm talking issuers of 241:7 security -- 241:8 A Forgive me. Just now you actually used 241:9 the phrase "issuer," I believe, not an investment 241:10 advisor. I might be wrong.</p>	<p>241:1 Q The duty -- let me make sure I take this 241:2 incrementally. Is there a duty, Professor, on the 241:3 part of an investment [advisor] to disclose 241:4 conflicts of interest to prospective investors? 241:5 A For investment advisors you asked? Yes. 241:6 Q No. An issuer. I'm talking issuers of 241:7 security -- 241:8 A Forgive me. Just now you actually used 241:9 the phrase "issuer," I believe, not an investment 241:10 advisor. I might be wrong.</p>
<p>245:21 Q An investment advisor has an obligation, 245:22 a discloser obligation as a fiduciary as directed 245:23 by the SEC in the instructions to form ADV to make 245:24 disclosure to clients and prospective clients of 245:25 all material conflicts of interest, right? 246:1 A Right. 246:2 Q Is it your opinion that the issuer of a 246:3 security has got the same obligation to make that 246:4 disclosure of material conflicts of interest to 246:5 prospective investors? 246:6 A Right. As I said earlier, I do believe 246:7 there are situations where issuers must make 246:8 disclosure of conflicts of interest. With regard 246:9 to investing in the issuer, they must make that 246:10 disclosure to a potential investors in the</p>	<p>245:21 Q An investment advisor has an obligation, 245:22 a [disclosure] obligation as a fiduciary as directed 245:23 by the SEC in the instructions to form ADV to make 245:24 disclosure to clients and prospective clients of 245:25 all material conflicts of interest, right? 246:1 A Right. 246:2 Q Is it your opinion that the issuer of a 246:3 security has got the same obligation to make that 246:4 disclosure of material conflicts of interest to 246:5 prospective investors? 246:6 A Right. As I said earlier, I do believe 246:7 there are situations where issuers must make 246:8 disclosure of conflicts of interest. With</p>

Original	Corrected
<p>issuer. 246:11 So in that respect, the duties and obligations are 246:12 not dissimilar. Again, it depends on exactly 246:13 what -- what you're asking.</p>	<p>regard 246:9 to investing in the issuer, they must make that 246:10 disclosure to a potential investors in the issuer. 246:11 So in that respect, the duties and obligations are 246:12 not dissimilar. Again, it depends on exactly 246:13 what -- what you're asking.</p>
<p>255:1 Q Let's move on to, I guess, the next 255:2 opinion in your report, Professor. So it's -- I'm 255:3 going to move to page 22 of the expert report. I 255:4 got it in front of me. So this says: "Winkelman 255:5 and BOB failed to disclose and made false 255:6 statements about conflicts of interest." Do you 255:7 see that? 255:8 A Yes. 255:9 Q Okay. The second paragraph here, 255:10 Professor, you said: "Winkelman had discretion 255:11 to set his own compensation for work he performed 255:12 at BOP," correct? 255:13 A Yes, that's correct.</p>	<p>255:1 Q Let's move on to, I guess, the next 255:2 opinion in your report, Professor. So it's -- I'm 255:3 going to move to page 22 of the expert report. I 255:4 got it in front of me. So this says: "Winkelman 255:5 and [BOP] failed to disclose and made false 255:6 statements about conflicts of interest." Do you 255:7 see that? 255:8 A Yes. 255:9 Q Okay. The second paragraph here, 255:10 Professor, you said: "Winkelman had discretion 255:11 to set his own compensation for work he performed 255:12 at BOP," correct? 255:13 A Yes, that's correct.</p>
<p>286:18 Q It's on page 24 of the report. You're 286:19 ware that Mr. Binkholder had a contractual 286:20 relationship with Blue Ocean Portfolios, right? 286:21 A Yes, I'm aware.</p>	<p>286:18 Q It's on page 24 of the report. You're 286:19 [aware] that Mr. Binkholder had a contractual 286:20 relationship with Blue Ocean Portfolios, right? 286:21 A Yes, I'm aware.</p>
<p>298:16 Q Right. Okay. So one of the expenses 298:17 that you opined did not appear to be bona fide 298:18 apparently the Division changed its opinion about 298:19 that. 298:20 A Well, as I said much earlier, I saw 298:21 documents that were made available to me after I 298:22 submitted the report so that I can though longer</p>	<p>298:16 Q Right. Okay. So one of the expenses 298:17 that you opined did not appear to be bona fide 298:18 apparently the Division changed its opinion about 298:19 that. 298:20 A Well, as I said much earlier, I saw 298:21 documents that were made available to me after I 298:22 submitted the report so that I can [no]</p>

