

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 4002/July 20, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-17253

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In the Matter of	:	
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JAMES A. WINKELMANN, SR., and	:	ORDER
BLUE OCEAN PORTFOLIOS, LLC	:	

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The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on May 19, 2016, pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940. The hearing is scheduled to commence on October 4, 2016. Under consideration are Respondents' Motion for More Definite Statement and responsive pleadings.

The OIP contains a number of specific allegations in paragraphs 2-15. Respondents seek a more definite statement on paragraph 16, which reads in its entirety:

In addition to the misrepresentations contained in the offering memoranda, Winkelmann made other false and misleading statements to his advisory clients. For instance, Winkelmann misrepresented the success of the Royalty Units offerings to prospective investors, including by sending an email to an advisory client in which Winkelmann materially overstated, by over 85%, the amounts earlier Royalty Unit investors had been repaid.

OIP at ¶16. Respondents complain that the OIP fails to identify the "other false and misleading statements" and when, how, and to whom Winkelmann allegedly made them. The Division notes that Respondents recognize that they are not, at this stage entitled to disclosure of evidence that the Division may present at the hearing. The Division refers to *Morris J. Reiter*, Exchange Act Release No. 6108, 1959 SEC LEXIS 588 (Nov. 2, 1959), which is frequently cited in orders denying motions for more definite statement and is the leading Commission case on this topic. That case stands for the proposition that "appropriate notice of proceedings is given [in the OIP] when the respondent is sufficiently informed of the nature of the charges against him so that he may adequately prepare his defense, and that he is not entitled to a disclosure of evidence." *Id.* at \*5. However, the *Reiter* ruling occurred long before the Commission adopted the deadlines contained in 17 C.F.R. § 201.360. Thus, the Commission's statement, "[s]hould it appear at the

hearing that additional time is required to enable registrant to prepare his defense with respect to evidence introduced by the Division, he may, of course, apply for a continuance” should no longer be relied on. *Id.* at \*6. In view thereof, the Division must identify the advisory client referenced in paragraph 16, and the list of additional “false and misleading statements” alleged will be considered final unless supplemented by July 29, 2016.

IT IS SO ORDERED.

/s/ Carol Fox Foelak  
Carol Fox Foelak  
Administrative Law Judge