

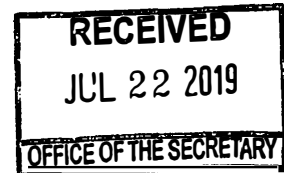
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

**JAMES A. WINKELMANN, SR. AND
BLUE OCEAN PORTFOLIOS, LLC,**

Respondents.

ADMINISTRATIVE PROCEEDING
File No. 3-17253



REPLY IN SUPPORT OF MOTION

FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

Pursuant to SEC Rule of Practice 452, 17 C.F.R. § 201.154(b), Respondents James A. Winkelmann, Sr. and Blue Ocean Portfolios, LLC (“Blue Ocean” or the “Firm”) hereby files this Reply in Support Motion for Leave to Adduce Additional Evidence.

BACKGROUND

Respondents submitted their motion for leave to adduce additional evidence on July 10, 2019. On July 16, 2016 The Division of Enforcement submitted their response in opposition. The Division’s opposition argues that Exhibit A to the Motion for Leave to Adduce Additional Evidence, an email that supports Respondents’ advice of counsel defense, is an incomplete part of a chain and should therefore not be added to the record.

The Division’s opposition also argues that Exhibit B to the Motion for Leave to Adduce Additional Evidence, an affidavit of Greensfelder’s general counsel, is duplicative and therefore should not be added to the record.

ANALYSIS

Exhibit A

Exhibit A represents the complete email chain and the Rule of Completeness is therefore satisfied. Exhibit A was produced to The Edgar Law Firm who is representing Respondents in a

civil action filed against Greensfelder in the Circuit Court of St. Louis County, Missouri. The attached Affidavit of Matthew J. Limoli of The Edgar Law Firm describes how Exhibit A was produced and explains why there is no evidence it is part of larger chain.¹ In any event, Mr. Limoli's affidavit attaches all other emails that Greensfelder produced with the subject line "ADV – more" or "Re: ADV – more." Respondents do not object to these emails being entered into the record if necessary to satisfy the Rule of Completeness.

The Division's argument that Exhibit A is not relevant is also incorrect. The evidence is particular and material in supporting Respondents' reliance on counsel defense. This excerpt from Exhibit A references "to this offering":

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."

The only securities offering of any type that Respondents ever made was the Royalty Unit offering. Thus, Exhibit A can only pertain to the Royalty Units issued by the Respondents and clearly supports the position that Greensfelder knew Respondents intended to offer Royalty Units to the investment advisory clients.

Exhibit B

Respondents included Exhibit B² in their Motion for Leave to Adduce Additional Evidence to show The Commission that Greensfelder did not include Exhibit A in their response to The Division's subpoena to Greensfelder of December 17, 2015. Greensfelder failure to comply with this subpoena caused Exhibit A not to be part of the Administrative Law Judge

¹ Exhibit 1 – Affidavit of Matthew J. Limoli

² Affidavit of Erwin Switzer

hearing, creating a void in the evidence record. This void was not discovered until recently. This fact does not create unduly or repetitious evidence.

CONCLUSION

There is no evidence that Exhibit A was a part of larger email string. The only evidence supports the fact that Exhibit A is the complete email. The Division’s objection based on the Rule of Completeness must fail. Exhibit A is particular and material. Exhibit B lays the reasonable foundation for why Exhibit A it was not previously introduced into the record. The Commission should grant Respondent’s Motion for Leave to Adduce Additional Evidence and accept both Exhibits A and Exhibit B into the record.

Dated: July 19, 2019

James A. Winkelmann



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

CERTIFICATE OF SERVICE

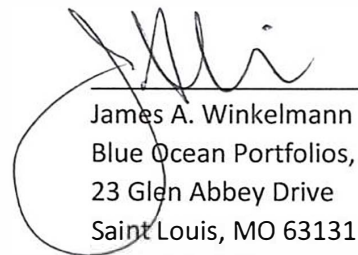
I hereby certify that on July 19, 2019, I served a copy of the foregoing REPLY IN SUPPORT OF MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE, as follows:

Original and three copies
Via
US First Class Mail &
Facsimile (202)772-9324

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



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

Exhibit 1

AFFIDAVIT OF MATTHEW J. LIMOLI

STATE OF MISSOURI)
)
COUNTY OF JACKSON)

The undersigned, Matthew J. Limoli, being first duly sworn upon his oath, deposes and states as follows:

1. I am a citizen of the State of Kansas over the age of 18 and make this Affidavit voluntarily and based upon first-hand knowledge.

2. I am an attorney at Edgar Law Firm LLC. I am one of the attorneys representing James A. Winkelmann and Blue Ocean Portfolios, LLC, in the litigation captioned *Blue Ocean Portfolios, LLC, et al. v. Greensfelder, Hemker & Gale, P.C., et al.*, cause no. 19SL-CC00307, pending in the Circuit Court of Saint Louis County, Missouri (the “Malpractice Suit”).