Original	Corrected
<p>298:23 say with any certainty that those payments to the 298:24 management company were necessarily illegal. I 298:25 changed my own opinion based on materials that 299:1 were produced as trial exhibits to this very case. 299:2 Q So you wholeheartedly support the 299:3 decision by the Division to withdraw those 299:4 allegations? 299:5 A I don't have a view on the legal 299:6 withdrawal. I can no longer say with certainty 299:7 that those payments were illegal; so I withdraw my 299:8 own opinion in that regard.</p>	<p>longer 298:23 say with any certainty that those payments to the 298:24 management company were necessarily illegal. I 298:25 changed my own opinion based on materials that 299:1 were produced as trial exhibits to this very case. 299:2 Q So you wholeheartedly support the 299:3 decision by the Division to withdraw those 299:4 allegations? 299:5 A I don't have a view on the legal 299:6 withdrawal. I can no longer say with certainty 299:7 that those payments were illegal; so I withdraw my 299:8 own opinion in that regard.</p>
<p>304:6 Q Okay. Let's see if we can zip through 304:7 this. Can we talk about this expectation that 304:8 you've talked about, the reasonable expectation 304:9 that you think the offering memoranda created as a 304:10 result of certain language about -- 304:11 A I liked -- 304:12 Q -- receiving more than a minute. 304:13 A I'd like to clarify that if I may. 304:14 Q Clarify what?</p>	<p>304:6 Q Okay. Let's see if we can zip through 304:7 this. Can we talk about this expectation that 304:8 you've talked about, the reasonable expectation 304:9 that you think the offering memoranda created as a 304:10 result of certain language about -- 304:11 A I liked -- 304:12 Q -- receiving more than [the minimum]. 304:13 A I'd like to clarify that if I may. 304:14 Q Clarify what?</p>
<p>371:14 Q And before you started Blue Ocean 371:15 Portfolios, you owned and managed a full- service 371:16 brokerage firm and registered investment advisory 371:17 firm? 371:18 A Yes. 371:19 Q And how long did you own and manage that 371:20 firm for? 371:21 A Let me clarify that. The full-service 371:22 brokerage firm that I owned and operated ended in 371:23 2001. After that we owned and operated a</p>	<p>371:14 Q And before you started Blue Ocean 371:15 Portfolios, you owned and managed a full- service 371:16 brokerage firm and registered investment advisory 371:17 firm? 371:18 A Yes. 371:19 Q And how long did you own and manage that 371:20 firm for? 371:21 A Let me clarify that. The full-service 371:22 brokerage firm that I owned and operated ended in 371:23 2001. After that we owned and operated a</p>

Original	Corrected
<p>fully 371:24 disclosed BD until 2008. 371:25 Q Okay. So how long did you own the broker 372:1 dealer for? 372:2 A Which one? 372:3 Q Any broker dealer prior to Blue Ocean. 372:4 For how long did you own the broker dealer? 372:5 A From 1987 through 2008. 372:6 Q 1987 through 2008? 372:7 A That's correct. 372:8 Q And before you started Blue Ocean 372:9 Portfolios, how long did you own the registered 372:10 investment advisory for? 372:11 A Since 1988. 372:12 Q Until? 372:13 A 2010.</p>	<p>fully 371:24 disclosed BD until 2008. 371:25 Q Okay. So how long did you own the broker 372:1 dealer for? 372:2 A Which one? 372:3 Q Any broker dealer prior to Blue Ocean. 372:4 For how long did you own the broker dealer? 372:5 A From 1987 through 2008. 372:6 Q 1987 through 2008? 372:7 A That's correct. 372:8 Q And before you started Blue Ocean 372:9 Portfolios, how long did you own the registered 372:10 investment advisory [firm]? 372:11 A Since 1988. 372:12 Q Until? 372:13 A 2010.</p>
<p>376:20 Q And you understood you were right to 376:21 disclose to your clients all information as to any 376:22 potential or actual conflicts of interest? 376:23 A Yes.</p>	<p>376:20 Q And you understood you were [required] to 376:21 disclose to your clients all information as to any 376:22 potential or actual conflicts of interest? 376:23 A Yes.</p>
<p>392:19 Q And a mutual fund is an investment? 392:20 A It's a product. 392:21 Q Sir, are you telling me that it's your 392:22 testimony that a mutual fund is not an investment? 392:23 A It's an investment product. It's a 392:24 package product involving investments. 392:25 Q And stocks and investments, right? 393:1 A Sure. 393:2 Q A variable annuities of investment? 393:3 A It's a product. 393:4 Q Sir, a variable annuity isn't an 393:5 investment? 393:6 A It's an investment product.</p>	<p>392:19 Q And a mutual fund is an investment? 392:20 A It's a product. 392:21 Q Sir, are you telling me that it's your 392:22 testimony that a mutual fund is not an investment? 392:23 A It's an investment product. It's a 392:24 package product involving investments. 392:25 Q And [stock's an investment], right? 393:1 A Sure. 393:2 Q A variable [annuity's an] investment? 393:3 A It's a product. 393:4 Q Sir, a variable annuity isn't an 393:5 investment? 393:6 A It's an investment product.</p>
<p>395:17 Q Okay. And I think another thing you told 395:18 the Court upon his questioning is, that a feature of 395:19 all the products referenced in Exhibit 28 was that</p>	<p>395:17 Q Okay. And I think another thing you told 395:18 the Court upon his questioning is, that a feature of 395:19 all the products referenced in Exhibit [228] was that</p>

