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

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

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

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

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

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

Original	Corrected
174:5 payments may be considered an advertising	174:5 payments may be considered an advertising
expense,	expense,
174:6 you considered 2064; is that correct?	174:6 you considered [206(4)]; is that correct?
174:7 A I would say there are several statutes.	174:7 A I would say there are several statutes.
177:14 Q And, again, your numbers in this chart	177:14 Q And, again, your numbers in this
177:15 are based on those those documents that	chart
were	177:15 are based on those those documents that
177:16 created at least as of December of 2012 and	were
that	177:16 created at least as of December of 2012
177:17 contained I apologize. Strike that.	and that
177:18 And like the others, none of your	177:17 contained I apologize. Strike that.
177:19 none of your projections are based on	177:18 And like the others, none of your
documents	177:19 none of your projections are based on
177:20 that were in existence at or around the time of	documents
177:21 the third offering which was sent of 2012; is	177:20 that were in existence at or around the time
that	of
177:22 correct?	177:21 the third offering which was [September] of
	2012; is that
	177:22 correct?
178:17 Q Okay. I'm trying not to retread ground	178:17 Q Okay. I'm trying not to retread
178:18 that we've sort of already covered, but I guess	ground
178:19 what I'm trying to get at is when you were	178:18 that we've sort of already covered, but I
coming	guess
178:20 up with your calculations for the advertising	178:19 what I'm trying to get at is when you were
178:21 factor for the third offering, did you consider a	coming
178:22 document provided by the firm or that you	178:20 up with your calculations for the advertising
178:23 collected during your exam that showed the	178:21 factor for the third offering, did you consider
178:24 numbers, the advertising spent or the	а
revenue, as	178:22 document provided by the firm or that you
178:25 of specificallySeptember of 2012 at the time	178:23 collected during your exam that showed the
when	178:24 numbers, the advertising [spend] or the
179:1 the offering was being prepared?	revenue, as
	178:25 of specificallySeptember of 2012 at the
	time when
	179:1 the offering was being prepared?
192:24 Q Mr. Collins, Exhibits 440 through 444,	192:24 Q Mr. Collins, Exhibits 440 through
192:25 am I accurately describing them that they lay	444, 102.25 cm los cureto ludo coribina thom that they
Out	192:25 am I accuratelydescribing them that they
193:1 discrepancies between the advertising ratios	lay out
shown	193:1 discrepancies between the advertising ratios
193:2 in the offering memorandum and the	shown
advertising	193:2 in the offering memorandum and the
193:3 ratios that you calculated based on Blue	advertising
Ocean	193:3 ratios that you calculated based on Blue

