UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of: **JAMES A. WINKELMANN, SR. AND BLUE OCEAN PORTFOLIOS, LLC,** **Respondents.**	ADMINISTRATIVE PROCEEDING File No. 3-17253

MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

Pursuant to SEC Rule of Practice 452, Respondents James A. Winkelmann, Sr. and Blue Ocean Portfolios, LLC ("Blue Ocean" or the "Firm") hereby file this Motion for Leave to Adduce Additional Evidence and supplement the record before the Commission. In support, Respondents state as follows:

I. BACKGROUND

On October 15, 2018 Respondents were served with an Initial Decision on Remand (ID) in this matter. Based on additional evidenced adduced into the record on June 15, 2017 the Initial Decision on Remand reversed the findings of scienter in the original Initial Decision of March 20, 2017 and concluded that Respondents acted without scienter[1].

Respondents request leave to supplement the record with an additional email correspondence[2] from Michael Morgan (deceased) formerly with the Greensfelder, Hemker & Gale law firm ("Greensfelder") to Respondents dated March 24, 2011. The email provides support for Respondents' advice of counsel defense.

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[1] ID page 70.
[2] Exhibit A – March 24, 2011 Email from M. Morgan to J. Winkelmann

Additionally, Respondents request leave to supplement the record with an affidavit[3] from Erwin O. Switzer, General Counsel of Greensfelder, that confirms the role that Greensfelder performed with respect to the issuance of the Royalty Units.

II. ANALYSIS

The email and the affidavit qualify for admission as additional evidence under Rule 452, which allows additional evidence where the moving party "show[s] with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." Rule of Practice 452, 17 C.F.R. § 201.452. This standard is easily met under the circumstances presented here.

A. The Additional Evidence Is Material.

Both Exhibit A and B support Respondents' advice of counsel defense and rebut the Division's claims that scienter-based sanctions should be imposed on Respondents.

The email, Exhibit A, demonstrates that Mr. Morgan, counsel for Mr. Winkelmann and Blue Ocean, was specifically aware of Blue Ocean's plans to offer royalty units to its advisory clients. Mr. Morgan's email was written just before Blue Ocean began the first royalty unit offering on March 31, 2011. Mr. Morgan's email discusses whether Blue Ocean could "issue a security to a client." Mr. Morgan's email therefore supports Respondents' claim that Respondents relied on the advice of their counsel when offering the royalty units to Blue Ocean advisory clients.

The affidavit, Exhibit B, demonstrates that Greensfelder "provided legal advice to Winkelmann and Blue Ocean in connection with" the royalty unit offerings. The email exhibits of this affidavit have been already adduced into the record. However, Respondents are also

[3] Exhibit B – May 3, 2017 Affidavit of Erwin O. Switzer

requesting leave to supplement the record with the affidavit itself. The affidavit references the Greensfelder response to the to subpoena served on them by the Division dated December 17, 2015. The Greensfelder response to that referenced subpoena failed to include Exhibit A.

B. Respondents Have Reasonable Grounds For Not Previously Adducing the Evidence.

Respondents did not have a copy of Exhibit A until it was recently obtained in Respondents' civil suit against Greensfelder.[4] Respondents requested their entire file from Greensfelder prior to the Administrative Law Judge hearing in June of 2016. Exhibit A was not included in the voluminous Greensfelder response to that request.[5] Also, Greensfelder did not produce Exhibit A in their response to the December 17, 2015 Division's subpoena.

III. CONCLUSION

For the reasons and circumstances stated above Respondents respectfully request that the Commission accept both Exhibit A, the March 24, 2011 email, and Exhibit B, Erwin Switzer's affidavit.

Dated: July 9, 2019

James A. Winkelmann

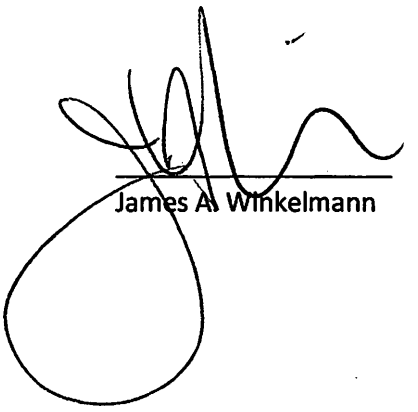
Blue Ocean Portfolios, LLC
23 Glen Abbey Drive
Saint Louis, MO 63131
(314)226-7411
Jim@BlueOceanPortfolios.com

[4] Blue Ocean v. Greensfelder, Circuit Court of St. Louis County No. 19SL-CC00307.
[5] Exhibit C, First Amended Petition, paragraphs 127-131.

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2019, I served a copy of the foregoing MOTION FOR LEA VE TO ADD ADDITIONAL EVIDENCE, as follows:

Original and three copies Via US First Class Mail	Office of the Secretary U.S. Securities & Exchange Commission 100 F Street, N.E. Washington, DC 20549
One Copy to: Via Email	David F. Benson Benjamin J. Hanauer U.S. Securities & Exchange Commission 175 W. Jackson Blvd., Ste 900 Chicago, IL 60604 bensond@sec.gov hanauerb@sec.gov
One Copy Via Email	Hon. Jason Patil Administrative Law Judge U.S. Securities & Exchange Commission 100 F. Street, N.E. Washington DC 20549-2557 ALJ@SEC.gov



James A. Winkelmann

EXHIBIT A

From: Michael Morgan [mm@greensfelder.com]
Sent: Thursday, March 24, 2011 2:47 PM
To: Jim
Subject: Re: ADV - more

OK my last comment on the ADV.

I guess that arguably for BOP to issue a security to a client is a principal cross-transaction, which your ADV says you don't do.

The obvious solution is to amend the ADV to cover this BUT that means a reference in the ADV to this offering, which I think is a bad idea.

I think we stick where we are, but I have not researched the no-action letters or other materials that might address this or any other aspects of an offering by an IA to its customers of its securities. I did spend some time with the CCH reporter and saw nothing. But the risks here are small - the customers with whom you engage in these transactions will, after all, certainly will know your status as "principal."

Just to let you know my thinking on this.

MM

Michael Morgan
Greensfelder, Hemker & Gale, P.C.
10 S. Broadway, Suite 2000
St. Louis, MO 63102

[redacted] (cell)e
314-241-9090 (main)e

Exhibit A

Exhibit B

UNITED STATE OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of: **JAMES A. WINKELMANN, SR. AND BLUE OCEAN PORTFOLIOS, LLC,** **Respondents.**	ADMINISTRATIVE PROCEEDING File No. 3-17253

AFFIDAVIT OF ERWIN O. SWITZER

1. My name is Erwin O. Switzer. I currently serve as the General Counsel for the law firm Greensfelder, Hemker & Gale, P.C. ("Greensfelder"). In my capacity as General Counsel for Greensfelder, I have personal knowledge of the facts set forth in this Affidavit.

2. I understand that in the above-captioned proceeding, the Securities and Exchange Commission (the "Commission") brought charges against James A. Winkelmann, Sr. and Blue Ocean Portfolios, LLC ("Blue Ocean") related to four royalty unit offerings that occurred between March 2011 and February 2013 (the "Offerings").

3. Greensfelder provided legal advice to Winkelmann and Blue Ocean in connection with the Offerings. The late Michael Morgan was the attorney responsible for Greensfelder's representation of Winkelmann and Blue Ocean in connection with the Offerings. Morgan died on February 6, 2015.

4. The document attached as Exhibit 1 to this Affidavit is a true and correct copy of an email (with accompanying attachment) that Winkelmann sent to Morgan on March 28, 2011.

5. On December 31, 2015, Greensfelder produced a copy of the document attached as Exhibit 1 to the Commission in response to a subpoena dated December 17, 2015. *See* GHG-004590–GHG004591.

6. The document attached as Exhibit 2 to this Affidavit is a true and correct copy of an email (with accompanying attachment) that Morgan sent to Winkelmann on March 29, 2011.

7. On December 31, 2015, Greensfelder produced a copy of the document attached as Exhibit 2 to the Commission in response to a subpoena dated December 17, 2015. *See* GHG-004317–GHG-004319.

8. Greensfelder confirms the authenticity of the documents attached as Exhibits 1 and 2 to this Affidavit.

9. Attached as Exhibit 3 to this Affidavit is a document tracking the changes between the attachment to Exhibit 1 and the attachment to Exhibit 2.

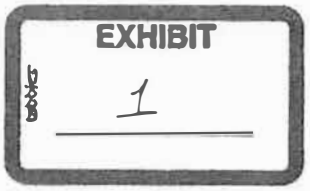
Erwin O. Switzer
Affiant

Subscribed and sworn before me this 3rd day of May, 2017.

Mary E. Illig
Notary Public

My Commission Expires: 

MARY E. ILLIG
My Commission Expires
January 5, 2020
St. Louis City
Commission #11512913



From: Jim [jim@blueoceanportfolios.com]
Sent: Monday, March 28, 2011 7:05 PM
To: Morgan, Michael
Subject: what about our accreditted investors
Attachments: [redacted] BOP Royalty Cover.docx; Mime.822

this is the letter I came up with ,,,,

would like to send this out to a handful of accreditted investors - [redacted], etc.

--

James A. Winkelmann, Principal

Blue Ocean Portfolios, LLC

Registered Investment Advisors

16020 Swingley Ridge, Suite 360

Chesterfield, MO 63017

Office: 636-530-9393

Cell: [redacted]

www.BlueOceanPortfolios.com

March 24, 2011

DRAFT

Jay Shields
President
Schaeffer Oil Company
102 Barton Street
Saint Louis, MO 63104

RE: Blue Ocean Portfolios

Dear Jay,

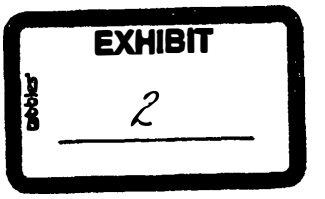
Thanks to clients like you we have been steadily growing our Blue Ocean Portfolios business. Since our launching the company in August of 2009 we have grown the AUM to approximately $40 million and we are growing every day due to our effective radio advertising on KMOX , our weekly radio program on FM 97.1 –The Financial Coach Show and of course our compelling approach to portfolio management. We are spending about $2,500 to land $1million in new assets that generate approximately $8,000 in recurring annual revenue. As you can see this business model and advertising system has the potential to create a very valuable cash flow.

I made the decision that once we had acquired about $40 million in assets that we would expand the business. That threshold will be easily met and we will be raising up to $1 million in new capital for our business to increase the advertising budget from $6,000 per month to approximately $25,000 per month and to hire a few more representatives to support the anticipated expanded activity. If we can maintain similar advertising efficiency we would expect the new customer portfolio assets to grow at a rate of $4-6 million per month just in the St. Louis market. This advertising system could work all over the country. The cash flow from this recurring revenue model has the potential to be very valuable.

My idea for the new capital would be to sell Blue Ocean Royalty Units for $25,000 each. Each one of these Blue Ocean Royalty units would give the purchaser rights to at least 0.25% of the cash receipts of Blue Ocean, LLC until the unit holder would be re-paid $75,000. These payments would be made every quarter. Then the unit holder would have a warrant to purchase 0.25% of Blue Ocean Portfolios for $25,000. We already have several units spoken for from friends and family members reserved. Because of the fiduciary relationship we have with you I cannot recommend that you or your family participate in this offering due to the potential conflict that such a recommendation will create. Nonetheless I wanted to make you aware of this offering and will provide you with a complete offering document should your interest warrant. Please do not hesitate to call should you have any questions or comments.

Sincerely yours,

Jim Winkelmann
President



From: Michael Morgan [mm@greensfelder.com]
Sent: Tuesday, March 29, 2011 2:39 PM
To: Jim
Subject: Re: what about our accreditted investors
Attachments: Jay Shield BOP Royalty Cover.docx

second try

Michael Morgan
Greensfelder, Hemker & Gale, P.C.
10 S. Broadway, Suite 2000
St. Louis, MO 63102

[redacted] (cell)o
314-241-9090 (main)o

>>> Jim < jim@blueoceanportfolios.com > 3/28/2011 7:05 PM >>>
this is the letter I came up with ,,,,

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James A. Winkelmann, Principal

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Office: 636-530-9393

Cell: [redacted]

www.BlueOceanPortfolios.com

March 24, 2011

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President
Schaeffer Oil Company
102 Barton Street
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RE: Blue Ocean Portfolios

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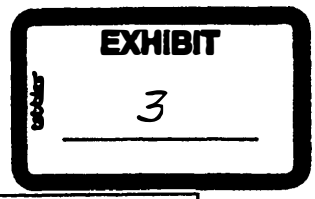
I made the decision that once we had acquired about $40 million in assets that we would expand the business. That threshold will be easily met and we will be raising up to $1 million in new capital for our business to increase the advertising budget from $6,000 per month to approximately $25,000 per month and to hire a few more representatives to support the anticipated expanded activity. If we can maintain similar advertising efficiency we would expect the new customer portfolio assets to grow at a rate of $4-6 million per month just in the St. Louis market. This advertising system could work all over the country. The cash flow from this recurring revenue model has the potential to be very valuable.