Original	Corrected
<p>395:20 the mutual funds in the annuities had features that 395:21 entice the offerer to sell that document? 395:22 A Well, as you know, it's a very competitive 395:23 landscape. All these promoters of these annuities 395:24 and mutual funds they spend a lot of energy getting 395:25 advisers to place these products with their clients.</p>	<p>395:20 the mutual funds [and] the annuities had features that 395:21 entice the offerer to sell that [product]? 395:22 A Well, as you know, it's a very competitive 395:23 landscape. All these promoters of these annuities 395:24 and mutual funds they spend a lot of energy getting 395:25 advisers to place these products with their clients.</p>
<p>424:17 Q And then it continues, Furthermore, The 424:18 Financial Coach to exclusively enable Blue Ocean to 424:19 generate leads from -- I think that's it may be a 424:20 typo -- TFB websites, social media sites, radio 424:21 shows, television shows, speaking engagements and 424:22 book publications? 424:23 A We wanted to tie up the bank holder 424:24 Financial Coach such that a higher bidder couldn't 424:25 come in. That's why it's there.</p>	<p>424:17 Q And then it continues, Furthermore, The 424:18 Financial Coach to exclusively enable Blue Ocean to 424:19 generate leads from -- I think that's it may be a 424:20 typo -- TFB websites, social media sites, radio 424:21 shows, television shows, speaking engagements and 424:22 book publications? 424:23 A We wanted to tie up the [Binkholder] 424:24 Financial Coach such that a higher bidder couldn't 424:25 come in. That's why it's there.</p>
<p>426:22 Q And he asks you -- basically start all 426:23 over so you get the date right and you answer, Yeah 426:24 the key role that Bryan Binholder played all the 426:25 time from 2009 from the inception of Blue Ocean, all 427:1 the way until he was basically run out of the office 427:2 when we learned about his federal investigation, he 427:3 hosted a radio show that we sponsored. He generated 427:4 70 to 100 leads a week from The Financial Coach 427:5 show. Blue Ocean Portfolios sponsored that.</p>	<p>426:22 Q And he asks you -- basically start all 426:23 over so you get the date right and you answer, Yeah 426:24 the key role that Bryan [Binkholder] played all the 426:25 time from 2009 from the inception of Blue Ocean, all 427:1 the way until he was basically run out of the office 427:2 when we learned about his federal investigation, he 427:3 hosted a radio show that we sponsored. He generated 427:4 70 to 100 leads a week from The Financial Coach 427:5 show. Blue Ocean Portfolios sponsored that.</p>
<p>429:23 The Financial Coach show. 429:24 Q Okay. And Blue Ocean meticulously tracked</p>	<p>429:23 The Financial Coach show. 429:24 Q Okay. And Blue Ocean meticulously tracked</p>

Original	Corrected
<p>429:25 the source of client leads, right? 430:1 A Well, obviously, you can see this. 430:2 Q It goes down to, like, GMO Bryan or 430:3 downloaded a CD or the Blue Ocean website, right? 430:4 A The financial Coach website is on there, 430:5 yeah. 430:6 Q It looks like it's not so meticulous that 430:7 it's breaking out what portion of the leads from 430:8 97.1 came from Mr. Binkholder's radio show as 430:9 opposed to other sources?</p>	<p>429:25 the source of client leads, right? 430:1 A Well, obviously, you can see this. 430:2 Q It goes down to, like, [Jim O'Brien] or 430:3 downloaded a CD or the Blue Ocean website, right? 430:4 A The financial Coach website is on there, 430:5 yeah. 430:6 Q It looks like it's not so meticulous that 430:7 it's breaking out what portion of the leads from 430:8 97.1 came from Mr. Binkholder's radio show as 430:9 opposed to other sources?</p>
<p>449:3 Q And you meticulous tracked Blue Ocean 449:4 Portfolios advertising yield data? 449:5 A Our business practices continually evolved 449:6 the tracking of the advertising spent. 449:7 Q Right. But you or Blue Ocean Portfolios? 449:8 A Right. 449:9 Q Meticulous tracked Blue Ocean Portfolios 449:10 advertising yield data?</p>	<p>449:3 Q And you [meticulously] tracked Blue Ocean 449:4 Portfolios advertising yield data? 449:5 A Our business practices continually evolved 449:6 the tracking of the advertising [spend]. 449:7 Q Right. But you or Blue Ocean Portfolios? 449:8 A Right. 449:9 Q [Meticulously] tracked Blue Ocean Portfolios 449:10 advertising yield data?</p>
<p>451:25 The enumerator is the culmination of the 452:1 advertising results. May I use an analogy?</p>	<p>451:25 The [numerator] is the culmination of the 452:1 advertising results. May I use an analogy?</p>
<p>455:9 Q So when you say to investors that the 455:10 advertising factor for 2011 was .79, okay, what is 455:11 the enumerator? 455:12 A The current business that is coming on 455:13 that month.</p>	<p>455:9 Q So when you say to investors that the 455:10 advertising factor for 2011 was .79, okay, what is 455:11 the [numerator]? 455:12 A The current business that is coming on 455:13 that month.</p>
<p>456:21 In the second third and fourth offering 456:22 memorandum when you said the 2011 factor was .79, 456:23 was enumerator an advertising expense or was it a 456:24 revenue? 456:25 A The number on top? I want to make sure we 457:1 are talking about --</p>	<p>456:21 In the second third and fourth offering 456:22 memorandum when you said the 2011 factor was .79, 456:23 was [numerator] an advertising expense or was it a 456:24 revenue? 456:25 A The number on top? I want to make sure we 457:1 are talking about --</p>