193:4Portfolios's personal financial data?193:5A Could I just see the exhibits? I193:6dont193:7Q Oh, yeah.193:8Byron, can you pull up Exhibit 440?193:9A I just wanted to make sure we were193:11Q Talking about a discrepancybetween193:1222 in the offering memorandum and the193:13calculated off of Blue Ocean's internal193:14Calculated off of Blue Ocean's internal193:15A That's correct.193:16Q And I'll represent to you that Exhibits193:1741 through 444, theyre similar type exhibits193:20A I do.193:21Q And do you remember or do you recall193:22M I do.193:22A I do.193:22A I do.193:24the ad ratios in the offering memorandum and asked193:24the ad ratios in the offering memorandum and asked193:24the ad ratios in the offering memorandum and 193:23193:24the ad ratios in the offering memorandum and 193:25193:24the ad ratios in the offering memorandum and 193:25193:24the ad ratios in the offering memorandum and 193:25193:24the ad ratios in the offering memorandum and 193:25193:25advertising ratios based on Blue Ocean's internal194:13Q And where, if anywhere, in Mr. 194:14194:13Q And where, if anywhere, in Mr. 194:14194:13Q And where, if anywhere, in Mr. 194:15194:14Winkelmann's Wells s	Original	Corrected
193.6don't193.5ACould I just see the exhibits? I193.7QOh, yeah.193.6don't193.8Byron, can you pull up Exhibit 440?193.7QOh, yeah.193.9AI just wanted to make sure we were193.7QOh, yeah.193.10Iooking at the same thing. That's correct.193.10Iooking at the same thing. That's correct.193.12.22 in the offering memorandum and the numbers you193.13calculated off of Blue Ocean's internal financial193.14data.193.13calculated off of Blue Ocean's internal financial193.14data.193.14data.193.14data.193.15AThat's correct.193.16QAnd fli represent to you that Exhibits193.14tata.193.16QAnd fli represent to you that Exhibits193.19that?193.14data.193.16Q193.20AI do.193.19that?193.22Mr. Winkelmann's testimony that he was asked193.21QAnd do you remember or do you recall193.22Mr. Winkelmann's testimony that he was asked193.22Mr. Winkelmann's testimony that he was asked193.24the ad ratios in the offering memorandum and 193.24193.22Mr. Winkelmann's testimony that he was asked193.24the ad ratios in the offering memorandum and 193.25advertising ratios based on Blue Ocean's internal194.21AI recall that.193.22194.22 <td< td=""><td></td><td>Ocean</td></td<>		Ocean
193.6don't193.5A Could I just see the exhibits? I193.7Q Oh, yeah.193.8Byron, can you pull up Exhibit 440?193.9A I just wanted to make sure we were193.10looking at the same thing. That's correct.193.11Q Talking about a discrepancybetween193.12.22 in the offering memorandum and thenumbers you193.13193.14data.193.15A That's correct.193.14data.193.15A That's correct.193.16Q And I'l represent to you that Exhibits193.17441 through 444, they're similar type exhibits193.18for different offerings memorandum. Do you193.20A I do.193.22Mr. Winkelmann's testimony that he wasasked193.22193.24the ad ratios in the offering memorandum and193.25advertising ratios based on Blue Ocean's193.22A I do.193.23questions about discrepancies that existedbetween193.24193.24the ad ratios in the offering memorandum and193.24the ad ratios in the offering memorandum and193.24the ad ratios in the offering memorandum and193.24the ad ratios in the offering memorandum and193.25advertising ratios based on Blue Ocean's193.24the ad ratios in the offering memorandum and193.25advertising ratios based on Blue Ocean's193.24the ad ratios in the offering memorandum and193.25advertising rati	193:5 A Could I just see the exhibits? I	193:4 Portfolios's [internal] financial data?
193:7 193:8QOh, yeah.193:6don't193:8Byron, can you pull up Exhibit 440?193:7QOh, yeah.193:9ALjust wanted to make sure we were193:8Byron, can you pull up Exhibit 440?193:10looking at the same thing. That's correct.193:9ALjust wanted to make sure we were193:11QTalking about a discrepancy between193:10looking at the same thing. That's correct.193:12.22 in the offering memorandum and the numbers you193:13calculated off of Blue Ocean's internal financial193:13calculated off of Blue Ocean's internal financial193:13calculated off of Blue Ocean's internal financial193:14data.193:14data.193:15AThat's correct.193:16Q193:14data.193:15AThat's correct.193:15AThat's correct.193:16QAnd I'll represent to you that Exhibits193:19that?193:18for different offerings memorandum. Do you recall193:19that?193:20AI do.193:19that?193:21QAnd do you remember or do you recall193:20A193:22Mr. Winkelmann's testimony that he was asked193:22aceitant193:23questions about discrepancies that existed between193:22QAnd do you remember or do you recall193:24the ad ratios in the offering memorandum and 193:25a loc.193:22ques		193:5 A Could I just see the exhibits? I