My idea for the new capital is to privately place up to 40 Blue Ocean Royalty Units for $25,000 each. Each one of these Blue Ocean Royalty units would give the unit holder rights to at least 0.25% of the cash receipts of Blue Ocean, LLC until the unit holder would be re-paid $75,000. These payments would be made every quarter. Then the unit holder would have a warrant to purchase 0.25% of Blue Ocean Portfolios for $25,000. We already have several units spoken for from friends and family members.

Because of the fiduciary relationship we have with you, I cannot recommend that you or your family participate in this offering due to the potential conflict that such a recommendation will create, and this letter is not an offer. Nonetheless I wanted to make you aware of this situation and can provide you with offering materials should your interest warrant. Please do not hesitate to call should you have any questions or comments.

Sincerely yours,

Jim Winkelmann
President



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DRAFT

Jay Shields
President
Schaeffer Oil Company
102 Barton Street
Saint Louis, MO 63104

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_____ Because of the fiduciary relationship we have with you, I cannot recommend that you or your family participate in this offering due to the potential conflict that such a recommendation will create, and this letter is not an offer. Nonetheless I wanted to make you aware of this ~~offering~~ situation and ~~will~~ can provide you with ~~a complete~~ offering ~~document~~ materials should your interest warrant. Please do not hesitate to call should you have any questions or comments.

Sincerely yours,

Jim Winkelmann
President

Exhibit C

IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY, MISSOURI

BLUE OCEAN PORTFOLIOS, LLC,

JAMES A. WINKELMANN, SR.

Plaintiffs,

v.

GREENSFELDER, HEMKER & GALE, P.C.,

GILES M. WALSH,

WENDY MENGHINI,

ULMER & BERNE LLP,
Serve:
1660 W. 2nd St., Ste. 1100
Cleveland, Ohio 44113-1448

ALAN M. WOLPER,
Serve:
500 W. Madison St., Ste. 3600
Chicago, Illinois 60661-4587

HEIDI E. VONDERHEIDE,
Serve:
500 W. Madison St., Ste. 3600
Chicago, Illinois 60661-4587

Defendants.

DEMAND FOR JURY TRIAL

Cause No. 19SL-CC00307

Division 15

FIRST AMENDED PETITION

Plaintiffs Blue Ocean Portfolios, LLC and James A. Winkelmann, Sr. (collectively, "Plaintiffs"), for their First Amended Petition against Greensfelder, Hemker & Gale, P.C. ("Greensfelder"), Giles M. Walsh, Wendy Menghini (together with Greensfelder and Walsh, the "Greensfelder Defendants"), Ulmer & Berne LLP ("Ulmer"), Alan M. Wolper, and Heidi E. VonderHeide (together with Ulmer and Wolper, the "Ulmer Defendants") state and allege as follows:

NATURE OF THE CASE

1. In 2011, Jim Winkelmann retained Greensfelder, Hemker & Gale to advise his investment firm, Blue Ocean Portfolios. Winkelmann was a thirty-year veteran of the securities industry who had never been subject to regulatory discipline. He founded Blue Ocean in 2009 to provide honest investment advice without the exorbitant fees or undisclosed conflicts of interest that are endemic to the wealth management industry When Winkelmann contacted Greensfelder, he had recently been [redacted] Winkelmann hoped to implement a business plan that would make Blue Ocean a self-sustaining source of income for his family.

2. Greensfelder helped Winkelmann develop a plan under which Blue Ocean would raise capital by selling "royalty units" to outside investors. In exchange for a capital contribution, the royalty unit investors would receive a fixed percentage of Blue Ocean's cash receipts until they were paid back a multiple of their investment. Greensfelder told Winkelmann the royalty unit structure fit Blue Ocean's conflict-free philosophy because the investors' interests were fully aligned with Blue Ocean's. With Greensfelder's advice and supervision, Blue Ocean issued $1.4 million in royalty units over a period of two years.

3. Winkelmann's reliance on Greensfelder was a huge mistake. Both the Missouri Securities Division and the U.S. Securities and Exchange Commission opened investigations into the royalty unit offerings, casting a shadow over Blue Ocean and hindering Winkelmann's ability to implement Blue Ocean's business plan. The SEC ultimately brought a civil enforcement action against Winkelmann and Blue Ocean alleging the royalty unit offerings violated the antifraud provisions of the federal securities laws.

4. Winkelmann then retained another law firm, Ulmer & Berne, to represent him and Blue Ocean in the SEC's enforcement action. Ulmer and Winkelmann agreed that he and Blue Ocean had a sound defense: they could not have willfully defrauded anyone because they undertook the royalty unit offerings in reliance on Greensfelder's advice that the offerings complied with applicable law.

5. Unfortunately for Winkelmann, Ulmer too was grossly negligent in representing him and Blue Ocean. Ulmer failed to offer into evidence a crucial email chain that supported the advice-of-counsel defense. Without the benefit of this evidence, the administrative law judge presiding over the enforcement action found Winkelmann and Blue Ocean responsible for willfully defrauding the royalty unit investors. Winkelmann was banned from the securities industry for the rest of his life. Blue Ocean was unable to continue as an investment advisor and was forced to sell its assets under duress and at a discount.

6. In short, Winkelmann relied on Greensfelder and Ulmer to help him build a legacy for his family and to defend his reputation for integrity; he received advice that ended his career. Greensfelder and Ulmer should be held responsible for the harm their negligence has caused.

PARTIES

7. Plaintiff Blue Ocean Portfolios, LLC ("Blue Ocean"), is a Missouri limited liability company with its principal place of business at 23 Glen Abbey Drive, Frontenac, Missouri 63131. Before the events described in this lawsuit forced Blue Ocean to suspend its operations as a registered investment advisor in January 2018, Blue Ocean maintained its principal place of business at 1588 S. Lindbergh, Ste. 205, Saint Louis, Missouri 63131. The sole member of Blue Ocean is 23 Glen Abbey Partners, LLC ("Glen Abbey Partners").

8. Plaintiff James A. Winkelmann, Sr. ("Winkelmann"), is a citizen of Missouri who resides in St. Louis County, Missouri. Winkelmann was a registered investment advisor representative for Blue Ocean. Winkelmann is married to Patricia Winkelmann. Patricia Winkelmann is the sole member of Glen Abbey Partners.

9. Defendant Greensfelder, Hemker & Gale, P.C. ("Greensfelder"), is a Missouri professional corporation with its principal place of business at 10 S. Broadway, Ste. 2000, Saint Louis, Missouri 63102.

10. Defendant Giles M. Walsh is a citizen of Kansas who resides in [redacted], Kansas, at [redacted] Kansas [redacted]. Upon information and belief, Walsh was an associate attorney at Greensfelder and worked out of Greensfelder's office at 10 S. Broadway, Ste. 2000, Saint Louis, Missouri 63102, at all relevant times during the events described in this First Amended Petition.

11. Defendant Wendy Menghini is a citizen of Missouri who resides in Saint Louis County, Missouri, at [redacted], Saint Louis, Missouri [redacted]. Upon information and belief, Menghini was an officer of Greensfelder and worked out of Greensfelder's office at 10 S. Broadway, Ste. 2000, Saint Louis, Missouri 63102, at all relevant times during the events described in this First Amended Petition.

12. Defendant Ulmer & Berne LLP ("Ulmer") is an Ohio limited liability partnership with its principal place of business at 1660 W. 2nd Street, Suite 1100, Cleveland, Ohio 44113.

13. Defendant Alan M. Wolper maintains a business office at 500 W. Madison Street, Suite 3600, Chicago, Illinois 60661. Wolper was a partner of Ulmer at all relevant times during the events described in this First Amended Petition.

14. Defendant Heidi E. VonderHeide maintains a business office at 500 W. Madison Street, Suite 3600, Chicago, Illinois 60661. VonderHeide was an associate or partner of Ulmer at all relevant times during the events described in this First Amended Petition.

JURISDICTION

15. This Court has personal jurisdiction over the Greensfelder Defendants because Greensfelder and Menghini are citizens of Missouri, and because the Greensfelder Defendants conducted business in Missouri, made a contract in Missouri, and committed tortious acts in Missouri that injured Plaintiffs, as described throughout this First Amended Petition.

16. This Court has personal jurisdiction over the Ulmer Defendants because the Ulmer Defendants conducted business in Missouri, made a contract in Missouri, and committed tortious acts in Missouri that injured Plaintiffs, as described throughout this First Amended Petition.

FACTS COMMON TO ALL COUNTS

Winkelmann Founds Blue Ocean to Provide Conflict-Free Investment Advice.

17. Winkelmann began his career in the securities industry in 1981. Over the next three decades, he owned a brokerage firm and an investment advisory firm, operated an insurance agency, and passed five licensing exams administered by the Financial Industry Regulatory Authority (FINRA). Winkelmann has served as the chairman of the Missouri Securities Industry Association, the treasurer of a publicly traded mutual fund, and an expert consultant on securities disputes involving sales practices and disclosures.

18. In August 2009, Winkelmann formed Blue Ocean as a registered investment advisor. Winkelmann intended for Blue Ocean to provide its clients honest and economical

investment advisory services by focusing on low-cost index funds and eliminating advisor's commissions and other potential conflicts of interest.

19. As a registered investment advisor, Blue Ocean was subject to regulation by the U.S. Securities and Exchange Commission ("SEC") and the Missouri Securities Division ("MSD").

20. At all times, Winkelmann has been Blue Ocean's chief executive officer, chief compliance officer, and manager, and has had ultimate decision-making authority at Blue Ocean.

Winkelmann Engages Greensfelder to Advise Blue Ocean on Raising Capital.

21. In late 2010, during Blue Ocean's first full year of operations, Winkelmann was [redacted], the most [redacted] With his health in jeopardy, Winkelmann wanted to implement a capitalization strategy for Blue Ocean that would allow it to grow rapidly and provide a self-sustaining source of income for his family should he succumb to the disease.

22. Though Winkelmann is an experienced investment advisor, he has no legal training. In early 2011, Winkelmann met with Michael Morgan, a Greensfelder attorney experienced in securities matters, to discuss how Winkelmann's goal of turning Blue Ocean into a self-sustaining source of income for his family could be achieved.

23. The "Banking & Financial Services" page on Greensfelder's website, as it appeared in 2011, stated that "Greensfelder is trusted by . . . investment advisors . . . and other financial services firms to handle complex disputes, as well as day-to-day counselling and compliance matters."

24. Winkelmann made clear to Morgan that Glen Abbey Partners (as the sole owner of Blue Ocean) and Patricia Winkelmann (as the majority owner of Glen Abbey) were to share in the benefits of the capitalization plan he hoped to develop and put into action.

25. One idea that Morgan and Winkelmann discussed was an offering of "royalty units" in Blue Ocean. Investors who purchased the royalty units would contribute capital to Blue Ocean in exchange for the right to receive a certain minimum percentage of its cash receipts until a fixed multiple of their initial investment was paid back.

26. Relying on Morgan's expertise and advice, Winkelmann and Blue Ocean agreed to go forward with a royalty unit offering.

27. On or about February 3, 2011, Winkelmann and Blue Ocean retained Greensfelder to ensure that Blue Ocean's royalty unit offerings complied with all applicable laws and regulations, and to provide ongoing compliance advice to Blue Ocean in connection with its day-to-day operations, including advice regarding the content of filings with the SEC and MSD. The benefits of the representation were to extend to Glen Abbey Partners and Patricia Winkelmann in accordance with Winkelmann's prior discussions with Morgan.

28. Within several weeks after Plaintiffs engaged Greensfelder, Morgan recruited Walsh to assist him in working on the Blue Ocean matter. Walsh, though employed by Greensfelder, was not yet licensed to practice law in Missouri. According to the official attorney directory maintained by the Missouri Bar, Walsh was not licensed to practice law in Missouri until September 2011.

29. Morgan cautioned Walsh not to reveal his inexperience to Winkelmann. In an email dated March 1, 2011, Morgan told Walsh that Winkelmann was not aware of Walsh's "slender experience" with the Investment Advisers Act of 1940, an expansive federal law that

regulates the conduct of investment advisors like Blue Ocean. Morgan advised Walsh to "soft-pedal" his inexperience in this area.

Greensfelder Advises Blue Ocean that Royalty Units Can Be Sold to Advisory Clients.

30. Winkelmann intended from the time the royalty unit concept was devised that Blue Ocean would offer the royalty units to its advisory clients (as well as to non-clients).

31. Because Blue Ocean placed great emphasis on avoiding conflicts of interest with its clients, Winkelmann repeatedly sought Greensfelder's assurances that there was no conflict in Blue Ocean offering royalty units to its advisory clients.