Original	Corrected
<p>457:2 Q I think enumerator is the number on top?</p> <p>458:1 Q I just want to know for 2011, when you say</p> <p>458:2 the factor is .9 -- .79, I'm sorry, is the</p> <p>458:3 enumerator, expense or is the enumerator revenue?</p> <p>458:4 A The number on top is the expense.</p>	<p>457:2 Q I think [numerator] is the number on top?</p> <p>458:1 Q I just want to know for 2011, when you say</p> <p>458:2 the factor is .9 -- .79, I'm sorry, is the</p> <p>458:3 [numerator], expense or is the [numerator] revenue?</p> <p>458:4 A The number on top is the expense.</p>
<p>458:9 Q Okay. So for 2009 or 2011, if we wanted</p> <p>458:10 to do the calculation in the way you are saying you</p> <p>458:11 represented it to investors, you would take the</p> <p>458:12 advertising expense for all of 2011, that's the</p> <p>458:13 enumerator?</p>	<p>458:9 Q Okay. So for 2009 or 2011, if we wanted</p> <p>458:10 to do the calculation in the way you are saying you</p> <p>458:11 represented it to investors, you would take the</p> <p>458:12 advertising expense for all of 2011, that's the</p> <p>458:13 [numerator]?</p>
<p>460:10 Q Okay. And so you were able to agree with</p> <p>460:11 me that the factor, the enumerator is advertising</p> <p>460:12 expense, right?</p> <p>460:13 A Yes.</p> <p>460:14 Q And when you say the enumerator for 2011</p> <p>460:15 is advertising expense, is it the advertising</p> <p>460:16 expense covering the whole year of 2011?</p> <p>460:17 A I had have to look at the documents. I</p> <p>460:18 want to be accurate. You want me to be accurate?</p>	<p>460:10 Q Okay. And so you were able to agree with</p> <p>460:11 me that the factor, the [numerator] is advertising</p> <p>460:12 expense, right?</p> <p>460:13 A Yes.</p> <p>460:14 Q And when you say the [numerator] for 2011</p> <p>460:15 is advertising expense, is it the advertising</p> <p>460:16 expense covering the whole year of 2011?</p> <p>460:17 A I had have to look at the documents. I</p> <p>460:18 want to be accurate. You want me to be accurate?</p>
<p>467:22 Q So the enumerator is some set period of</p> <p>467:23 time, right?</p> <p>467:24 A Yes.</p>	<p>467:22 Q So the [numerator] is some set period of</p> <p>467:23 time, right?</p> <p>467:24 A Yes.</p>
<p>470:1 Q All right. So I think we're at least</p> <p>470:2 settled that the enumerator is the expense for some</p> <p>470:3 given period, right?</p> <p>470:4 A Let's use five years of expenses.</p> <p>470:5 Q Sure.</p> <p>470:6 A Let's take the last five years of</p> <p>470:7 expenses. We probably spent \$750,000 in</p>	<p>470:1 Q All right. So I think we're at least</p> <p>470:2 settled that the [numerator] is the expense for some</p> <p>470:3 given period, right?</p> <p>470:4 A Let's use five years of expenses.</p> <p>470:5 Q Sure.</p> <p>470:6 A Let's take the last five years of</p> <p>470:7 expenses. We probably spent \$750,000 in</p>