193:8Byron, can you pull up Exhibit 440?193:7QOh, yeah.193:9AI just wanted to make sure we were193:8Byron, can you pull up Exhibit 440?193:10Iooking at the same thing. That's correct.193:9AI just wanted to make sure we were193:11QTalking about a discrepancybetween193:10Iooking at the same thing. That's correct.193:12.22 in the offering memorandum and the numbers you193:12.22 in the offering memorandum and the numbers you193:13calculated off of Blue Ocean's internal financial193:14.22 in the offering memorandum and the numbers you193:14data.193:14.21 in the offering memorandum. and the numbers you193:15AThat's correct.193:14.21 in the offering memorandum. and the numbers you193:14data.193:15AThat's correct.193:15AThat's correct.193:14.22 in the offering semorandum. Do you recall193:19that?193:19that?.23 in the offerings memorandum. Do you recall193:20AI do.193:21Q193:22Mr. Winkelmann's testimony that he was asked193:22Mr. Winkelmann's testimony that he was asked193:24the ad ratios in the offering memorandum and 193:25advertising ratios based on Blue Ocean's internal193:24the ad ratios in the offering memorandum and 193:24193:25advertising ratios based on Blue Ocean's internal194:25AI recall	193:7 Q Oh, yeah.	
193:9AI just wanted to make sure we were193:10looking at the same thing. That's correct.193:11QTalking about a discrepancy between193:12.22 in the offering memorandum and thenumbers you193:13193:14data.193:15AThat's correct.193:16QAnd I'll represent to you that Exhibits193:17441 through 444, they're similar type exhibits193:19that?193:20A193:21Q193:22Mr. Winkelmann's testimony that he wasasked193:23questions about discrepancies that existed193:24the ad ratios in the offering memorandum and193:24the ad ratios in the offering memorandum and193:24A193:24A193:25A193:24Ti financial data?193:25advertising ratios based on Blue Ocean's193:24the ad ratios in the offering memorandum and194:24A194:27A194:28A194:29A194:29A194:20A194:20A194:21Q194:21Q194:24Winkelmann's Wells submission does heexplain the194:13194:14Winkelmann's Wells submission does heexplain the194:14		193:7 Q Oh, yeah.
193:10looking at the same thing. That's correct.193:9AI just wanted to make sure we were193:11QTalking about a discrepancy between193:10looking at the same thing. That's correct.193:1222 in the offering memorandum and the numbers you193:12.22 in the offering memorandum and the numbers you193:12.22 in the offering memorandum and the numbers you193:13calculated off of Blue Ocean's internal financial193:14.41a.193:12.22 in the offering memorandum and the numbers you193:14data.193:14data.193:14.41a193:15AThat's correct.193:14193:16QAnd thil represent to you that Exhibits but193:15AThat's correct.193:19that?193:16QAnd dhil represent to you that Exhibits193:20AI do.193:17441 through 444, they're similar type exhibits but193:21QAnd do you remember or do you recall193:20AI do.193:22Mr. Winkelmann's testimony that he was asked193:21QAnd do you remember or do you recallat193:22193:23questions about discrepancies that existed between193:24He ad ratios in the offering memorandum and 193:24193:23193:24the ad ratios in the offering memorandum and 193:24193:24the ad ratios in the offering memorandum and194:12AI recall that.193:24the ad ratios in th		5
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explain the explain the		
	explain the	
	194:15 discrepancies between the numbers in the	194:15 discrepancies between the numbers in the
offering		•
194:16 memoranda for the ad ratios and the ad ratio 194:16 memoranda for the ad ratios and the ad	0	0
194:17 numbers based on the OP's internal financial ratio		
data? 194:17 numbers based on [BOP's] internal		
194:18 A I don't believe he discusses the financial data?		