32. Morgan assured Winkelmann that no conflict existed. Specifically, Morgan told Winkelmann, "That's the beauty of the structure, Jim, because there is no conflict of interest."

33. Walsh affirmed Morgan's opinion. Before the first royalty unit offering commenced, Winkelmann and Morgan held a conference call in which they discussed issues including whether Blue Ocean advisory clients could purchase royalty units. During the call, Morgan remarked that Walsh had just walked into his office. Winkelmann heard Morgan ask Walsh whether there would be any problem with Blue Ocean advisory clients purchasing royalty units. Winkelmann heard Walsh respond that there would not be a problem, as long as Blue Ocean did not *recommend* that the advisory clients purchase the royalty units.

34. At least two email exchanges make clear that Greensfelder approved of Blue Ocean's plan to sell royalty units to advisory clients.

35. In an email from Morgan to Winkelmann dated March 24, 2011 (the "March 24 Morgan/Winkelmann Email"), Morgan considered whether Blue Ocean needed to amend its Form ADV filing to disclose its intent to issue securities (the royalty units) to its advisory clients. Morgan admitted that he had "not researched . . . materials that might address . . . an offering by

an [investment advisor] to its customers of its securities." Nevertheless, Morgan told Winkelmann that "the risks here are small," and advised him that amending the Form ADV was not necessary.

36. In another email dated March 28, 2011, Winkelmann sent to Morgan for his review and comment a draft letter to be sent to certain advisory clients of Blue Ocean.

37. The draft letter is clear on its face that it was intended for a Blue Ocean advisory client. The letter reads (all emphasis added):

> Dear Jay, thanks to ***clients*** like you we have been steadily growing our Blue Ocean Portfolios business. . . .
>
> I made the decision that once we had acquired about $40 million in assets that we would expand the business. That threshold will be easily met and we will be raising up to $1 million in new capital for our business . . . .
>
> My idea for the new capital would be to sell Blue Ocean Royalty Units for $25,000 each. Each one of these Blue Ocean Royalty Units would give the purchaser rights to at least 0.25% of the cash receipts of Blue Ocean, LLC until the unit holder would be re-paid $75,000. . . . ***Because of the fiduciary relationship we have with you*** I cannot recommend that you or your family participate in this offering due to the potential conflict that such a recommendation will create. ***Nonetheless I wanted to make you aware of this offering and will provide you with a complete offering document should your interest warrant.*** Please do not hesitate to call should you have any questions or comments.

38. It is inconceivable that Morgan or any other Greensfelder attorney could have read Winkelmann's draft letter and without understanding that it was directed toward a Blue Ocean advisory client.

39. Morgan responded to Winkelmann's email on March 29 with a redlined draft of the letter containing several revisions, including multiple revisions to the paragraph referencing the fiduciary relationship between Winkelmann, Blue Ocean, and the addressee. Morgan's revisions are shown below:

> _____ Because of the fiduciary relationship we have with you, I cannot recommend that you or your family participate in this offering due to the potential conflict that such a recommendation will create, and this letter is not an offer. Nonetheless I wanted to make you aware of this ~~offering~~ situation and ~~will~~ can provide you with ~~a complete offering document~~ materials should your interest warrant. Please do not hesitate to call should you have any questions or comments.

The email exchange between Winkelmann and Morgan (the "March 28–29 Winkelmann/Morgan Email Exchange"), and an affidavit from Greensfelder's general counsel confirming its authenticity, are attached as **Exhibit 1**.

40. Morgan's response in no way indicated that offering royalty units to Blue Ocean advisory clients might create a conflict of interest or otherwise be improper. Indeed, neither Morgan nor any other Greensfelder attorney *ever* told Winkelmann or Blue Ocean that royalty units should not be offered to Blue Ocean advisory clients, or that doing so required additional precautions be taken to avoid a conflict of interest.

41. Relying on Morgan's and Walsh's advice, Winkelmann and Blue Ocean decided Blue Ocean would offer royalty units to its advisory clients as well as non-clients.

Greensfelder Advises Blue Ocean on Four Royalty Unit Offerings.

42. Satisfied with Greensfelder's assurances that the royalty units could be offered to Blue Ocean advisory clients, Winkelmann and Blue Ocean prepared for the first of what would become four rounds of royalty unit offerings. Greensfelder represented Winkelmann and Blue Ocean with respect to each of the four offerings.

43. Blue Ocean initiated each royalty unit offering with an offering memorandum sent to potential investors.

44. Winkelmann prepared the initial draft of the offering memoranda, and Greensfelder, pursuant to its engagement, reviewed, revised, and approved each of the offering memoranda, often exchanging several drafts with Winkelmann. The purpose of Greensfelder's

review was to ensure that the offering memoranda were compliant with all applicable state and federal laws and regulations.

45. Morgan and Walsh were the Greensfelder attorneys principally involved in reviewing, revising and approving the offering memoranda for each royalty unit offering. Morgan or Walsh (or both) approved the final form of all offering memoranda before they were sent to potential investors.

46. Morgan and Walsh also drafted (or reviewed, revised, and approved) other documents used in connection with the offerings, including the royalty unit certificates, the subscription agreements, and the cover letters that summarized the offerings for potential investors.

47. Each of the royalty unit offering memoranda emphasized Blue Ocean's goal of eliminating conflicts of interest between it and its clients, and likewise promoted the royalty units as an investment free of conflicts of interest between Blue Ocean and the royalty unit investor. For example:

a. Each of the offering memoranda stated that royalty financing "appears to be a compelling way for the investors, owners and employees to align their interest."

b. Each of the offering memoranda stated that Blue Ocean "attracts clients who are fed up with conflicts of interest prevalent at the broker/dealers where representatives/advisors make more money selling one security over another."

c. Each of the offering memoranda stated that Blue Ocean "creates value for its clients by eliminating conflicts of interest."

d. The second, third, and fourth offering memoranda stated that raising capital through royalty units was "the optimal way to fund growth, provide immediate cash flow streams to the Royalty Unit holder, and align all interests for the highest potential return at the least risk"; the first offering memoranda contained a nearly identical statement.

e. The first offering memoranda stated that the objective of the offering was to "keep the interest of the investors, employees, customers, and owners of [Blue Ocean] aligned at all times."

48. Blue Ocean's first royalty unit offering commenced on March 31, 2011. The first offering sought to raise up to $1 million by issuing forty royalty units at $25,000 each. Each royalty unit entitled its owner to receive a minimum of 0.25% of Blue Ocean's monthly cash receipts until the owner received a total of $75,000. The first royalty unit offering resulted in Blue Ocean issuing twenty-six royalty units to fourteen investors, ten of whom were Blue Ocean advisory clients.

49. Blue Ocean's second royalty unit offering commenced on March 10, 2012. The second offering sought to raise up to $350,000 by issuing fourteen royalty units at $25,000 each. Each royalty unit entitled its owner to receive a minimum of 0.25% of Blue Ocean's monthly cash receipts until the owner received a total of $62,500. The second royalty unit offering resulted in Blue Ocean issuing fourteen royalty units to ten investors, seven of whom were Blue Ocean advisory clients.

50. Blue Ocean's third royalty unit offering commenced on September 1, 2012. The third offering sought to raise up to $650,000 by issuing twenty-six royalty units at $25,000 each. Each royalty unit entitled its owner to receive a minimum of 0.10% of Blue Ocean's monthly

cash receipts until the owner received a total of $56,250. The third royalty unit offering resulted in Blue Ocean issuing eleven royalty units to four investors, three of whom were Blue Ocean advisory clients.

51. Blue Ocean's fourth royalty unit offering commenced on February 15, 2013. The third offering sought to raise up to $375,000 by issuing seventy-five royalty units at $5,000 each. Each royalty unit entitled its owner to receive a minimum of 0.05% of Blue Ocean's monthly cash receipts until the owner received a total of $12,500. The fourth royalty unit offering resulted in Blue Ocean issuing twenty-five royalty units to two investors, both of whom were Blue Ocean advisory clients.

52. In sum, the four offerings resulted in seventy-six royalty units being issued to twenty-four unique investors for total proceeds of $1.4 million. Nineteen of the twenty-four investors who purchased royalty units were Blue Ocean advisory clients.

53. As Blue Ocean predicted, the royalty unit offerings and the advertising they funded led to dramatic growth in Blue Ocean's business by every measure. Blue Ocean's number of clients, assets under management, and revenue all increased rapidly. Blue Ocean's clients' accounts gained over $20 million from January 2011 through December 2017, at which point Blue Ocean had over $130 million under management.

Greensfelder Advises Blue Ocean on Numerous Form ADV and Form D Filings.

54. Following the commencement of Blue Ocean's first royalty unit offering, Greensfelder (through Morgan, Walsh, and Menghini) continued to advise Blue Ocean on complying with state and federal securities laws.

55. Greensfelder's representation regarding compliance matters included advising Winkelmann and Blue Ocean on their ongoing obligations to the royalty unit investors.

56. As discussed above, the royalty unit investors were entitled to receive a percentage of Blue Ocean's cash receipts. From May 2011 through May 2012, Blue Ocean's practice was to accrue in its bank account the percentage of cash receipts due to the investors and pay the accrued amounts on a monthly basis. In May 2012, Winkelmann asked Morgan whether Blue Ocean could instead accrue the amounts owned and pay them to the investors on a quarterly basis, in order to lessen the administrative burden of calculating and distributing the payments.

57. Morgan advised Winkelmann that quarterly payments were acceptable, so long as Blue Ocean informed the investors.

58. Relying on Morgan's advice, Blue Ocean informed the royalty unit investors that payments would be made on a quarterly basis and adhered to that practice from that point onwards.

59. Greensfelder's representation regarding compliance matters also included drafting, reviewing, approving, and filing documents with the SEC and MSD. Two such documents were the "Form ADV" and "Form D."

60. The Form ADV is a two-part form that investment advisors like Blue Ocean must file and update, usually on an annual basis, to maintain registration with the SEC and with state regulatory bodies like the MSD.

61. The Form D is filed with the SEC to provide notice of an exempt offering of securities under the Securities Act of 1933. Blue Ocean's royalty unit offerings were to be exempt, so each offering required a Form D to be filed.

62. Winkelmann and Blue Ocean retained Greensfelder in part to advise them on the contents of Blue Ocean's Forms ADV and Forms D. Greensfelder did in fact provide such advice for Forms ADV and Forms D that Blue Ocean submitted and amended between 2011 and 2015.

63. The Forms ADV required Blue Ocean to indicate whether it held custody of client assets. Under applicable securities laws, investment advisors who have custody of client assets are required to undertake certain additional duties and obligations.

64. Greensfelder (and attorneys Morgan, Menghini, and Walsh) were aware of Blue Ocean's practices concerning the accrual and payments of the amounts owed to royalty unit owners.

65. Greensfelder (acting through Morgan, Walsh, and Menghini) advised Winkelmann that Blue Ocean did not have custody of client assets.

66. Blue Ocean, relying on Greensfelder's advice, indicated on Forms ADV filed from June 2011 through November 2014 that it did not have custody of client assets.

67. The Forms D Blue Ocean filed in connection with the royalty unit offerings required Blue Ocean to classify the royalty units as a type of security. The Form D offers several options, including "Equity," "Debt," and "Other."

68. Greensfelder (acting through Morgan and Walsh) advised Blue Ocean that the royalty units should be classified as "Debt" offerings.

69. Blue Ocean, relying on Greensfelder's advice, indicated on Forms D filed from May 2011 through February 2013 that each of the four royalty unit offerings were "Debt" offerings.

Greensfelder Advises Blue Ocean on its Relationship with Bryan Binkholder

70. Winkelmann was acquainted with Bryan Binkholder, a fellow investment advisor who hosted a St. Louis-area radio show called *The Financial Coach*.

71. In March 2011, Blue Ocean and Binkholder entered an exclusive marketing agreement under which Blue Ocean agreed to pay for costs associated with *The Financial Coach*

in exchange for Binkholder's promise to exclusively promote Blue Ocean's advisory services. Greensfelder reviewed and approved the exclusive marketing agreement.

72. On or about December 29, 2011, Binkholder and the MSD entered a consent order that prohibited Binkholder from acting as investment advisor representative in Missouri.

73. Binkholder was not an investment advisor representative of Blue Ocean at the time the consent order was entered (or any time thereafter), and the basis for the consent order was unrelated to any of Binkholder's dealings with Winkelmann or Blue Ocean.

74. Winkelmann became aware of the consent order around the same time that it was entered and made Greensfelder aware of the order as well. Winkelmann asked Greensfelder (specifically, Morgan) whether Blue Ocean could continue to have a relationship with Binkholder in light of the order.

75. Greensfelder advised Winkelmann that Blue Ocean's relationship with Binkholder was not prohibited by the terms of the consent order or by other applicable law.

76. Relying on Greensfelder's advice, Blue Ocean continued to sponsor *The Financial Coach* under the exclusive marketing agreement.