Original	Corrected
<p>revenue as 470:8 in advertising, the last five years. We got \$3 1/2 470:9 million worth of revenue. That's a pretty good 470:10 deal. 470:11 Q So -- 470:12 A The factor is like below 20. Again, this 470:13 is my attempt. It may be a poor decision to try to 470:14 bring this type of minutia into an offering 470:15 document, but that's how we ran our business. To 470:16 make sure that that spend ended up in the most 470:17 recurring revenue as we could. 470:18 Q Okay. So I think we are in agreement now 470:19 that the enumerator is advertising expense for some 470:20 given period of time, correct? 470:21 A Right.</p>	<p>revenue as 470:8 in advertising, the last five years. We got \$3 1/2 470:9 million worth of revenue. That's a pretty good 470:10 deal. 470:11 Q So -- 470:12 A The factor is like below 20. Again, this 470:13 is my attempt. It may be a poor decision to try to 470:14 bring this type of minutia into an offering 470:15 document, but that's how we ran our business. To 470:16 make sure that that spend ended up in the most 470:17 recurring revenue as we could. 470:18 Q Okay. So I think we are in agreement now 470:19 that the [numerator] is advertising expense for some 470:20 given period of time, correct? 470:21 A Right.</p>
<p>480:4 A Could I see the Wells notice? 480:5 Q 341, please. Blow up the first two 480:6 paragraphs. You can just read that to yourself. 480:7 A I'm looking for any references to these 480:8 advertising factors and the Wells notes. 480:9 Q Do you need more time to review the Wells 480:10 notes?</p>	<p>480:4 A Could I see the Wells notice? 480:5 Q 341, please. Blow up the first two 480:6 paragraphs. You can just read that to yourself. 480:7 A I'm looking for any references to these 480:8 advertising factors [in] the Wells [notice]. 480:9 Q Do you need more time to review the Wells 480:10 [notice]?</p>
<p>495:20 Q All right. Well, let's take a look at 495:21 Exhibit 7, please. And Exhibit 7 is a February 495:22 16th, 2011 letter you wrote to Rodger Riney at 495:23 Scottrade, correct? 495:24 A Correct. 495:25 Q And if I have it right from the 496:1 commercials, Mr. Riney is the CEO of Scottrade? 496:2 A He owns the company.</p>	<p>495:20 Q All right. Well, let's take a look at 495:21 Exhibit 7, please. And Exhibit 7 is a February 495:22 16th, 2011 letter you wrote to [Roger] Riney at 495:23 Scottrade, correct? 495:24 A Correct. 495:25 Q And if I have it right from the 496:1 commercials, Mr. Riney is the CEO of Scottrade? 496:2 A He owns the company.</p>
<p>497:22 Q And can you go to the first paragraph, 497:23 please. And you say, We're steadily growing our</p>	<p>497:22 Q And can you go to the first paragraph, 497:23 please. And you say, We're steadily growing</p>

Original	Corrected
<p>497:24 Blue Ocean Portfolios' business. Since launching 497:25 the company this August of 2009, we have grown the 498:1 AUM to approximately \$36 million. 498:2 We continue to grow everyday due to our 498:3 effective radio show advertising on KMOX and our 498:4 weekly radio program on FM 97.1, The Financial 498:5 Coach. 498:6 We are spending about \$2200 to lend \$1 498:7 million in new AUM that generates approximately 498:8 9,000 in recurring annual revenue. May I approach, 498:9 Your Honor?</p>	<p>our 497:24 Blue Ocean Portfolios' business. Since launching 497:25 the company this August of 2009, we have grown the 498:1 AUM to approximately \$36 million. 498:2 We continue to grow everyday due to our 498:3 effective radio show advertising on KMOX and our 498:4 weekly radio program on FM 97.1, The Financial 498:5 Coach. 498:6 We are spending about \$2200 to [land] \$1 498:7 million in new AUM that generates approximately 498:8 9,000 in recurring annual revenue. May I approach, 498:9 Your Honor?</p>
<p>546:11 Q And Exhibit 40, that's a May 3rd letter 546:12 that you wrote to Mr. Mark Funfsion? How do you say 546:13 his last name? 546:14 A I still don't know. 546:15 Q How about we just call him, Mark. So 546:16 Mark, Mr. Funfsion, is still a client? 546:17 A Yes, he is still a client, long-term 546:18 client.</p>	<p>546:11 Q And Exhibit 40, that's a May 3rd letter 546:12 that you wrote to Mr. Mark [Funfsinn]? How do you say 546:13 his last name? 546:14 A I still don't know. 546:15 Q How about we just call him, Mark. So 546:16 Mark, Mr. [Funfsinn], is still a client? 546:17 A Yes, he is still a client, long-term 546:18 client.</p>
<p>549:13 Q Did you tell Mr. Erst that he can't 549:14 invest if he doesn't get his money in by the end of 549:15 May? 549:16 A No. 549:17 Q You took his money in July? 549:18 A Correct.</p>	<p>549:13 Q Did you tell Mr. [Ursch] that he can't 549:14 invest if he doesn't get his money in by the end of 549:15 May? 549:16 A No. 549:17 Q You took his money in July? 549:18 A Correct.</p>
<p>549:19 Q And let's go to the last sentence of this 549:20 letter -- or I'm sorry, Exhibit 40. And you write 549:21 to your client, Mr. Funfsion, Because of the 549:22 fiduciary relationship we have with you I cannot 549:23 recommend that you or your family participate in</p>	<p>549:19 Q And let's go to the last sentence of this 549:20 letter -- or I'm sorry, Exhibit 40. And you write 549:21 to your client, Mr. [Funfsinn], Because of the 549:22 fiduciary relationship we have with you I</p>