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

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

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

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

Original	Corrected
fully	fully
371:24 disclosed BD until 2008.	371:24 disclosed BD until 2008.
371:25 Q Okay. So how long did you own the	371:25 Q Okay. So how long did you own the
broker	broker
372:1 dealer for?	372:1 dealer for?
372:2 A Which one?	372:2 A Which one?
372:3 Q Any broker dealer prior to Blue Ocean.	372:3 Q Any broker dealer prior to Blue Ocean.
372:4 For how long did you own the broker dealer?	372:4 For how long did you own the broker dealer?
372:5 A From 1987 through 2008.	372:5 A From 1987 through 2008.
372:6 Q 1987 through 2008?	372:6 Q 1987 through 2008?
372:7 A That's correct.	372:7 A That's correct.
372:8 Q And before you started Blue Ocean	372:8 Q And before you started Blue Ocean
372:9 Portfolios, how long did you own the registered	372:9 Portfolios, how long did you own the
372:10 investment advisory for?	registered
372:11 A Since 1988.	372:10 investment advisory [firm]?
372:12 Q Until?	372:11 A Since 1988.
372:13 A 2010.	372:12 Q Until?
	372:13 A 2010.
376:20 Q And you understood you were right to	376:20 Q And you understood you were
376:21 disclose to your clients all information as to	[required] to
any	376:21 disclose to your clients all information as to
376:22 potential or actual conflicts of interest?	any
376:23 A Yes.	376:22 potential or actual conflicts of interest?
	376:23 A Yes.
392:19 Q And a mutual fund is an investment?	392:19 Q And a mutual fund is an investment?
392:20 A It's a product.	392:20 A It's a product.
392:21 Q Sir, are you telling me that it's your	392:21 Q Sir, are you telling me that it's your
392:22 testimony that a mutual fund is not an	392:22 testimony that a mutual fund is not an
investment?	investment?
392:23 A It's an investment product. It's a	392:23 A It's an investment product. It's a
392:24 package product involving investments.	392:24 package product involving investments.
392:25 Q And stocks and investments, right?	392:25 Q And [stock's an investment], right?
393:1 A Sure.	393:1 A Sure.
393:2 Q A variable annuities of investment?	393:2 Q A variable [annuity's an] investment?
393:3 A It's a product.	393:3 A It's a product.
393:4 Q Sir, a variable annuity isn't an	393:4 Q Sir, a variable annuity isn't an
393:5 investment?	393:5 investment?
393:6 A It's an investment product.	393:6 A It's an investment product.
395:17 Q Okay. And I think another thing you	395:17 Q Okay. And I think another thing you
told	told
395:18 the Court upon his questioning is, that a	395:18 the Court upon his questioning is, that a
feature of 205-10 all the products referenced in Exhibit 28 was	feature of 205:10 all the products referenced in Exhibit [229]
395:19 all the products referenced in Exhibit 28 was	395:19 all the products referenced in Exhibit [228]
that	was that

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

Original	Corrected
429:25 the source of client leads, right?	429:25 the source of client leads, right?
430:1 A Well, obviously, you can see this.	430:1 A Well, obviously, you can see this.
430:2 Q It goes down to, like, GMO Bryan or	430:2 Q It goes down to, like, [Jim O'Brien] or
430:3 downloaded a CD or the Blue Ocean website,	430:3 downloaded a CD or the Blue Ocean website,
right?	right?
430:4 A The financial Coach website is on there,	430:4 A The financial Coach website is on
430:5 yeah.	there,
430:6 Q It looks like it's not so meticulous that	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	430.7 it's breaking out what portion of the leads from
430:9 opposed to other sources?	430:8 97.1 came from Mr. Binkholder's radio show
	as
	430:9 opposed to other sources?
449:3 Q And you meticulous tracked Blue Ocean	449:3 Q And you [meticulously] tracked Blue
449:4 Portfolios advertising yield data?	Ocean
449:5 A Our business practices continually	449:4 Portfolios advertising yield data?
evolved	449:5 A Our business practices continually
449:6 the tracking of the advertising spent.	evolved
449:7 Q Right. But you or Blue Ocean	449:6 the tracking of the advertising [spend].
Portfolios?	449:7 Q Right. But you or Blue Ocean
449:8 A Right.	Portfolios?
449:9 Q Meticulous tracked Blue Ocean	449:8 A Right.
Portfolios	449:9 Q [Meticulously] tracked Blue Ocean
449:10 advertising yield data?	Portfolios
	449:10 advertising yield data?
451:25 The enumerator is the culmination of the	451:25 The [numerator] is the culmination of the
452:1 advertising results. May I use an analogy?	452:1 advertising results. May I use an analogy?
455:9 Q So when you say to investors that the	455:9 Q So when you say to investors that the
455:10 advertising factor for 2011 was .79, okay, what is	455:10 advertising factor for 2011 was .79, okay, what is
455:11 the enumerator?	455:11 the [numerator]?
455:12 A The current business that is coming on	455:12 A The current business that is coming
455:13 that month.	on
	455:13 that month.
456:21 In the second third and fourth offering	456:21 In the second third and fourth offering
456:22 memorandum when you said the 2011 factor	456:22 memorandum when you said the 2011 factor
was .79,	was .79,
456:23 was enumerator an advertising expense or	456:23 was [numerator] an advertising expense or
was it a	was it a
456:24 revenue?	456:24 revenue?
456:25 A The number on top? I want to make	456:25 A The number on top? I want to make
Sure we	Sure we
457:1 are talking about	457:1 are talking about