77. When preparing for the second and third royalty unit offerings in March and September of 2012, Winkelmann was concerned that disclosure of Binkholder's consent order may be necessary. Winkelmann raised this concern with Greensfelder; specifically, with Morgan.

78. Greensfelder (through Morgan) advised Winkelmann that disclosure of Binkholder's consent order was not necessary.

79. Blue Ocean, relying on Greensfelder's advice, did not disclose Binkholder's consent order in the offering memoranda or other materials associated with the second and third royalty unit offerings.

Greensfelder's Bad Advice Puts Winkelmann and Blue Ocean in the Regulators' Crosshairs.

80. Throughout the four royalty unit offerings, Greensfelder never advised Blue Ocean that allowing advisory clients to purchase royalty units could result in an impermissible conflict of interests. Indeed, Greensfelder continued to approve documents that made unmistakably clear Blue Ocean was offering the royalty units to current advisory clients.

81. In an email dated September 6, 2012, Winkelmann asked Morgan to approve a draft cover letter for use in the third royalty unit offering. Morgan responded on the same day, sending back a lightly revised version. Morgan did not edit, comment on, or object to the statement in the letter that "This [royalty unit] offering has gone out to several of our existing clients and business associates." Consequently, the third royalty unit offering resulted in Blue Ocean issuing eleven royalty units to four investors, three of whom were Blue Ocean advisory clients.

82. In December 2012, after all but the last round of royalty unit offerings had taken place, Winkelmann received a notice from the MSD informing him that he and Blue Ocean were under investigation for potential violations of Missouri securities law. The notice did not disclose the nature of the potential violations. Winkelmann made Greensfelder aware of the notice within a week after he received it.

83. Greensfelder did not advise Winkelmann that the MSD investigation should stop Blue Ocean from going forward with additional royalty unit offerings, whether to clients or non-clients.

84. On January 17, 2013, as Blue Ocean was preparing for the fourth royalty unit offering, Winkelmann emailed to Morgan and Walsh a draft disclosure be included in Blue Ocean's Form ADV. The disclosure stated that Blue Ocean had "issued securities on a private

placement basis to finance its growth and advertising strategies. Some of these securities were offered and sold to certain clients of [Blue Ocean]." Morgan replied that the disclosure "[l]ooks good."

85. Over the next several days, Winkelmann, Morgan, and Walsh traded further revisions of the disclosure. At one point, the reference to securities being offered and sold to clients was removed from the disclosure. In an email to Morgan, Walsh asked whether "we need to mention that some of the purchasers were clients?"

86. Morgan and Walsh evidently decided that this fact needed to be mentioned. The final revision of the disclosure, sent from Walsh to Winkelmann on January 22, 2013, stated that "[Blue Ocean] has issued securities in the past to clients and non-clients . . . to finance its advertising strategy and may issue additional securities in the future."

87. Even after Winkelmann raised with Morgan and Walsh the possibility that the MSD might contend the royalty unit offerings created a conflict of interest, Morgan and Walsh remained steadfast.

88. On January 21, 2013, Winkelmann wrote to Morgan and Walsh, "The issue [the MSD] may be concerned about is whether or not the issuance of the securities presents a conflict of interest. Of course our position has been . . . no . . . ."

89. But Morgan and Walsh never deviated from their prior advice to Winkelmann that the offering was free of all conflicts of interest. Morgan and Walsh subsequently reviewed and approved an offering memorandum for the fourth royalty unit offering that contained the same statements about the alignment of interests between Blue Ocean and the investors as appeared in prior memoranda, such as those described in paragraph 47(a)–(d), *supra*.

90. The MSD investigation cast a cloud of uncertainty over Blue Ocean for several years. Winkelmann worked diligently to keep Blue Ocean's business plan on track, but had no choice but to divert much of the company's advertising budget to legal fees. Other business development activities were also curtailed. Blue Ocean had opened a Chicago office in October 2012 but closed it just months later due to the expense and distraction caused by the MSD investigation. In early 2013, the costs associated with the investigation required Blue Ocean to lay off several key employees.

Greensfelder Admits It Erroneously Advised Blue Ocean to Classify the Royalty Units as "Debt" Securities.

91. On March 13, 2013, the MSD conducted an on-the-record interview of Winkelmann in connection with its investigation. The questioning led Winkelmann to believe that one focus of the investigation was whether the Form Ds filed in connection with the royalty unit offerings had improperly classified the royalty units as "Debt" securities.

92. On March 20, 2013, Winkelmann emailed Morgan and asked him whether the Form Ds should be amended to reclassify the royalty units as "Other" securities.

93. The next day, March 21, Morgan acknowledged the error in an email to Greensfelder officer Phillip Stanton, writing "Unfortunately the Form D's we filed referred to the units as debt offerings. [Winkelmann] is now asking about the possibility of filing amended Form D's. I think it's a good idea but is also obviously an admission that the forms were wrong."

94. On the same day, Morgan admitted to Winkelmann that, according to Walsh, the "reason why we called the [royalty units] debt on the Form D's" was not due to research or analysis, but "to cut down on random questions from the [St. Louis Business Journal], etc."

95. Morgan further admitted that he was at fault for allowing the erroneous Form Ds to be filed on Blue Ocean's behalf, telling Winkelmann "I should have reviewed the darn things, I think I would have caught it and said something."

96. On March 27, 2013, Greensfelder filed (on Blue Ocean's behalf) revised Form Ds for each of the four royalty unit offerings, now classifying the royalty units as "Other" securities.

Greensfelder Doubles Down on its Incorrect Advice that Blue Ocean Does Not Have Custody of Client Assets.

97. Because Blue Ocean's assets under management had grown dramatically from $40 million in early 2011 to over $100 million in April 2013, Blue Ocean was required to register with the SEC. On April 18, 2013, Blue Ocean registered with the SEC as an investment advisor.

98. In June 2013, with the MSD's investigation still ongoing, the SEC conducted a routine on-site examination of Blue Ocean to determine its compliance with the Investment Adviser's Act of 1940. Winkelmann and Blue Ocean fully cooperated with the SEC examination team. Following Winkelmann's exit interview with the SEC examiner, he still believed that Blue Ocean was compliant with all federal laws and regulations.

99. By the fall of 2013, however, Winkelmann had not yet been informed of the SEC's final conclusions from the examination. On October 16, 2013, Winkelmann wrote Morgan that he was "despondent" the SEC had not issued its findings, as the matter continued to distract him from serving clients and growing Blue Ocean's business.

100. Unbeknownst to Winkelmann, just days before he wrote to Morgan, the SEC had issued a non-public order authorizing its employees to investigate Blue Ocean for potential violations of the Investment Advisers Act of 1940 ("Advisers Act"), the Securities Act of 1933 ("Securities Act"), and the Securities Exchange Act of 1934 ("Exchange Act").

101. In early 2014, Morgan began experiencing health issues that prevented him from maintaining a regular work schedule. Morgan referred Winkelmann to Menghini, who, along with Walsh, advised Winkelmann on the SEC matter and ongoing compliance matters such as Form ADV filings.

102. On March 12, 2014, the SEC issued Blue Ocean a letter setting forth "deficiencies and weaknesses" identified during the June 2013 examination. The alleged deficiencies included that (a) the royalty unit offering memoranda did not contain full and fair disclosures of all facts material to potential investors; (b) Blue Ocean maintained custody of client assets in connection with the royalty unit offerings but did not comply with surprise audit requirements; and (c) Blue Ocean's radio advertising contained statements of fact that could not be substantiated.

103. Each of the deficiencies noted in the SEC letter related to matters on which Greensfelder had advised Blue Ocean. Greensfelder reviewed and approved each of the royalty unit offering memoranda (which included the script for Blue Ocean's radio advertising) and reviewed and approved Blue Ocean's Form ADV filings (which took the position that Blue Ocean did not maintain custody of client assets).

104. The SEC letter invited Blue Ocean to respond, describing the steps it had taken or intended to take to address the alleged deficiencies. Greensfelder (primarily through Menghini, with Walsh also participating) represented Blue Ocean in drafting and submitting its response.

105. During the same period that Greensfelder was preparing Blue Ocean's response to the SEC letter, Blue Ocean sought Greensfelder's advice regarding its annual Form ADV filing. In an email dated March 25, 2014, a Blue Ocean employee asked Walsh whether Blue Ocean should remove from its Form ADV disclosures the statement that Blue Ocean would comply

with Missouri regulation 15 C.S.R. 30-51.100, which deals with custody of client funds. Walsh conferred with Menghini, who suggested that the statement be removed.

106. In an email dated March 27, 2014, Winkelmann wrote to Walsh and Menghini about the same issue. Menghini responded, "We need to be consistent. If we take the position, as I think we should, in the SEC exam deficiency response that we don't have custody we should be taking the same position in the ADV filing."

107. Relying on Greensfelder's advice, Blue Ocean continued to take the position in its Form ADV filings that it did not have custody of client funds.

108. On April 7, 2014, Blue Ocean submitted its response to the SEC letter as prepared by Menghini and Walsh. The response sought to maintain the correctness of Greensfelder's advice to Winkelmann and Blue Ocean by asserting that (a) the royalty unit offering memoranda made full disclosure of all material facts and (b) Blue Ocean did not maintain custody of client funds. The response also noted that Blue Ocean would no longer use the radio advertising script that was the subject of the examiners' concerns.

109. The response did not acknowledge Greensfelder's role in advising Winkelmann and Blue Ocean on the disclosures made in the offering memoranda or on the issue of whether Blue Ocean held custody of client funds.

110. Greensfelder's failure to acknowledge those facts—apparently out of a desire to protect the professional credibility of its attorneys—was a serious omission. Good-faith reliance on the advice of counsel can operate as an affirmative defense to alleged violation of the federal securities laws. Had Greensfelder made clear its role in advising Winkelmann and Blue Ocean, it could have prevented the SEC from proceeding with its investigation or instituting proceedings against Winkelmann and Blue Ocean.

The SEC Brings Enforcement Proceedings Against Winkelmann and Blue Ocean.

111. Greensfelder's attempt to persuade the SEC that Blue Ocean had not violated the federal securities laws was not successful.

112. On September 15, 2014, the SEC served Menghini (as counsel for Winkelmann and Blue Ocean) with subpoenas for the production of documents.

113. On September 17, 2014, the SEC replied to Blue Ocean's response to its deficiency letter, stating that the arguments raised in the letter were "unpersuasive." The SEC reply further stated that the investigation had been referred to the Division of Enforcement.

114. Winkelmann and Blue Ocean fully cooperated with the SEC investigation as it proceeded over the next year.

Winkelmann and Blue Ocean Retain Ulmer to Represent them in the SEC Enforcement Action.

115. In August 2015, Winkelmann and Blue Ocean retained Ulmer to represent them in all matters relating to or arising from the SEC investigation. Winkelmann signed the engagement letter creating the contractual relationship between himself, Blue Ocean, and Ulmer in St. Louis, Missouri. A true and correct copy of the engagement letter is attached as **Exhibit 2.**

116. Wolper and VonderHeide were the Ulmer attorneys responsible for the representation.

117. Wolper is the partner-in-charge of Ulmer's Chicago office and the co-chair of the firm's financial services and securities litigation practice group. According to Wolper's biography on the Ulmer website, he "focuses his practice exclusively on the representation of brokers, broker-dealers, and investment advisors," and "defendant regulatory investigations and enforcement actions brought by . . . the [SEC]."

118. Similarly, VondeHeide's biography represents that she "specializes in representing financial institutions, investment advisers, and broker-dealers in litigation matters." Her practice "involves handling both customer and industry disputes, as well as regulatory matters."

119. Based upon Wolper's and VonderHeide's purported experience in defending investment advisers in regulatory enforcement actions, Winkelmann believed they were qualified to represent him and Blue Ocean and relied upon their advice in dealing with all aspects of the SEC's investigation.

120. On May 19, 2016, the SEC issued an order instituting proceedings ("OIP") against Winkelmann and Blue Ocean. The OIP charged Winkelmann and Blue Ocean with violating the antifraud provisions of Securities Act § 17(a), Exchange Act § 10(b) and Rule 10b-5, and Advisers Act §§ 206(1) and 206(2) (collectively, the "Antifraud Provisions"). The OIP further charged Winkelmann and Blue Ocean with violating the custody and compliance provisions of Advisers Act § 206(4) and Rules 206(4)-2 and 206(4)-7, and Advisers Act § 207 (collectively, the "Custody Provisions").

121. The alleged violations of the Antifraud Provisions and the Custody Provisions set forth in the OIP occurred in connection with the royalty unit offerings and arose from issues on which Greensfelder (through Morgan, Walsh, and Menghini) were responsible for advising Winkelmann and Blue Ocean as described throughout this First Amended Petition.