Original	Corrected
<p>549:24 this offering due to the potential conflict that 549:25 such a recommendation will create. This letter is 550:1 not an offer. Nonetheless, I wanted to make you 550:2 aware of the situation and provide you with the 550:3 offering materials. Please do not hesitate to call 550:4 should you have any questions or comments. 550:5 Do you see that? 550:6 A Yes. 550:7 Q So it looks like you recognize that a 550:8 potential conflict existed between you and an 550:9 advisory client who you're offering royalty unit 550:10 investments to? 550:11 A This was my attempt to tell them like Mr. 550:12 Swardson told Heidi yesterday that I couldn't 550:13 recommend they purchase it or not. 550:14 Q Right. But what you are telling Mr. 550:15 Funfsion is that a potential conflict exists, right? 550:16 A I felt we could not quote, recommend or 550:17 advise people, our clients, to buy it.</p>	<p>cannot 549:23 recommend that you or your family participate in 549:24 this offering due to the potential conflict that 549:25 such a recommendation will create. This letter is 550:1 not an offer. Nonetheless, I wanted to make you 550:2 aware of the situation and provide you with the 550:3 offering materials. Please do not hesitate to call 550:4 should you have any questions or comments. 550:5 Do you see that? 550:6 A Yes. 550:7 Q So it looks like you recognize that a 550:8 potential conflict existed between you and an 550:9 advisory client who you're offering royalty unit 550:10 investments to? 550:11 A This was my attempt to tell them like Mr. 550:12 Swardson told Heidi yesterday that I couldn't 550:13 recommend they purchase it or not. 550:14 Q Right. But what you are telling Mr. 550:15 [Funfsinn] is that a potential conflict exists, right? 550:16 A I felt we could not quote, recommend or 550:17 advise people, our clients, to buy it.</p>
<p>557:20 Q Okay. Exhibit 60, please. And these are 557:21 two e-mails from Ms. Hennessen to you? 557:22 A Correct. 557:23 Q And Ms. Hennessen was one of your 557:24 employees? 557:25 A Correct.</p>	<p>557:20 Q Okay. Exhibit 60, please. And these are 557:21 two e-mails from Ms. [Hennessy] to you? 557:22 A Correct. 557:23 Q And Ms. [Hennessy] was one of your 557:24 employees? 557:25 A Correct.</p>
<p>560:10 Q Let's go to Exhibit 7 and this is an 560:11 October 18th, 2011 e-mail from you to Mr. 560:12 Binkholder?</p>	<p>560:10 Q Let's go to Exhibit [70] and this is an 560:11 October 18th, 2011 e-mail from you to Mr. 560:12 Binkholder?</p>
<p>566:21 Q Just wanted to make sure you were ready to 566:22 go. In December 2011, you learned that the Missouri</p>	<p>566:21 Q Just wanted to make sure you were ready to 566:22 go. In December 2011, you learned that the Missouri</p>

Original	Corrected
<p>566:23 Division of Securities barred Mr. Binkholder from 566:24 acting as an investment visor, correct?</p>	<p>566:23 Division of Securities barred Mr. Binkholder from 566:24 acting as an investment [adviser], correct?</p>
<p>577:13 I think I had a call 577:14 from Wendy McGeenythat day too. 577:15 Q Wendy McGeeny, the day you emailed it to 577:16 Mr. -- 577:17 A No. I didn't say I emailed it. I believe 577:18 Wendy is involved in the conversation. She is 577:19 alive. 577:20 Q She is alive, right? 577:21 A Yeah, she is alive. 577:22 Q And so you talked to not only Mr. Morgan, 577:23 but Ms. McGeenyin the same conversation in 2011 577:24 where you told them about the bar order, right? 577:25 A My recollection is Ms. McGeenyknew about 578:1 the bar order before I did.</p>	<p>577:13 I think I had a call 577:14 from Wendy [Menghini] that day too. 577:15 Q Wendy [Menghini], the day you emailed it to 577:16 Mr. -- 577:17 A No. I didn't say I emailed it. I believe 577:18 Wendy is involved in the conversation. She is 577:19 alive. 577:20 Q She is alive, right? 577:21 A Yeah, she is alive. 577:22 Q And so you talked to not only Mr. Morgan, 577:23 but Ms. [Menghini] in the same conversation in 2011 577:24 where you told them about the bar order, right? 577:25 A My recollection is Ms. [Menghini] knew about 578:1 the bar order before I did.</p>
<p>578:9 Q Because there's no reference to Ms. 578:10 McGeeny talking to you either at any time in 578:11 December 2011 or January of 2011.</p>	<p>578:9 Q Because there's no reference to Ms. 578:10 [Menghini] talking to you either at any time in 578:11 December 2011 or January of 2011.</p>
<p>657:1 Q And that's where I'm going. You took 657:2 time to digest the order so he could intelligently 657:3 speak to you extensively about it, right? 657:4 A Uh-huh. 657:5 Q Is that a "yes"? 657:6 A Yes, I'm sorry. 657:7 Q And you had a -- he did in fact speak 657:8 extensively to you about it, right? 657:9 A That's my recollection.</p>	<p>657:1 Q And that's where I'm going. [He] took 657:2 time to digest the order so he could intelligently 657:3 speak to you extensively about it, right? 657:4 A Uh-huh. 657:5 Q Is that a "yes"? 657:6 A Yes, I'm sorry. 657:7 Q And you had a -- he did in fact speak 657:8 extensively to you about it, right? 657:9 A That's my recollection.</p>
<p>658:3 Q And that would include services that his 658:4 partner, Ms. Menghini, performed also? 658:5 A I don't know. It's my understanding that 658:6 Mr. Morgan was the billing partner so that he 658:7 would -- any bills that would go out of</p>	<p>658:3 Q And that would include services that his 658:4 partner, Ms. Menghini, performed also? 658:5 A I don't know. It's my understanding that</p>

