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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17253

In the Matter of

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

Respondents.

THE DIVISION OF ENFORCEMENT'S PETITION FOR REVIEW

Pursuant to Commission Rule of Practice 410(b), the Division of Enforcement ("Division") hereby files a Petition for Review of the Initial Decision Following Remand in this matter (Initial Decision Rel. No. 1261 (the "Initial Decision")). The Division respectfully requests the Commission to review the following aspects of the Initial Decision:

1. The erroneous conclusion that Respondents James Winkelmann ("Winkelmann") and Blue Ocean Portfolios, LLC ("BOP") did not violate the antifraud provisions of the Securities Act of 1933 ("Securities Act"), Securities Exchange Act of 1934 ("Exchange Act"), and Investment Advisers Act of 1940 ("Advisers Act")[1] even though they:

   (a) failed to disclose the Missouri investment adviser bar imposed against Bryan Binkholder – who co-founded BOP with Winkelmann, who played a central role in BOP's advertising and marketing efforts, and who Respondents prominently featured in

[1] Those provisions, collectively referred to herein as the "Antifraud Provisions," are Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Sections 206(1) and 206(2).

the offering materials at issue in these proceedings – to BOP royalty unit investors and potential investors;

(b) misrepresented the amount of money BOP had repaid royalty unit investors and the amount of money BOP had raised in the royalty unit offerings;

(c) failed to disclose conflicts, misrepresented a lack of conflicts, and breached fiduciary duties owed to BOP clients who invested in royalty units;[2]

(d) misrepresented to investors other than BOP clients, the "alignment" and lack of conflicts between Winkelmann's and the investors' interests; and

(e) misrepresented and made material omissions regarding BOP's "advertising ratio,"[3] a business performance metric the royalty unit offering materials represented was the "key driver" of BOP's business and would impact the pace of investor returns.

2. The erroneous imposition of insufficient sanctions, including the: (a) failure to impose Cease-and-Desist Orders regarding the scienter-based Antifraud Provisions; (b) imposition of only a six-month suspension against Winkelmann; (c) imposition of only first tier civil penalties; and (d) application of the statute of limitations to limit penalties, despite valid tolling agreements.

The above-described aspects of the Initial Decision embody findings or conclusions of material fact that are clearly erroneous, conclusions of law that are erroneous, and/or an exercise of discretion or decision of law or policy that is important and the Commission should review.

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[2] The Initial Decision found that Respondents' misrepresentations and omissions to clients regarding conflicts, and their breach of fiduciary duties, constituted negligence-based violations of Securities Act Sections 17(a)(2) and (a)(3) and Advisers Act Section 206(2). The Division seeks review of the Initial Decision's finding that such conduct did not similarly violate the scienter-based Antifraud Provisions.

[3] Respondents also referred to the advertising ratio as the "advertising conversion rate" or "advertising factor."

WHEREFORE, the Division of Enforcement respectfully requests that the Commission grant its petition for review of the issues described herein.

Dated: November 5, 2018

Respectfully submitted:

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