122. In particular, the OIP alleged that Winkelmann and Blue Ocean violated the Antifraud Provisions by "fail[ing] to disclose the material conflict of interest that existed between [Winkelmann and Blue Ocean] and their advisory clients who purchased Royalty Units." The OIP further alleged that Winkelmann and Blue Ocean violated the Custody

Provisions by filing Forms ADV between June 2011 and November 2014 "that each falsely represented that [Blue Ocean] did not have custody of client assets."

123. Ulmer, through Wolper and VonderHeide, continued to represent Winkelmann and Blue Ocean in connection with the SEC proceeding, and Winkelmann and Blue Ocean continued to rely on their advice.

124. After the OIP was issued, Winkelmann regularly discussed with Wolper and VonderHeide his and Blue Ocean's strategy for defending themselves against the SEC's alleged violations.

125. One defense that Winkelmann repeatedly discussed with Wolper and VonderHeide was that he and Blue Ocean relied in good faith upon Greensfelder's advice in taking the actions that the SEC alleged violated the Antifraud Provisions and Custody Provisions. Good-faith reliance on the advice of counsel is an affirmative defense that can negate the element of scienter that is required to prove a violation of the federal securities laws.

126. Wolper, VonderHeide, Winkelmann, and Blue Ocean all agreed that reliance on the advice of counsel was to be the cornerstone of Winkelmann and Blue Ocean's defense.

Greensfelder Fails to Turn Over Key Evidence to Winkelmann and Blue Ocean.

127. After retaining Ulmer to represent him and Blue Ocean in the SEC proceeding, Winkelmann asked Greensfelder to produce its entire file relating to its representation of him and Blue Ocean.

128. Greensfelder produced a voluminous set of documents to Winkelmann that it represented to be its entire file for its representation, in accordance with Winkelmann's request.

129. Greensfelder failed to include the March 24 Morgan/Winkelmann Email in the set of documents it produced to Winkelmann.

130. As discussed above at paragraph 35, the March 24 Morgan/Winkelmann Email is clear evidence that Greensfelder was aware Blue Ocean intended to issue royalty units to its investment advisory clients and approved of that course of action.

131. Greensfelder's inexplicable failure to include the March 24 Morgan/Winkelmann Email in the documents it produced to Winkelmann can only be interpreted as an attempt by Greensfelder to protect its own professional reputation by concealing from Winkelmann and Blue Ocean evidence of Greensfelder's recklessness.

Ulmer Fails to Introduce the Crucial March 28–29 Winkelmann/Morgan Email Exchange into the Hearing Record.

132. Winkelmann produced to Ulmer all documents he received from Greensfelder well in advance of the hearing on the allegations set forth in the OIP.

133. The set of documents Ulmer received did include the March 28–29 Winkelmann/Morgan Email Exchange.

134. As discussed above at paragraphs 36 through 39, the March 28–29 Winkelmann/Morgan Email Exchange is clear evidence that Greensfelder was aware Blue Ocean intended to issue royalty units to its investment advisory clients and approved of that course of action.

135. Winkelmann instructed Wolper and VonderHeide to introduce into the record all evidence that supported the reliance on advice-of-counsel defense.

136. In October 2016, a hearing on the alleged violations set forth in the OIP was held in St. Louis, Missouri before SEC administrative law judge ("ALJ") Jason S. Patil.

137. Ulmer (through Wolper and VonderHeide) represented Winkelmann and Blue Ocean at the hearing.

138. At no point during the six-day hearing did Wolper or VonderHeide introduce into evidence the March 28–29 Winkelmann/Morgan Email Exchange.

139. At no point during the six-day hearing did Wolper or VonderHeide examine Winkelmann on the specific issue of whether Greensfelder advised him that it was permissible for Blue Ocean to issue royalty units to its advisory clients.

140. On the afternoon of October 14, just after the SEC hearing concluded, Winkelmann realized that the March 28–29 Winkelmann/Morgan Email Exchange had not been included in a voluminous compilation of emails between Winkelmann and Greensfelder that had been submitted into evidence as a single exhibit, RX 106.

141. Winkelmann immediately emailed Wolper and VonderHeide to inform them of this omission.

142. Winkelmann urged Wolper and VonderHeide to move for the March 28–29 Winkelmann/Morgan Email Exchange to be admitted into evidence.

143. Despite Winkelmann's requests, Wolper and VonderHeide declined to make any attempt to have the March 28–29 Winkelmann/Morgan Email Exchange admitted into evidence before ALJ Patil made his initial ruling.

144. On March 20, 2017, ALJ Patil issued an Initial Decision setting forth findings of fact and conclusions of law (the "Initial Decision"). The Initial Decision found both Winkelmann and Blue Ocean liable for violations of the Antifraud Provisions and the Custody Provisions.

145. The Initial Decision found that Winkelmann and Blue Ocean willfully violated the Antifraud Provisions by failing to disclose in the offering memoranda distributed to royalty unit investors that actual and potential conflicts of interest existed between Blue Ocean and the investors. The Initial Decision found that these nondisclosures were particularly egregious

because the offering memoranda affirmatively represented that the interests of Blue Ocean and the royalty unit investors were fully aligned.

146. The Initial Decision further found that Winkelmann and Blue Ocean violated the Custody Provisions by filing multiple Form ADVs that inaccurately stated that Blue Ocean did not have custody of client funds, even though Blue Ocean accrued in its operating bank account the amounts owed to the royalty unit investors who were Blue Ocean advisory clients.

147. The Initial Decision found that Winkelmann and Blue Ocean fully proved the advice-of-counsel defense as to issuance of royalty units to non-advisory clients. ALJ Patil wrote:

> Greensfelder expended considerable time discussing, reviewing, and revising the offering documents that were used by Winkelmann in the offerings. Despite other changes to the draft offering documents, and despite changes to the disclosures between the various offerings, the conflict of interest language was never amended or updated. Winkelmann followed Greensfelder's advice with respect to the offering documents. Thus, with respect to the inclusion of the language in the offering materials reviewed and approved by Greensfelder, [Winkelmann and Blue Ocean] have satisfied the elements of the advice of counsel defense, and, as such have established a defense to *scienter* regarding those representations with respect to royalty units sold to non-advisory clients.

148. However, the Initial Decision rejected Winkelmann's and Blue Ocean's assertion of the advice-of-counsel defense as to the issuance of royalty units to Blue Ocean's advisory clients. ALJ Patil found there was a lack of documentary evidence "that reflects that Winkelmann ever asked [Greensfelder] for advice on whether or not he could sell royalty units to clients or that Greensfelder advised he could."

149. Had Greensfelder produced to Winkelmann the March 24 Morgan/Winkelmann Email, or had Ulmer introduced into the record the March 28–29 Winkelmann/Morgan Email Exchange, there would have been documentary evidence before ALJ Patil proving that (a)

Winkelmann asked Greensfelder for advice on whether or not Blue Ocean could issue royalty units to its advisory clients and (b) Greensfelder advised him that it could do so.

150. Consequently, had Greensfelder produced to Winkelmann the March 24 Morgan/Winkelmann Email, or had Ulmer introduced into the record the March 28–29 Winkelmann/Morgan Email Exchange, Winkelmann and Blue Ocean would not have suffered the harm caused by the Initial Decision's findings that they acted with intent to defraud Blue Ocean's clients.

Blue Ocean Has No Option But to Sell its Assets Under Duress.

151. The Initial Decision imposed severe sanctions upon Winkelmann and Blue Ocean for their unwitting violations of the Antifraud Provisions and Custody Provisions. Winkelmann was permanently barred from registering as an investment advisor or being associated with an investment advisor and was ordered to pay $415,000 (plus prejudgment interest) in disgorgement and $187,500 in civil penalties. Blue Ocean was ordered to cease and desist from causing violations of the Antifraud Provisions.

152. The Initial Decision did not revoke Blue Ocean's registration as an investment advisor, reasoning that Blue Ocean should be allowed to remain in business so that the royalty unit owners could be repaid in full. As a practical matter, however, the Initial Decision's findings forced Blue Ocean to cease all business operations.

153. Applicable securities laws require advisory firms like Blue Ocean to maintain custody of client funds with a qualified third-party custodian. From its inception, Blue Ocean used Scottrade as custodian of its advisory accounts. This relationship was to continue with TD Ameritrade following that firm's acquisition of Scottrade in September 2017.

154. On October 10, 2017, as a direct result of the findings set forth in the Initial Decision, TD Ameritrade permanently terminated its relationship with Blue Ocean, effective December 22, 2017.

155. Winkelmann and Blue Ocean repeatedly asked TD Ameritrade to rescind the termination, explaining that they were not at fault for the violations found in the Initial Decision. TD Ameritrade refused to reconsider its decision.

156. Winkelmann explored all available options for custody of Blue Ocean's advisory accounts. Even though Blue Ocean's assets under management exceeded $130 million, each qualified custodian that Winkelmann contacted rejected Blue Ocean due to the Initial Decision's derogatory findings.

157. Consequently, Winkelmann—unemployed and owing thousands of dollars in legal fees—had no choice but to sell Blue Ocean's assets in a distressed sale because Blue Ocean could not continue operations without a qualified custodian.

158. In December 2017, Winkelmann and Blue Ocean reached an agreement to sell Blue Ocean's book of business and related tangible and intangible assets to a small investment advisory firm. The terms of the sale were substantially inferior to what could have been received but for the Initial Decision and its derogatory findings. The sale price is subject to substantial adjustments to be made based upon the buyer's ability to retain and receive revenue from the former Blue Ocean clients. Furthermore, the price is to be paid in installments and will not be paid in full until December 31, 2022.

159. Greensfelder was well aware of the importance of Blue Ocean maintaining its relationship with its third-party custodian. On February 8, 2013, as Blue Ocean was preparing for the fourth royalty unit offering, Morgan wrote to Winkelmann that the offering memorandum

should include a disclosure describing the "risk" Blue Ocean would face "if the Scottrade relationship is lost." The harm Blue Ocean suffered from its inability to contract with a qualified third-party custodian was thus fully foreseeable to Greensfelder.

The Initial Decision Is Revised After the Record Is Supplemented with the Evidence that Ulmer Previously Omitted.

160. Winkelmann and Blue Ocean appealed the Initial Decision to the SEC commissioners.

161. After the SEC commissioners granted review of the appeal, Ulmer moved for leave to supplement the record on appeal with the March 28–29 Winkelmann/Morgan Email Exchange. The SEC Division of Enforcement did not oppose the motion, and the motion was granted.

162. On November 30, 2017, before the SEC commissioners made any ruling on Winkelmann and Blue Ocean's appeal, developments in a case pending before the U.S. Supreme Court led the SEC to issue an order requiring all administrative law judges who had issued an initial decision then pending before the SEC commissioners to reopen the record for new evidence, reconsider the full record, and ratify or revise their initial decision. Consequently, the SEC proceeding against Winkelmann and Blue Ocean was remanded to ALJ Patil.

163. Ulmer moved to supplement the record before ALJ Patil with the March 28–29 Winkelmann/Morgan Email Exchange, as well as a March 2011 Greensfelder invoice that reflected the work that Morgan and Walsh performed leading up to the first royalty unit offering.

164. In the motion, Ulmer observed regarding Greensfelder's negligence and the consequences that the Initial Decision had for Winkelmann and Blue Ocean:

> The evidence shows the [SEC Division of Enforcement] has wrongfully credited Greensfelder's reputation – as did Mr. Winkelmann and Blue Ocean.

> As a result, Blue Ocean now no longer has any advisory clients and Mr. Winkelmann is out of a job. No custodial firm (the entity which custodies the advisory client funds) was willing to associate with Mr. Winkelmann or Blue Ocean, given the findings contained in the Initial Decision. [Blue Ocean] lost all of its $132 million in assets under management (the client accounts). Mr. Winkelmann has lost his professional reputation and eligibility to work in the securities industry.

165. The March 28–29 Winkelmann/Morgan Email Exchange and the March 2011 Greensfelder invoice were admitted to the record before ALJ Patil.

166. On October 15, 2018, ALJ Patil issued an Initial Decision Following Remand (the "Revised Initial Decision").

167. The Revised Initial Decision again found that Winkelmann and Blue Ocean violated the Antifraud Provisions and the Custody Provisions for the same reasons as stated in the Initial Decision.

168. However, the Revised Initial Decision found that Winkelmann and Blue Ocean did not act with scienter in causing the violations because they relied in good faith on Greensfelder's advice. Specifically, the Revised Initial Decision found that:

> Correspondence shows that Greensfelder attorneys were aware that Winkelmann intended to sell royalty units to Blue Ocean advisory clients in 2011, before the first offering. Morgan reviewed and approved a letter Winkelmann address[ed] to his clients informing them of the offering. Later, Greensfelder attorneys discussed the need for Blue Ocean to disclose on its Form ADV that it had sold securities to advisory clients.