Original	Corrected
457:2 Q I think enumerator is the number on	457:2 Q I think [numerator] is the number on
top? 458:1 Q I just want to know for 2011, when you say	top? 458:1 Q I just want to know for 2011, when you say
458:2 the factor is .979, I'm sorry, is the	458:2 the factor is .979, I'm sorry, is the
458:3 enumerator, expense or is the enumerator	458:3 [numerator], expense or is the [numerator]
revenue?	revenue?
458:4 A The number on top is the expense.	458:4 A The number on top is the expense.
458:9 Q Okay. So for 2009 or 2011, if we wanted	458:9 Q Okay. So for 2009 or 2011, if we wanted
458:10 to do the calculation in the way you are	458:10 to do the calculation in the way you are
saying you	saying you
458:11 represented it to investors, you would take the	458:11 represented it to investors, you would take
458:12 advertising expense for all of 2011, that's the	the
458:13 enumerator?	458:12 advertising expense for all of 2011, that's the 458:13 [numerator]?
460:10 Q Okay. And so you were able to agree	460:10 Q Okay. And so you were able to
with	agree with
460:11 me that the factor, the enumerator is	460:11 me that the factor, the [numerator] is
advertising	advertising
460:12 expense, right?	460:12 expense, right?
460:13 A Yes.	460:13 A Yes.
460:14 Q And when you say the enumerator for 2011	460:14 Q And when you say the [numerator] for 2011
460:15 is advertising expense, is it the advertising	460:15 is advertising expense, is it the advertising
460:16 expense covering the whole year of 2011?	460:16 expense covering the whole year of 2011?
460:17 A I had have to look at the documents. I	460:17 A I had have to look at the documents.
460:18 want to be accurate. You want me to be	
accurate?	460:18 want to be accurate. You want me to be
467:22 Q So the enumerator is some set period	accurate? 467:22 Q So the [numerator] is some set
of	period of
467:23 time, right?	467:23 time, right?
467:24 A Yes.	467:24 A Yes.
470:1 Q All right. So I think we're at least	470:1 Q All right. So I think we're at least
470:2 settled that the enumerator is the expense for	470:2 settled that the [numerator] is the expense
some	for some
470:3 given period, right?	470:3 given period, right?
470:4 A Let's use five years of expenses.	470:4 A Let's use five years of expenses.
470:5 Q Sure.	470:5 Q Sure.
470:6 A Let's take the last five years of 470:7 expenses. We probably spent \$750,000 in	470:6 A Let's take the last five years of 470:7 expenses. We probably spent \$750,000 in
The subclises we high and shell \$1.20,000 III	Trou cypenses, we provably spend \$150,000 III

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

Original	Corrected
497:24 Blue Ocean Portfolios' business. Since	our
launching	497:24 Blue Ocean Portfolios' business. Since
497:25 the companythis August of 2009, we have	launching
grown the	497:25 the companythis August of 2009, we have
498:1 AUM to approximately \$36 million.	grown the
498:2 We continue to grow everyday due to	498:1 AUM to approximately \$36 million.
our	498:2 We continue to grow everyday due to
498:3 effective radio show advertising on KMOX and	our
OUR STATES A TH	498:3 effective radio show advertising on KMOX and
498:4 weekly radio program on FM 97.1, The	OUR
Financial	498:4 weekly radio program on FM 97.1, The
498:5 Coach.	
498:6 We are spending about \$2200 to lend \$1	498:5 Coach.
498:7 million in new AUM that generates	498:6 We are spending about \$2200 to [land] \$1
approximately	
498:8 9,000 in recurring annual revenue. May I	498:7 million in new AUM that generates
approach, 498:9 Your Honor?	approximately 498:8 9,000 in recurring annual revenue. May I
	approach,
	498:9 Your Honor?
546:11 Q And Exhibit 40, that's a May 3rd letter	546:11 Q And Exhibit 40, that's a May 3rd letter
546:12 that you wrote to Mr. Mark Funfsion? How do	546:12 that you wrote to Mr. Mark [Funfsinn]? How
you say	do you say
546:13 his last name?	546:13 his last name?
546:14 A I still don't know.	546:14 A I still don't know.
546:15 Q How about we just call him, Mark. So	546:15 Q How about we just call him, Mark. So
546:16 Mark, Mr. Funfsion, is still a client?	546:16 Mark, Mr. [Funfsinn], is still a client?
546:17 A Yes, he is still a client, long-term	546:17 A Yes, he is still a client, long-term
546:18 client.	546:18 client.
549:13 Q Did you tell Mr. Erst that he can't	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	549:14 invest if he doesn't get his money in by the
end of	end of
549:15 May?	549:15 May?
549:16 A No.	549:16 A No.
549:17 Q You took his money in July?	549:17 Q You took his money in July?
549:18 A Correct.	549:18 A Correct.
549:19 Q And let's go to the last sentence of this	549:19 Q And let's go to the last sentence of
549:20 letter or I'm sorry, Exhibit 40. And you write	this
549:21 to your client, Mr. Funfsion, Because of the	549:20 letter or I'm sorry, Exhibit 40. And you
549:22 fiduciary relationship we have with you I	write 540:21 to your client Mr. [Eunfeinn] Recause of
cannot 549:23 recommend that you or your family participate	549:21 to your client, Mr. [Funfsinn], Because of the
lin	549:22 fiduciary relationship we have with you I