Original	Corrected
<p>658:8 Greensfelder toward Blue Ocean or myself would be 658:9 funneled through his desk and he would make the 658:10 appropriate adjustments, allegations. 658:11 Q He could write off people's time? 658:12 A That's my understanding.</p>	<p>658:6 Mr. Morgan was the billing partner so that he 658:7 would -- any bills that would go out of 658:8 Greensfelder toward Blue Ocean or myself would be 658:9 funneled through his desk and he would make the 658:10 appropriate adjustments, <u>[inaudible]</u>. 658:11 Q He could write off people's time? 658:12 A That's my understanding.</p>
<p>664:11 Q Right. But there would -- anyone reading 664:12 both the first and second memorandum could not have 664:13 been able to tell there was a switch in 664:14 methodology, correct? 664:15 MR. WOLPER: I'll object. That calls for 664:16 speculation that anyone can't produce that. 664:17 JUDGE PATIL: Overruled. 664:18 MS. VONDERHEIDE: Renee, could you read 664:19 that back to me. 664:20 (The reporter read back the record.) 664:21 THE WITNESS: That's correct.</p>	<p>664:11 Q Right. But there would -- anyone reading 664:12 both the first and second memorandum could not have 664:13 been able to tell there was a switch in 664:14 methodology, correct? 664:15 MR. WOLPER: I'll object. That calls for 664:16 speculation that anyone can't [deduce] that. 664:17 JUDGE PATIL: Overruled. 664:18 MS. VONDERHEIDE: Renee, could you read 664:19 that back to me. 664:20 (The reporter read back the record.) 664:21 THE WITNESS: That's correct.</p>
<p>677:21 Q And then Exhibit 130, that's an email on 677:22 behalf of you to Mike Ursh? 677:23 A Yes.</p>	<p>677:21 Q And then Exhibit 130, that's an email on 677:22 behalf of you to Mike [Ursch]? 677:23 A Yes.</p>
<p>678:12 Q And Ms. Gamache and Mr. Ursh, they were 678:13 both clients? 678:14 A Yes.</p>	<p>678:12 Q And Ms. Gamache and Mr. [Ursch], they were 678:13 both clients? 678:14 A Yes.</p>
<p>704:23 Q Okay. Why did the fourth offering stop? 704:24 A As I sit here today, I remember that in 704:25 the wake of this Missouri investigation, Mr. 705:1 Binkholder in the layoffs and the adjustments we 705:2 made to the spending, that we had adequate amount 705:3 of capital from the two investors for round four 705:4 that we didn't need any more at that point. It 705:5 wasn't a driving from anything but a cash flow 705:6 forecast.</p>	<p>704:23 Q Okay. Why did the fourth offering stop? 704:24 A As I sit here today, I remember that in 704:25 the wake of this Missouri investigation, Mr. 705:1 Binkholder [and] the layoffs and the adjustments we 705:2 made to the spending, that we had adequate amount 705:3 of capital from the two investors for round four 705:4 that we didn't need any more at that point. It 705:5 wasn't a driving from anything but a cash flow 705:6 forecast.</p>
<p>725:14 Q And you write, "Swiftie, here's the plan 725:15 and the current situation," right? "I need to come</p>	<p>725:14 Q And you write, "[Swifty], here's the plan 725:15 and the current situation," right? "I need to</p>

Original	Corrected
<p>725:16 up with a deal. I am hesitant" -- "I am hesitate 725:17 to go back to some of the investor/clients with 725:18 this bad news. Need to be careful to not start any 725:19 rumors." 725:20 Do you see that?</p>	<p>come 725:16 up with a deal. I am hesitant" -- "I am hesitate 725:17 to go back to some of the investor/clients with 725:18 this bad news. Need to be careful to not start any 725:19 rumors." 725:20 Do you see that?</p>
<p>738:10 Q And then you write, "This will be our 738:11 file" -- "our final round. I need to go ahead and 738:12 dam the torpedoes."</p>	<p>738:10 Q And then you write, "This will be our 738:11 file" -- "our final round. I need to go ahead and 738:12 [damn] the torpedoes."</p>
<p>789:14 Q And after your February 2005 testimony 789:15 with Mr. Benson, you began taking the position that 789:16 Blue Ocean Portfolios had custody of client assets, 789:17 correct? 789:18 A Correct.</p>	<p>789:14 Q And after your February [2015] testimony 789:15 with Mr. Benson, you began taking the position that 789:16 Blue Ocean Portfolios had custody of client assets, 789:17 correct? 789:18 A Correct.</p>
<p>813:21 Q And you write out -- you write to Mr. 813:22 Grazer, "Blue Ocean ATM has the concession to 813:23 provide ATMs to the Festival of the Little Hills, 813:24 August 16 to 18th. We are going to need about 813:25 70,000 in vault cash to keep the ATMs filled. Blue 814:1 Ocean Portfolios, LLC, has enough in the operating 814:2 account to lend out this cash over the weekend. 814:3 Unfortunately, this creates a bunch of regulatory 814:4 scrutiny by the SEC when they examine Blue Ocean 814:5 Portfolios -- nothing illegal, just a hassle. I 814:6 would rather avoid moving money back and forth 814:7 between the companies." 814:8 And at this time this was like a month 814:9 after Mr. Collins and his team came in and did the</p>	<p>813:21 Q And you write out -- you write to Mr. 813:22 [Graser], "Blue Ocean ATM has the concession to 813:23 provide ATMs to the Festival of the Little Hills, 813:24 August 16 to 18th. We are going to need about 813:25 70,000 in vault cash to keep the ATMs filled. Blue 814:1 Ocean Portfolios, LLC, has enough in the operating 814:2 account to lend out this cash over the weekend. 814:3 Unfortunately, this creates a bunch of regulatory 814:4 scrutiny by the SEC when they examine Blue Ocean 814:5 Portfolios -- nothing illegal, just a hassle. I 814:6 would rather avoid moving money back and forth 814:7 between the companies." 814:8 And at this time this was like a month 814:9 after Mr. Collins and his team came in and did</p>