169. While the Revised Initial Decision nonetheless imposed sanctions upon Winkelmann and Blue Ocean, those sanctions are much less severe than those imposed by the Initial Decision. Winkelmann was given a six-month suspension from acting as an investment advisor and was ordered to pay $415,000 (plus prejudgment interest) in disgorgement and $25,500 in civil penalties. Blue Ocean was ordered to cease and desist from causing violations of the Antifraud Provisions.

170. The Revised Initial Decision made clear that ALJ Patil's acceptance of the advice-of-counsel defense was based upon the March 28–29 Winkelmann/Morgan Email Exchange, which Ulmer (through Wolper and VonderHeide) failed to enter into evidence during the hearing or before the Initial Decision was issued. Regarding the March 28–29 Winkelmann/Morgan Email Exchange, ALJ Patil wrote, "[t]his back and forth between Winkelmann and Morgan shows that Morgan and Greensfelder were aware of—and engaged with—the plan to offer or sell royalty units to clients." ALJ Patil further wrote, explaining his decision to lessen the sanctions imposed against Winkelmann, that:

> In the original initial decision, I imposed full industry and associational bars on Winkelmann for his "extremely reckless" conduct in repeatedly selling royalty units to his advisory clients. In light of the new evidence, I concluded that Winkelmann relied in good faith on the advice of counsel . . . Given the lack of scienter, a permanent bar is not appropriate or in the public interest.

171. Moreover, ALJ Patil distinguished persuasive value of the newly-admitted evidence from the emails between Winkelmann and Greensfelder that had been admitted into evidence at the hearing, writing:

> RX 106 was part of the record that I considered in the original initial decision. [Winkelmann and Blue Ocean] argue that this evidence was ignored and, even without consideration of the new evidence, established their reliance-on-counsel defense. [citation omitted] But RX 127 and RX 128 are crucial because they establish that Greensfelder was aware of the plan to sell royalty units to clients even before the first offering. Without the context provided by those exhibits, the persuasive value of the later communications contained in RX 106 is greatly reduced.

172. Thus, had Ulmer entered the March 28–29 Winkelmann/Morgan Email Exchange into evidence during the hearing (or even after the hearing concluded but before the Initial Decision was issued), Winkelmann and Blue Ocean would not have suffered the harm caused by the Initial Decision's findings that they acted with intent to defraud Blue Ocean's clients. Winkelmann would not have been barred for life from the securities industry.

Greensfelder's and Ulmer's Negligence Ruin Winkelmann and Blue Ocean.

173. Even though the Revised Initial Decision vacated the lifetime ban that the Initial Decision imposed upon Winkelmann, he and Blue Ocean remain irreparably damaged.

174. Winkelmann, now 60 years old, cannot again embark on the long and difficult road of building an investment advisory firm from the ground up. The Initial Decision's findings that Winkelmann willfully defrauded Blue Ocean's clients—a direct result of Greensfelder's and Ulmer's malpractice—have already tarnished Winkelmann's reputation, prevented him from finding gainful employment, and forced Blue Ocean to sell its assets under duress and at a steep discount. Those harms cannot be undone.

175. The harm Greensfelder's and Ulmer's malpractice has caused Winkelmann is not limited to financial and reputational damage. In January 2018, Winkelmann was diagnosed with post-traumatic stress disorder as a result of the malpractice and its disastrous consequences for Blue Ocean and for Winkelmann's career as an investment advisor. Winkelmann's symptoms include depression, anxiety, and sleep and eating disorders.

Winkelmann and Blue Ocean Remain Under Threat of an MSD Enforcement Proceeding.

176. Greensfelder's malpractice may still cause more harm to Winkelmann and Blue Ocean.

177. In October 2017, the MSD provided Winkelmann with a draft petition alleging that he and Blue Ocean are civilly liable for numerous violations of Missouri's securities laws and regulations (the "MSD Draft Petition").

178. The MSD Draft Petition also seeks to impose liability upon Glen Abbey Partners (the sole member of Blue Ocean) and Patricia Winkelmann (Winkelmann's wife and the sole member of Glen Abbey Partners). Insofar as Glen Abbey Partners and Patricia Winkelmann

participated in the conduct alleged in the MSD Draft Petition, it was in accordance with Greensfelder's advice, as Greensfelder's representation of Winkelmann and Blue Ocean was for their joint benefit.

179. The MSD Draft Petition alleges that Winkelmann, Blue Ocean, Glen Abbey Partners, and Patricia Winkelmann violated Missouri's securities laws and regulations by:

a. selling unregistered, nonexempt securities (the royalty units);

b. selling securities (the royalty units) without being registered in Missouri as an investment adviser;

c. failing to adequately disclose in the royalty unit offering memoranda information regarding Blue Ocean's financial condition;

d. incorrectly stating in Form ADV filings that Blue Ocean did not have custody of client funds;

e. incorrectly stating in Form ADV filings that Blue Ocean did not sell securities (the royalty units) to investment advisory clients;

f. incorrectly stating in Form D filings that the royalty units were "Debt" securities;

g. failing to adequately disclose in the royalty unit offering memoranda information regarding Binkholder's ban from acting as an investment advisor or investment advisor representative and Blue Ocean's ongoing affiliation with Binkholder.

180. The alleged violations of Missouri's securities laws and regulations set forth in the MSD Draft Petition all occurred in connection with the royalty unit offerings and arise from

issues on which Greensfelder (through Morgan, Walsh, and Menghini) were responsible for advising Winkelmann and Blue Ocean as described throughout this First Amended Petition.

181. The MSD Draft Petition seeks to impose over $500,000 in civil penalties.

182. If the MSD Draft Petition is ultimately filed against Winkelmann, Blue Ocean, Glen Abbey Partners, and Patricia Winkelmann, they will face additional legal expenses, emotional trauma, reputational damage, and, potentially, monetary liability.

Greensfelder and Ulmer Are Responsible for the Destruction of Blue Ocean.

183. Winkelmann and Blue Ocean always endeavored to comply with the securities laws and their fiduciary obligations with the utmost diligence. From Blue Ocean's inception in 2009 to the present day, no Blue Ocean client or investor has ever lodged a complaint against Winkelmann or Blue Ocean. The royalty unit investors have always been paid (and continue to be paid) in accordance with the terms of the offerings. Neither Winkelmann nor Blue Ocean ever acted willfully, recklessly, or negligently in violation of the state or federal securities laws, and all findings to the contrary are attributable to the Greensfelder Defendants and the Ulmer Defendants.

184. Winkelmann and Blue Ocean engaged the Greensfelder Defendants to make sure the royalty unit offerings complied with all applicable laws and regulations, including the Antifraud Provisions, the Custody Provisions, and Missouri's securities laws and regulations.

185. Winkelmann and Blue Ocean maintained regular communication with the Greensfelder Defendants regarding the royalty unit offerings, and furnished the Greensfelder Defendants with all necessary information for its attorneys to render proper legal advice.

186. Winkelmann and Blue Ocean relied on the Greensfelder Defendants' advice with respect to all legal and regulatory aspects of the royalty unit offerings, including all offering memoranda, subscription agreements, and other disclosures made to royalty unit investors.

187. Winkelmann and Blue Ocean also relied on the Greensfelder Defendants' advice with respect to all compliance matters involving the royalty unit offerings, including those related to custody of amounts owed to royalty unit holders, and representations made in compliance policies, procedure manuals, and Form ADV filings.

188. Throughout the Greensfelder Defendants' representation of Winkelmann and Blue Ocean, the Greensfelder Defendants repeatedly advised Plaintiffs that the royalty unit offerings and their related compliance practices (including those described in Form ADV and Form D filings) complied with all applicable laws and regulations.

189. None of the Greensfelder Defendants ever advised Winkelmann or Blue Ocean that any aspect of the royalty unit offerings violated or potentially violated any part of the Antifraud Provisions.

190. None of the Greensfelder Defendants ever advised Winkelmann or Blue Ocean that any aspect of their compliance practices with respect to the royalty unit offerings violated or potentially violated any part of the Custody Provisions.

191. If the Greensfelder Defendants had properly advised Winkelmann and Blue Ocean with respect to the Antifraud Provisions and the Custody Provisions, they would have followed the Greensfelder Defendants' advice, and neither Winkelmann nor Blue Ocean would have been subject to the MSD or SEC investigations or had regulatory proceedings brought against them.

192. Moreover, if the Greensfelder Defendants had properly advised Winkelmann and Blue Ocean with respect to the Antifraud Provisions, the Custody Provisions, and Missouri's securities laws and regulations, Blue Ocean would undoubtedly have realized Winkelmann's objective of becoming a large, profitable, and self-sustaining investment advisory firm.

193. After having been made a regulatory target by the Greensfelder Defendants' recklessness, Winkelmann and Blue Ocean engaged Ulmer to provide them with the best possible defense in SEC enforcement action.

194. Winkelmann and Blue Ocean maintained regular communication with the Ulmer Defendants regarding the SEC enforcement action, and furnished the Ulmer Defendants with all necessary information for its attorneys to render proper legal advice.

195. Winkelmann and Blue Ocean relied on the Ulmer Defendants' advice with respect to all aspects of the SEC enforcement action.

196. Throughout the Ulmer Defendants' representation of Winkelmann and Blue Ocean, the Ulmer Defendants repeatedly advised Winkelmann and Blue Ocean that they would put forth all evidence necessary to support Winkelmann and Blue Ocean's reliance-on-counsel defense.

197. If the Ulmer Defendants had done as they promised to Winkelmann and Blue Ocean, the Initial Decision would not have found that Winkelmann and Blue Ocean willfully violated the Antifraud Provisions or the Custody Provisions, and neither Winkelmann nor Blue Ocean would have suffered the harm caused by the Initial Decision's derogatory findings.

198. Moreover, if the Ulmer Defendants had done as they promised to Winkelmann and Blue Ocean, the Initial Decision would have accepted Winkelmann and Blue Ocean's reliance-on-counsel defense to the same degree as the Revised Initial Decision or to a greater

degree, and Blue Ocean would not have been forced to sell its assets under duress and at a discount.

COUNT I

LEGAL MALPRACTICE

(against the Greensfelder Defendants)

199. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

200. Plaintiffs and the Greensfelder Defendants had an attorney-client relationship with respect to Blue Ocean's royalty unit offerings and compliance with applicable securities laws and regulations.

201. In the course of the Greensfelder Defendants' representation of Plaintiffs, Defendants failed to exercise the degree of skill and diligence ordinarily used representation of Plaintiffs by:

a. advising Plaintiffs that Blue Ocean's royalty unit offerings and compliance practices did not violate any applicable laws or regulations;

b. advising Plaintiffs that the offering memoranda distributed in connection with Blue Ocean's royalty unit offerings made all disclosures necessary to comply with all applicable laws and regulations;

c. advising Plaintiffs that Blue Ocean could issue royalty units to its investment advisory clients without creating actual or potential conflicts of interest;

d. advising Plaintiffs that Blue Ocean did not have custody of client assets in connection with the royalty unit offerings or otherwise;

e. advising Plaintiffs that Blue Ocean's royalty unit offerings were properly classified as debt securities;

f. failing to advise Plaintiffs that Blue Ocean's royalty unit offerings and related compliance practices violated or potentially violated applicable laws or regulations;

g. failing to advise Plaintiffs that the offering memoranda distributed in connection with Blue Ocean's royalty unit offerings did not disclose information that might be considered material to potential investors under applicable laws and regulations;

h. failing to advise Plaintiffs that Blue Ocean's issuance of royalty units to its investment advisory clients created actual or potential conflicts of interest that required Blue Ocean to make further disclosures or undertake additional considerations in order to comply with applicable laws and regulations;

i. failing to advise Plaintiffs that Blue Ocean had or arguably had custody of client assets in connection with the royalty unit offerings or otherwise;

j. failing to advise Plaintiffs that Blue Ocean's royalty unit offerings were not properly classified as debt securities;

k. proving Plaintiffs legal advice that was not supported by adequate knowledge or research;

l. failing to advise Plaintiffs of the risks in and alternatives to the courses of action that the Greensfelder Defendants recommended;

m. failing to assign attorneys of adequate skill and experience to perform work on the representation;

n. failing to adequately supervise and review the work of the junior attorneys or non-attorneys assigned to perform work on the representation;

and such other instances of professional negligence as described in this First Amended Petition.

202. The Greensfelder Defendants should have realized that their negligence in their representation of Plaintiffs exposed Plaintiffs to the action brought by the SEC and the violations found by the SEC, and to the action that may be brought by the MSD, and thus created an unreasonable risk of causing Plaintiffs severe and medically significant emotional distress.

203. The Greensfelder Defendants should have realized that their negligence in their representation of Plaintiffs created a high degree of probability that Plaintiffs would be subject to the action brought by the SEC and the violations found by the SEC, and to the action that may be brought by the MSD, and accordingly, Defendants' negligence in their representation of Plaintiffs was so reckless as to show complete indifference or a conscious disregard for Plaintiffs' rights.