Original	Corrected
549:24 this offering due to the potential conflict that	cannot
549:25 such a recommendation will create. This	549:23 recommend that you or your family
letter is	participate in
550:1 not an offer. Nonetheless, I wanted to make	549:24 this offering due to the potential conflict that
you	549:25 such a recommendation will create. This
550:2 aware of the situation and provide you with the	letter is
550:3 offering materials. Please do not hesitate to	550:1 not an offer. Nonetheless, I wanted to make
call	you
550:4 should you have any questions or comments.	550:2 aware of the situation and provide you with
550:5 Do you see that?	the
550:6 A Yes.	550:3 offering materials. Please do not hesitate to
550:7 Q So it looks like you recognize that a	call
550:8 potential conflict existed between you and an	550:4 should you have any questions or comments.
550:9 advisory client who you're offering royalty unit	550:5 Do you see that?
550:10 investments to?	550:6 A Yes.
550:11 A This was my attempt to tell them like	550:7 Q So it looks like you recognize that a
Mr.	550:8 potential conflict existed between you and an
550:12 Swardson told Heidi yesterday that I couldn't	550:9 advisory client who you're offering royalty unit
550:13 recommend they purchase it or not.	550:10 investments to?
550:14 Q Right. But what you are telling Mr.	550:11 A This was my attempt to tell them like
550:15 Funfsion is that a potential conflict exists,	Mr.
right?	550:12 Swardson told Heidi yesterday that I couldn't
550:16 A I felt we could not quote, recommend	550:13 recommend they purchase it or not.
Or EE0.17 advice people our gliepte to huwit	550:14 Q Right. But what you are telling Mr.
550:17 advise people, our clients, to buy it.	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.
557:20 Q Okay. Exhibit 60, please. And these are	557:20 Q Okay. Exhibit 60, please. And these
557:21 two e-mails from Ms. Hennessen to you?	are
557:22 A Correct.	557:21 two e-mails from Ms. [Hennessy] to you?
557:23 Q And Ms. Hennessen was one of your	557:22 A Correct.
557:24 employees?	557:23 Q And Ms. [Hennessy] was one of your
557:25 A Correct.	557:24 employees?
	557:25 A Correct.
560:10 Q Let's go to Exhibit 7 and this is an	560:10 Q Let's go to Exhibit <b>[70]</b> and this is an
560:11 October 18th, 2011 e-mail from you to Mr.	560:11 October 18th, 2011 e-mail from you to Mr.
560:12 Binkholder?	560:12 Binkholder?
566:21 Q Just wanted to make sure you were	566:21 Q Just wanted to make sure you were
ready to	ready to
566:22 go. In December 2011, you learned that the	566:22 go. In December 2011, you learned that the
Missouri	Missouri