Original	Corrected
814:10 on-site exam, correct?	the 814:10 on-site exam, correct?
841:15 MR. HANAUER: So that one I think we need 841:16 to go to Exhibit 442. And then you see factors in 841:17 excess of 1.11 for the most recent 12 months, and 841:18 then all the factors including the bank holder 841:19 payments.	841:15 MR. HANAUER: So that one I think we need 841:16 to go to Exhibit 442. And then you see factors in 841:17 excess of 1.11 for the most recent 12 months, and 841:18 then all the factors including the [Binkholder] 841:19 payments.
872:24 BY MS. VONDERHEIDE: 872:25 Q What time period does this chart offer? 873:1 A So this chart is showing November 2011 873:2 data through February. And then it appears that 873:3 we had also then in the beginning of March, just 873:4 updated the formulas to begin pulling March data. 873:5 Although this would have been created, you know, 873:6 the first week or so of March that way; so that's 873:7 why there's -- it's really a February report.	872:24 BY MS. VONDERHEIDE: 872:25 Q What time period does this chart [cover] ? 873:1 A So this chart is showing November 2011 873:2 data through February. And then it appears that 873:3 we had also then in the beginning of March, just 873:4 updated the formulas to begin pulling March data. 873:5 Although this would have been created, you know, 873:6 the first week or so of March that way; so that's 873:7 why there's -- it's really a February report.
898:6 Can you go back to a full screen? And 898:7 go back to RX64, page 63.	898:6 Can you go back to a full screen? And 898:7 go back to [RX-054] , page 63.
950:23 Q And RX59 is a printout from an Excel 950:24 spreadsheet, right? 950:25 A Yes.	950:23 Q And [Exhibit 159] is a printout from an Excel 950:24 spreadsheet, right? 950:25 A Yes.
1043:21 MR. BENSON: Your Honor, I move to admit 1043:22 Division Exhibit 45 into evidence. 1043:23 JUDGE PATIL: Admitted. 1043:24 (Division Exhibit No. 45 was 1043:25 received in evidence.)	1043:21 MR. BENSON: Your Honor, I move to admit 1043:22 Division Exhibit [485] into evidence. 1043:23 JUDGE PATIL: Admitted. 1043:24 (Division Exhibit No. [485] was 1043:25 received in evidence.)
1066:2 MR. KING: Yep.	1066:2 MR. [SWIFT] : Yep.
1323:25 Q At the time -- well, let's call it now. 1324:1 Maybe even now looking back, do you have any	1323:25 Q At the time -- well, let's call it now. 1324:1 Maybe even now looking back, do you have any

Original	Corrected
<p>1324:2 reason to believe that the legal advice that you 1324:3 received from Greensfelder was in any way not 1324:4 impart? 1324:5 A No.</p>	<p>1324:2 reason to believe that the legal advice that you 1324:3 received from Greensfelder was in any way not 1324:4 [impartial]? 1324:5 A No.</p>
<p>1425:6 Q And this is a subscription agreement 1425:7 that you signed in connection with the purchase of 1425:8 \$50,000 worth of royalty units in May of 2011, 1425:9 correct? 1425:10 A Yes. 1425:11 Q Okay. And your signature appears on 1425:12 page one of Division Exhibit 59. In other words, 1425:13 read and approved, correct? 1425:14 A Yes.</p>	<p>1425:6 Q And this is a subscription agreement 1425:7 that you signed in connection with the purchase of 1425:8 \$50,000 worth of royalty units in May of 2011, 1425:9 correct? 1425:10 A Yes. 1425:11 Q Okay. And your signature appears on 1425:12 page one of Division Exhibit 59. [Under the] words, 1425:13 read and approved, correct? 1425:14 A Yes.</p>

Jason S. Patil
Administrative Law Judge