204. As a direct and proximate result of the Greensfelder Defendants' negligence and recklessness, Plaintiffs suffered damages in an amount to be determined at trial.

COUNT II
BREACH OF CONTRACT
(against Greensfelder)

205. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

206. Plaintiffs and Greensfelder had a contract under which Greensfelder agreed to draft or review documents to be distributed or submitted by Plaintiffs and to ensure that such

documents complied with all applicable securities laws and regulations, in exchange for Plaintiffs' payment of fees, as demonstrated through the parties' conduct.

207. Pursuant to their contract, Plaintiffs instructed Greensfelder to draft or revise royalty unit offering memoranda and regulatory filings (such as Form ADVs and Form Ds) that complied with all applicable securities laws and regulations.

208. Greensfelder breached its obligations to Plaintiffs under the contract by failing to abide by Plaintiffs' instructions.

209. Plaintiffs fulfilled their obligations to Greensfelder under the contract.

210. As a direct and proximate result of Greensfelder's breach, Plaintiffs suffered damages in an amount to be determined at trial.

COUNT III
NEGLIGENT MISREPRESENTATION
(against the Greensfelder Defendants)

211. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

212. The Greensfelder Defendants, in the course of their professional employment, represented to Plaintiffs that:

a. Blue Ocean's royalty unit offerings and compliance practices did not violate any applicable laws or regulations;

b. the offering memoranda distributed in connection with Blue Ocean's royalty unit offerings made all disclosures necessary to comply with all applicable laws and regulations;

c. Blue Ocean could issue royalty units to its investment advisory clients without creating actual or potential conflicts of interest;

d. Blue Ocean did not have custody of client assets in connection with the royalty unit offerings or otherwise;

e. Blue Ocean's royalty unit offerings were properly classified as debt securities;

f. Greensfelder produced to Plaintiffs its file from its representation of Plaintiffs;

and such other representations as described in this First Amended Petition.

213. The Greensfelder Defendants made these representations with the intent that Plaintiffs rely upon them in conducting Blue Ocean's royalty unit offerings, in designing and implementing their compliance practices, in furnishing information to potential investors and regulatory authorities, and in preparing their defense to the alleged violations set forth in the OIP.

214. Plaintiffs relied on the Greensfelder Defendants' representations and their reliance was reasonable under the circumstances, given the Greensfelder Defendants' purported expertise.

215. The Greensfelder Defendants' representations were material to Plaintiffs' decisions in conducting Blue Ocean's royalty unit offerings, in designing and implementing their compliance practices, and in furnishing information to potential investors and regulatory authorities, and in preparing their defense to the alleged violations set forth in the OIP.

216. The Greensfelder Defendants' representations were false, in that Blue Ocean's royalty unit offerings and related compliance practices were determined to have violated applicable laws and regulations.

217. The Greensfelder Defendants failed to use ordinary care in making the representations to Plaintiffs.

218. The Greensfelder Defendants should have realized that their negligence in making the representations to Plaintiffs exposed Plaintiffs to the action brought by the SEC and the violations found by the SEC, and to the action that may be brought by the MSD, and thus created an unreasonable risk of causing Plaintiffs severe and medically significant emotional distress.

219. The Greensfelder Defendants should have realized that their negligence in making the representations to Plaintiffs created a high degree of probability that Plaintiffs would be subject to the action brought by the SEC and the violations found by the SEC, and to the action that may be brought by the MSD, and accordingly, the Greensfelder Defendants' negligence in their representation of Plaintiffs was so reckless as to show complete indifference or a conscious disregard for Plaintiffs' rights.

220. As a direct and proximate result of the Greensfelder Defendants' negligence and recklessness, Plaintiffs suffered damages in an amount to be determined at trial.

COUNT IV

NEGLIGENT MISREPRESENTATION BY OMISSION

(against the Greensfelder Defendants)

221. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

222. The Greensfelder Defendants, in the course of their professional employment, had a duty to disclose to Plaintiffs that:

a. Blue Ocean's royalty unit offerings and related compliance practices violated or potentially violated applicable laws or regulations;

b. the offering memoranda distributed in connection with Blue Ocean's royalty unit offerings did not disclose information that might be

considered material to potential investors under applicable laws and regulations;

c. Blue Ocean's issuance of royalty units to its investment advisory clients created actual or potential conflicts of interest that required Blue Ocean to make further disclosures or undertake additional considerations in order to comply with applicable laws and regulations;

d. Blue Ocean had or arguably had custody of client assets in connection with the royalty unit offerings or otherwise; and

e. Blue Ocean's royalty unit offerings were not properly classified as debt securities;

f. the set of documents produced to Plaintiffs as Greensfelder's file from its representation of Plaintiffs omitted documents such as the March 24 Morgan/Winkelmann Email.

223. The Greensfelder Defendants did not disclose any of the above facts to Plaintiffs.

224. Plaintiffs relied on Defendants' nondisclosure of such facts and their reliance was reasonable under the circumstances, given the Greensfelder Defendants' purported expertise.

225. The Greensfelder Defendants' nondisclosure of such facts was material to Plaintiffs' decisions conducting Blue Ocean's royalty unit offerings, in designing and implementing their compliance practices, in furnishing information to potential investors and regulatory authorities, and in preparing their defense to the alleged violations set forth in the OIP.

226. The Greensfelder Defendants' nondisclosure of such facts was the result of their failure to use ordinary care.

227. The Greensfelder Defendants should have realized that their nondisclosure of such facts exposed Plaintiffs to the action brought by the SEC and the violations found by the SEC, and to the action that may be brought by the MSD, and thus created an unreasonable risk of causing Plaintiffs severe and medically significant emotional distress.

228. The Greensfelder Defendants should have realized that their nondisclosure of such facts to Plaintiffs created a high degree of probability that Plaintiffs would be subject to the action brought by the SEC and the violations found by the SEC, and to the action that may be brought by the MSD, and accordingly, the Greensfelder Defendants' negligence in their representation of Plaintiffs was so reckless as to show complete indifference or a conscious disregard for Plaintiffs' rights.

229. As a direct and proximate result of the Greensfelder Defendants' negligence and recklessness, Plaintiffs suffered damages in an amount to be determined at trial.

COUNT V
BREACH OF FIDUCIARY DUTY
(against the Greensfelder Defendants)

230. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

231. Plaintiffs and the Greensfelder Defendants had an attorney-client relationship with respect to Blue Ocean's royalty unit offerings and compliance practices, which imposed on the Greensfelder Defendants the fiduciary duties of loyalty and confidentiality.

232. The Greensfelder Defendants breached their fiduciary duty to Plaintiffs by placing their own interest in maintaining their professional credibility and appearance of expertise above Plaintiffs' interest in avoiding investigation and liability for alleged violations of the securities laws and regulations.

233. The Greensfelder Defendants should have realized that the breach of their fiduciary duty to Plaintiffs exposed Plaintiffs to the action brought by the SEC and the violations found by the SEC, and to the action that may be brought by the MSD, and thus created an unreasonable risk of causing Plaintiffs severe and medically significant emotional distress.

234. The Greensfelder Defendants should have realized that the breach of their fiduciary duty to Plaintiffs created a high degree of probability that Plaintiffs would be subject to the action brought by the SEC and the violations found by the SEC, and to the action that may be brought by the MSD, and accordingly, the Greensfelder Defendants' negligence in their representation of Plaintiffs was so reckless as to show complete indifference or a conscious disregard for Plaintiffs' rights.

235. As a direct and proximate result of the Greensfelder Defendants' breach of their fiduciary duty to Plaintiffs, Plaintiffs sustained damages in an amount to be determined at trial.

COUNT VI

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(on behalf of Winkelmann against the Greensfelder Defendants)

236. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

237. The Greensfelder Defendants had a duty to protect Winkelmann from emotional distress because:

a. Winkelmann and the Greensfelder Defendants had an attorney-client relationship, which imposed upon the Greensfelder Defendants a fiduciary duty toward Winkelmann;

b. The Greensfelder Defendants' representation of Winkelmann was of a particularly personal and sensitive nature, in that Winkelmann sought from

the Greensfelder Defendants advice that would allow Blue Ocean to generate continuing income for Winkelmann's family in the event of Winkelmann's death;

c. The Greensfelder Defendants were aware that negligently advising Winkelmann could cause Winkelmann to become the subjects of a regulatory investigation or enforcement proceeding, to be portrayed as having engaged in fraudulent conduct, and to suffer concomitant emotional distress, anguish, and humiliation.

238. The Greensfelder Defendants breached their duty to protect Winkelmann from emotional distress by repeatedly providing Winkelmann legal advice that was not based upon sufficient knowledge, research, or legal judgment and by failing to advise Winkelmann of the risks in and alternatives to the advice provided as described throughout the First Amended Petition.

239. The Greensfelder Defendants should have realized that their breach exposed Winkelmann to the action brought by the SEC, and to the action that may be brought by the MSD, and thus created an unreasonable risk of causing Winkelmann severe and medically significant emotional distress.

240. As a direct and proximate result of the Greensfelder Defendants' negligence and recklessness, Winkelmann suffered severe and medically significant emotional distress, causing them damages in an amount to be determined at trial.

COUNT VII
LEGAL MALPRACTICE
(against the Ulmer Defendants)

241. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

242. Winkelmann, Blue Ocean, and the Ulmer Defendants had an attorney-client relationship through which the Ulmer Defendants agreed to represent and advise Winkelmann and Blue Ocean with respect to the SEC's investigation and the alleged violations set forth in the OIP.

243. In the course of the Greensfelder Defendants' representation of Plaintiffs, Defendants failed to exercise the degree of skill and diligence ordinarily used representation of Plaintiffs by:

a. failing to introduce all evidence relevant to the advice-of-counsel defense (such as the March 28–29 Winkelmann/Morgan Email Exchange) into the record at the SEC hearing;

b. failing to make any attempt to have such evidence admitted into the record before the Initial Decision was issued;

and such other instances of professional negligence as described in this First Amended Petition.

244. The Ulmer Defendants should have realized that their negligence in their representation of Winkelmann and Blue Ocean exposed Winkelmann and Blue Ocean to being found liable in the SEC's administrative proceeding and having sanctions imposed against them, notwithstanding their available defenses, and thus created an unreasonable risk of causing Winkelmann severe and medically significant emotional distress.

245. The Ulmer Defendants should have realized that their negligence in their representation of Winkelmann and Blue Ocean created a high degree of probability that Winkelmann and Blue Ocean would be found liable in the SEC's administrative proceeding and have sanctions imposed against them, notwithstanding their available defenses, and accordingly, the Ulmer Defendants' negligence in their representation of Winkelmann and Blue Ocean was so reckless as to show complete indifference or a conscious disregard for Winkelmann's and Blue Ocean's rights.

246. As a direct and proximate result of the Ulmer Defendants' negligence and recklessness, Winkelmann and Blue Ocean suffered damages in an amount to be determined at trial.

COUNT VIII
BREACH OF CONTRACT
(against Ulmer)

247. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

248. Plaintiffs and Ulmer had a contract under which Ulmer agreed to represent Plaintiffs in connection with the SEC's investigation and related matters, as set forth in Exhibit 2.

249. Pursuant to their contract, Plaintiffs instructed Ulmer to introduce into the record of the SEC proceeding all evidence that supported Plaintiffs' reliance on advice-of-counsel defense.

250. Upon learning that Ulmer failed to introduce into the record the March 28–29 Winkelmann/Morgan Email Exchange, Plaintiffs instructed Ulmer to introduce that document into the record before ALJ Patil rendered a decision on the violations alleged in the OIP.

251. Ulmer breached its obligations to Plaintiffs under the contract by failing to abide by Plaintiffs' instructions.

252. Plaintiffs fulfilled their obligations to Ulmer under the contract.

253. As a direct and proximate result of Ulmer's breach, Plaintiffs suffered damages in an amount to be determined at trial.

COUNT IX
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(on behalf of Winkelmann against the Ulmer Defendants)

254. Plaintiffs incorporate by reference all preceding paragraphs as though fully set forth herein.

255. The Ulmer Defendants had a duty to protect Winkelmann from emotional distress because:

a. Winkelmann and the Ulmer Defendants had an attorney-client relationship, which imposed upon the Ulmer Defendants a fiduciary duty toward Winkelmann;

b. The Ulmer Defendants' representation of Winkelmann was of a particularly personal and sensitive nature, in that Winkelmann retained the Ulmer Defendants to defend him against allegations that he willfully defrauded Blue Ocean's clients, when in fact Winkelmann operated with a good-faith belief that his conduct was permissible under all applicable laws and regulations because he had been so advised by his legal counsel;

c. The Ulmer Defendants were aware that negligently representing Winkelmann could cause Winkelmann to be found liable of willfully

defrauding Blue Ocean's clients and to suffer concomitant emotional distress, anguish, and humiliation.