Original	Corrected
566:23 Division of Securities barred Mr. Binkholder	566:23 Division of Securities barred Mr. Binkholder
from	from
566:24 acting as an investment visor, correct?	566:24 acting as an investment [adviser], correct?
577:13 I think I had a call	577:13   think   had a call
577:14 from Wendy McGeenythat day too.	577:14 from Wendy [Menghini] that day too.
577:15 Q Wendy McGeeny, the day you	577:15 Q Wendy [Menghini] the day you
emailed it to	emailed it to
577:16 Mr	577:16 Mr
577:17 A No. I didn't say I emailed it. I believe	577:17 A No. I didn't say I emailed it. I believe
577:18 Wendy is involved in the conversation. She is	577:18 Wendy is involved in the conversation. She
577:10 wendy is involved in the conversation. She is	is
	577:19 alive.
577:20 Q She is alive, right? 577:21 A Yeah, she is alive.	
	577:20 Q She is alive, right? 577:21 A Yeah, she is alive.
J J	577:22 Q And so you talked to not only Mr.
Morgan, 577.22 but Ms. McCoopyin the same conversation in	
577:23 but Ms. McGeenyin the same conversation in 2011	Morgan, 577-22 but Mc [Monghini] in the same
	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. McGeeny knew	577:24 where you told them about the bar order,
5	right? 577:25 A My recollection is Ms. [Menghini]
about 578:1 the bar order before I did.	577:25 A My recollection is Ms. [Menghini] knew about
	578:1 the bar order before I did.
578:9 Q Because there's no reference to Ms.	578:9 Q Because there's no reference to Ms.
578:10 McGeeny talking to you either at any time in	578:10 [Menghini] talking to you either at any time
578:11 December 2011 or January of 2011.	in s s s
, , , , , , , , , , , , , , , , , , ,	578:11 December 2011 or January of 2011.
	5
657:1 Q And that's where I'm going. You took	657:1 Q And that's where I'm going. [He] took
657:2 time to digest the order so he could intelligently	657:2 time to digest the order so he could
657:3 speak to you extensively about it, right?	intelligently
657:4 A Uh-huh.	657:3 speak to you extensively about it, right?
657:5 Q Is that a "yes"?	657:4 A Uh-huh.
657:6 A Yes, I'm sorry.	657:5 Q Is that a "yes"?
657:7 Q And you had a he did in fact speak	657:6 A Yes, I'm sorry.
657:8 extensively to you about it, right?	657:7 Q And you had a he did in fact speak
657:9 A That's my recollection.	657:8 extensively to you about it, right?
	657:9 A That's my recollection.
658:3 Q And that would include services that his	658:3 Q And that would include services that
658:4 partner, Ms. Menghini, performed also?	his
658:5 A I don't know. It's my understanding that	658:4 partner, Ms. Menghini, performed also?
658:6 Mr. Morgan was the billing partner so that he	658:5 A I don't know. It's my understanding
658:7 would any bills that would go out of	that

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

Original	Corrected
725:16 up with a deal. I am hesitant" "I am hesitate	come
725:17 to go back to some of the investor/clients with	725:16 up with a deal. I am hesitant" "I am
725:18 this bad news. Need to be careful to not start	hesitate
any	725:17 to go back to some of the investor/clients
725:19 rumors."	with
725:20 Do you see that?	725:18 this bad news. Need to be careful to not
	start any
	725:19 rumors."
	725:20 Do you see that?
738:10 Q And then you write, "This will be our	738:10 Q And then you write, "This will be our
738:11 file" "our final round. I need to go ahead	738:11 file" "our final round. I need to go ahead
and	and
738:12 dam the torpedoes."	738:12 [damn] the torpedoes."
789:14 Q And after your February 2005	789:14 Q And after your February [2015]
testimony	testimony
789:15 with Mr. Benson, you began taking the	789:15 with Mr. Benson, you began taking the
position that	position that
789:16 Blue Ocean Portfolios had custody of client	789:16 Blue Ocean Portfolios had custody of client
assets,	assets,
789:17 correct?	789:17 correct?
789:18 A Correct.	789:18 A Correct.
012.21 O And you write out you write to Mr	012.21 O And you write out you write to Mr
813:21 Q And you write out you write to Mr. 813:22 Grazer, "Blue Ocean ATM has the concession	813:21 Q And you write out you write to Mr.
to	813:22 [Graser], "Blue Ocean ATM has the concession to
813:23 provide ATMs to the Festival of the Little Hills,	813:23 provide ATMs to the Festival of the Little
813:24 August 16 to 18th. We are going to need	Hills,
about	813:24 August 16 to 18th. We are going to need
813:25 70,000 in vault cash to keep the ATMs filled.	about
Blue	813:25 70,000 in vault cash to keep the ATMs filled.
814:1 Ocean Portfolios, LLC, has enough in the	Blue
operating	814:1 Ocean Portfolios, LLC, has enough in the
814:2 account to lend out this cash over the	operating
weekend.	814:2 account to lend out this cash over the
814:3 Unfortunately, this creates a bunch of	weekend.
regulatory	814:3 Unfortunately, this creates a bunch of
814:4 scrutiny by the SEC when they examine Blue	regulatory
Ocean	814:4 scrutiny by the SEC when they examine Blue
814:5 Portfolios nothing illegal, just a hassle. I	Ocean
814:6 would rather avoid moving money back and	814:5 Portfolios nothing illegal, just a hassle. I
forth	814:6 would rather avoid moving money back and
814:7 between the companies."	forth
814:8 And at this time this was like a month	814:7 between the companies."
814:9 after Mr. Collins and his team came in and did	814:8 And at this time this was like a month
the	814:9 after Mr. Collins and his team came in and did

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	841:15 MR. HANAUER: So that one I think we need
841:16 to go to Exhibit 442. And then you see	841:16 to go to Exhibit 442. And then you see
factors in	factors in
841:17 excess of 1.11 for the most recent 12 months,	841:17 excess of 1.11 for the most recent 12
and	months, and
841:18 then all the factors including the bank holder	841:18 then all the factors including the
841:19 payments.	[Binkholder]
	841:19 payments.
872:24 BY MS. VONDERHEIDE:	872:24 BY MS. VONDERHEIDE:
872:25 Q What time period does this chart offer?	872:25 Q What time period does this chart
873:1 A So this chart is showing November 2011 873:2 data through February. And then it	[Cover]?
873:2 data through February. And then it appears that	873:1 A So this chart is showing November 2011 873:2 data through February. And then it
873:3 we had also then in the beginning of	appears that
March, just	873:3 we had also then in the beginning of
873:4 updated the formulas to begin pulling	March, just
March data.	873:4 updated the formulas to begin pulling
873:5 Although this would have been created,	March data.
you know,	873:5 Although this would have been created,
873:6 the first week or so of March that way; so	you know,
that's	873:6 the first week or so of March that way; so
873:7 why there's it's really a February report.	that's
898:6 Can you go back to a full screen? And	<ul><li>873:7 why there's it's really a February report.</li><li>898:6 Can you go back to a full screen? And</li></ul>
898:6 Can you go back to a full screen? And 898:7 go back to RX64, page 63.	898.7 go back to <b>[RX-054]</b> , page 63.
	070.7 go backio [ <b>177-034]</b> , page 03.
950:23 Q And RX59 is a printout from an Excel	950:23 Q And [Exhibit 159] is a printout from an
950:24 spreadsheet, right?	Excel
950:25 A Yes.	950:24 spreadsheet, right?
	950:25 A Yes.
1043:21 MR. BENSON: Your Honor, I move to	1043:21 MR. BENSON: Your Honor, I move to
admit	admit 1042.22 Division Euklikit <b>[405]</b> into evidence
1043:22 Division Exhibit 45 into evidence.	1043:22 Division Exhibit [485] into evidence.
1043:23 JUDGE PAT IL: Admitted. 1043:24 (Division Exhibit No. 45 was	1043:23 JUDGE PATIL: Admitted. 1043:24 (Division Exhibit No. [485] was
1043:24(Division Exhibit No. 45 was1043:25received in evidence.)	1043:24(Division Exhibit No. [485] was1043:25received in evidence.)
1066:2 MR. KING: Yep.	1066:2 MR. [SWIFT]: Yep.
1323:25 Q At the time well, let's call it now.	1323:25 Q At the time well, let's call it now.
1324:1 Maybe even now looking back, do you	1324:1 Maybe even now looking back, do you
have any	have any

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

Jason S. Patil Administrative Law Judge