256. The Ulmer Defendants breached their duty to protect Winkelmann from emotional distress by failing to introduce all evidence relevant to the advice-of-counsel defense (such as the March 28–29 Winkelmann/Morgan Email Exchange) into the record at the SEC hearing, and by failing to make any attempt to have such documents admitted into the record before the Initial Decision was issued.

257. The Ulmer Defendants should have realized that their breach exposed Winkelmann to be found liable of willfully defrauding Blue Ocean's clients, and thus created an unreasonable risk of causing Winkelmann severe and medically significant emotional distress.

258. As a direct and proximate result of the Ulmer Defendants' negligence and recklessness, Winkelmann suffered severe and medically significant emotional distress, causing him damages in an amount to be determined at trial.

PRAYER FOR RELIEF

259. Plaintiffs respectfully request that on each of the above Counts, the Court award:

a. damages in an amount to be determined at trial;

b. special damages, including Plaintiffs' attorney fees incurred in connection with the MSD and SEC investigations and the SEC proceeding, Winkelmann's lost wages, and damages arising from Winkelmann's emotional injuries;

c. punitive damages;

d. Plaintiffs' costs and disbursements in this action;

e. all other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

260. Plaintiffs respectfully request a trial by jury on all issues so triable.

Respectfully submitted,

EDGAR LAW FIRM LLC

Dated: May 2, 2019

/s/ Matthew J. Limoli

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on May 2, 2019, the foregoing pleading was filed via the Court's electronic filing system to be served via electronic mail upon the following:

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Pursuant to Rule 55.03(a), the undersigned further certifies that he signed the original of the foregoing pleading and this Certificate.

/s/ Matthew J. Limoli
Attorney for Plaintiffs

EXHIBIT 1

UNITED STATE OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of: **JAMES A. WINKELMANN, SR. AND BLUE OCEAN PORTFOLIOS, LLC,** **Respondents.**	ADMINISTRATIVE PROCEEDING File No. 3-17253

AFFIDAVIT OF ERWIN O. SWITZER

1.e My name is Erwin O. Switzer. I currently serve as the General Counsel for thee law firm Greensfelder, Hemker & Gale, P.C. ("Greensfelder"). In my capacity as General Counsel for Greensfelder, I have personal knowledge of the facts set forth in this Affidavit.

2.e I understand that in the above-captioned proceeding, the Securities and Exchangee Commission (the "Commission") brought charges against James A. Winkelmann, Sr. and Blue Ocean Portfolios, LLC ("Blue Ocean") related to four royalty unit offerings that occurred between March 2011 and February 2013 (the "Offerings").

3.e Greensfelder provided legal advice to Winkelmann and Blue Ocean in connectione with the Offerings. The late Michael Morgan was the attorney responsible for Greensfelder's representation of Winkelmann and Blue Ocean in connection with the Offerings. Morgan died on February 6, 2015.

4.e The document attached as Exhibit 1 to this Affidavit is a true and correct copy ofe an email (with accompanying attachment) that Winkelmann sent to Morgan on March 28, 2011.

5. On December 31, 2015, Greensfelder produced a copy of the document attachede as Exhibit 1 to the Commission in response to a subpoena dated December 17, 2015. *See* GHG-004590–GHG004591.

6.e The document attached as Exhibit 2 to this Affidavit is a true and correct copy ofe an email (with accompanying attachment) that Morgan sent to Winkelmann on March 29, 2011.

7.e On December 31, 2015, Greensfelder produced a copy of the document attachede as Exhibit 2 to the Commission in response to a subpoena dated December 17, 2015. *See* GHG-004317–GHG-004319.

8.e Greensfelder confirms the authenticity of the documents attached as Exhibits le and 2 to this Affidavit.

9.e Attached as Exhibit 3 to this Affidavit is a document tracking the changese between the attachment to Exhibit 1 and the attachment to Exhibit 2.

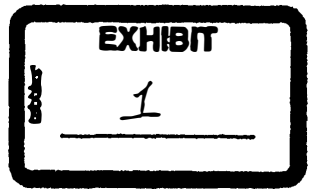
Affiant

Subscribed and sworn before me this 3rd day of May, 2017.

Notary Public

My Commission Expires: 

MARY E. ILLIG
My Commission Expires
January 6, 2020
St. Louis City
Commission #11512913



From: Jim [jim@blueoceanportfolios.com]
Sent: Monday, March 28, 2011 7:05 PM
To: Morgan, Michael
Subject: what about our accreditted investors
Attachments: [redacted] BOP Royalty Cover.docx; Mime.822

this is the letter I came up with ,,,,

would like to send this out to a handful of accreditted investors - [redacted] etc.

--

James A. Winkelmann, Principal

Blue Ocean Portfolios, LLC

Registered Investment Advisors

16020 Swingley Ridge, Suite 360

Chesterfield, MO 63017

Office: 636-530-9393

Cell: [redacted]

www.BlueOceanPortfolios.com

March 24, 2011

[redacted]

DRAFT

RE: Blue Ocean Portfolios

Dear Jay,

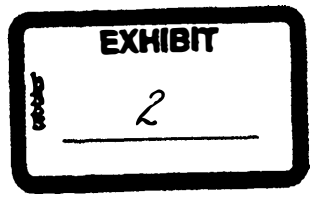
Thanks to clients like you we have been steadily growing our Blue Ocean Portfolios business. Since our launching the company in August of 2009 we have grown the AUM to approximately $40 million and we are growing every day due to our effective radio advertising on KMOX, our weekly radio program on FM 97.1 –The Financial Coach Show and of course our compelling approach to portfolio management. We are spending about $2,500 to land $1million in new assets that generate approximately $8,000 in recurring annual revenue. As you can see this business model and advertising system has the potential to create a very valuable cash flow.

I made the decision that once we had acquired about $40 million in assets that we would expand the business. That threshold will be easily met and we will be raising up to $1 million in new capital for our business to increase the advertising budget from $6,000 per month to approximately $25,000 per month and to hire a few more representatives to support the anticipated expanded activity. If we can maintain similar advertising efficiency we would expect the new customer portfolio assets to grow at a rate of $4-6 million per month just in the St. Louis market. This advertising system could work all over the country. The cash flow from this recurring revenue model has the potential to be very valuable.

My idea for the new capital would be to sell Blue Ocean Royalty Units for $25,000 each. Each one of these Blue Ocean Royalty units would give the purchaser rights to at least 0.25% of the cash receipts of Blue Ocean, LLC until the unit holder would be re-paid $75,000. These payments would be made every quarter. Then the unit holder would have a warrant to purchase 0.25% of Blue Ocean Portfolios for $25,000. We already have several units spoken for from friends and family members reserved. Because of the fiduciary relationship we have with you I cannot recommend that you or your family participate in this offering due to the potential conflict that such a recommendation will create. Nonetheless I wanted to make you aware of this offering and will provide you with a complete offering document should your interest warrant. Please do not hesitate to call should you have any questions or comments.

Sincerely yours,

Jim Winkelmann
President



From: Michael Morgan [mm@greensfelder.com]
Sent: Tuesday, March 29, 2011 2:39 PM
To: Jim
Subject: Re: what about our accreditted investors
Attachments: [redacted] BOP Royalty Cover.docx

second try

Michael Morgan
Greensfelder, Hemker & Gale, P.C.
10 S. Broadway, Suite 2000
St. Louis, MO 63102

[redacted] (cell)
314-241-9090 (main)t

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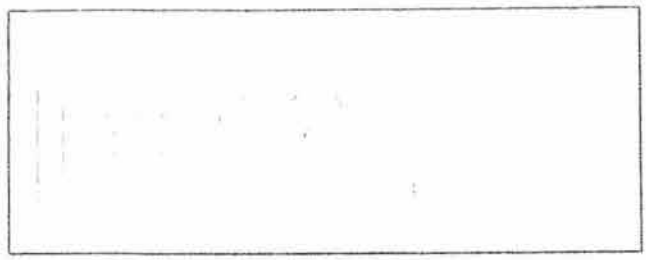

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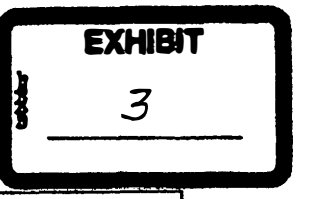
I made the decision that once we had acquired about $40 million in assets that we would expand the business. That threshold will be easily met and we will be raising up to $1 million in new capital for our business to increase the advertising budget from $6,000 per month to approximately $25,000 per month and to hire a few more representatives to support the anticipated expanded activity. If we can maintain similar advertising efficiency we would expect the new customer portfolio assets to grow at a rate of $4-6 million per month just in the St. Louis market. This advertising system could work all over the country. The cash flow from this recurring revenue model has the potential to be very valuable.

My idea for the new capital is to privately place up to 40 Blue Ocean Royalty Units for $25,000 each. Each one of these Blue Ocean Royalty units would give the unit holder rights to at least 0.25% of the cash receipts of Blue Ocean, LLC until the unit holder would be re-paid $75,000. These payments would be made every quarter. Then the unit holder would have a warrant to purchase 0.25% of Blue Ocean Portfolios for $25,000. We already have several units spoken for from friends and family members.

Because of the fiduciary relationship we have with you, I cannot recommend that you or your family participate in this offering due to the potential conflict that such a recommendation will create, and this letter is not an offer. Nonetheless I wanted to make you aware of this situation and can provide you with offering materials should your interest warrant. Please do not hesitate to call should you have any questions or comments.

Sincerely yours,

Jim Winkelmann
President



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Sincerely yours,

Jim Winkelmann
President

EXHIBIT 2

ulmer|berne|llp
ATTORNEYS

ALAN M. WOLPER
Partner
direct 312.658.6564
direct fax 312.658.6565
awolper@ulmer.com

August 4, 2015

Via Email: Jim@blueoceanportfolios.com
Mr. James A. Winkelmann
Principal
Blue Ocean Portfolios
1588 South Lindbergh, Suite 205
Village at Schneithorst's
Saint Louis, MO 63131

Re: Engagement Letter Agreement

Dear James:

I am pleased that you have selected Ulmer & Berne LLP to work with you regarding an SEC Exam (the "Matter"). We strive to deliver cost-effective legal services of the highest quality on your behalf.

This Engagement Letter Agreement confirms the scope, terms and conditions of our representation. We have found if we spell this out at the start of the representation we can avoid any misunderstandings in the future and we can all concentrate on the matters at hand.

The scope of the engagement will be to represent you regarding the Matter. If any new or expanded engagement beyond the Matter arises in the future, we may require an additional agreement in writing. Such additional representation, however, will remain subject to the same terms and conditions as detailed in this Engagement Letter Agreement unless otherwise agreed to in writing. Unless or until any additional written agreements are entered into, the only attorney-client relationship formed by reason of this Engagement Letter Agreement is between Ulmer & Berne LLP and you.

In connection with this engagement, we have agreed to charge for our services on the basis of the time we spend on the Matter. Our fees will be based on the amount of time spent on this matter by various lawyers and paralegals, multiplied by their individual hourly billing rates. I will be primarily responsible for handling this matter. My current billing rate is $575 per hour, but I have agreed to discount that by 10% to $517.50 per hour. It is likely that we will use other attorneys for various aspects of the matter as appropriate, based on their expertise and the interests of cost effective representation. Our standard hourly billing rates for lawyers currently range from $220 per hour to $680 per hour. Time may also be devoted to this matter by paralegals, whose current hourly rates range from $140 to $235. These billing rates are subject to change from time to time and are typically adjusted annually.

500 WEST MADISON STREET, SUITE 3600
CHICAGO, ILLINOIS 60661-4587
firm 312.658.6500 | fax 312.658.6501 | internet www.ulmer.com

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ATTORNEYS

It is our customary policy to obtain a retainer. In this case, we have determined that a retainer in the amount of $5,000 is appropriate. We will apply that retainer amount against current invoices until it is depleted. Any unused balance remaining at the end of the Matter will be refunded to you. In addition, we reserve the right, in our discretion, to request an additional retainer(s) at any time prior to performing additional services under this engagement. Our representation will not commence until we receive payment of the retainer which will be deposited to the Firm's Client Trust Account. Payment of the retainer can be made by check or wire transfer. Checks should be made payable to Ulmer & Berne LLP. Please contact me if you need wire transfer instructions.

Additional information regarding fees and other important matters appear in the Standard Terms of Representation attached to this letter. Please indicate your acceptance of the terms of this Engagement Letter Agreement and the Standard Terms of Representation by signing and returning a copy of this letter to me via email at AWolper@ulmer.com.

If you have any questions regarding this letter and attachments, please call me. We truly appreciate the opportunity to be of service to you, and I look forward to working with you.

Thank you for choosing Ulmer & Berne LLP to represent you.

Yours very truly,

Alan M. Wolper

AMW:mh
Encl.

Agreed to and accepted this 12 day of August, 2015.

JAMES A. WINKELMANN

Print: James A. Winkelmann

Sign: _____