3. One of the defendants in the Malpractice Suit is Greensfelder, Hemker & Gale, P.C. (“Greensfelder”).

4. In January 2016, Greensfelder produced to my firm in connection with the Malpractice Suit a set of electronic documents bates labeled Greensfelder_000001 through Greensfelder_013331 (the “Greensfelder Production”).

5. Included within the Greensfelder Production was the document bates labeled Greensfelder_001439 (the “Morgan Email”).

6. I provided an identical copy of the Morgan Email to Mr. Winkelmann.

7. I have reviewed the Motion for Leave to Adduce Additional Evidence that Mr. Winkelmann filed on July 10, 2019 (the “Motion”) and affirm that Exhibit A to the Motion is an identical copy of the Morgan Email that I provided to Mr. Winkelmann.


8. Each document within the Greensfelder Production was produced as an individual .TIF file. In other words, documents that appear to be email strings containing multiple emails were produced as individual .TIF files containing one or more pages.

9. The .TIF file containing the Morgan Email, "Greensfelder_001439.tif," is a single page and is in all respects is identical to Exhibit A to the Motion.


10. My firm has electronically searched the entire Greensfelder Production for documents appearing to be emails with the subject line "ADV," "Re: ADV" or "Re: ADV – more."

11. Identical copies of all such documents contained in the Greensfelder Production (including the Morgan Email but excluding partially or fully duplicated documents with different bates numbers), consisting of fourteen total pages, are attached to this Affidavit as Exhibit A-1.

FURTHERMORE AFFIANT SAYETH NAUGHT



Sworn to before me this 19th day of July, 2019.



Notary Public

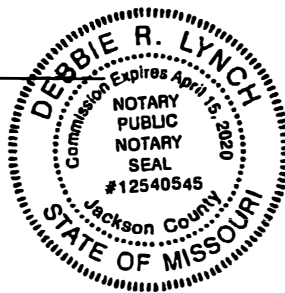


Exhibit A1

From: Michael Morgan [mm@greensfelder.com]
Sent: Wednesday, March 23, 2011 1:39 PM
To: Jim
CC: Walsh, Giles
Subject: Re: ADV

I took a look at the instructions and I now think that the rule is that since you were between 25 and 30 million as of the date of your last annual amendment, SEC registration is now elective but not required. My guess is that you can stay with the states until the end of 2011. Then, after 2011, you will be required to register with the SEC if you are by then over \$100 million.

Getting all that confirmed with a telephone call would make a lot of sense, we are in something of a grey area here.

MM

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

cell)a
314-241-9090 (main)a

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>>> Jim <jim@blucocceanportfolios.com > 3/21/2011 12:31 PM >>>a
I got CRD numbers for Patty and the kids - here is are the final drafts. Wea
need to submit this week.a

--

James A. Winkelmann, Principal

From: Michael Morgan [mm@greensfelder.com]
Sent: Thursday, March 24, 2011 2:28 PM
To: Hennessy, Kelly
Subject: Re: ADV - more

Oh yeah, and David's name is misspelled "Simth" in the text but that wasn't the problem... MM

>>> Kelly Hennessy <kelly.christauell@sbcglobal.net > 3/24/2011 1:41 PM >>>
I'm able to pull all of them up on www.advisorinfo.sec.gov .

For example, here is the link to David Patrick Smith.
[http://www.advisorinfo.sec.gov/\(S\(g0ht4h1pjkamfg3vzq4m5xcy\)/IAPD/Content/ViewIndvl/IAPD_IndvlSummary.aspx?Indvl_PK=4718057](http://www.advisorinfo.sec.gov/(S(g0ht4h1pjkamfg3vzq4m5xcy)/IAPD/Content/ViewIndvl/IAPD_IndvlSummary.aspx?Indvl_PK=4718057)

From: Jim <jim@blueoceanportfolios.com >
To: Michael Morgan <mm@greensfelder.com >
Cc: Kelly Christanell <kelly.christanell@sbcglobal.net >
Sent: Thu, March 24, 2011 12:58:36 PM
Subject: Re: ADV - more

kelly - do you know why they aren't showing up?

----- Original Message -----

From: "Michael Morgan" <mm@greensfelder.com >
To: "Jim" <jim@blueoceanportfolios.com >
Sent: Thursday, March 24, 2011 12:52:40 PM
Subject: Re: ADV - more

But he doesn't show up on the SEC site as a registered IA rep. Neither do
Carey

Mulwee or Greg Garland.

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

██████████
██████████ (cell)o
314-241-9090 (main)o

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>>> Jim <jim@blueoceanportfolios.com> 3/23/2011 5:24 PM >>>e
he is an outside accountant but also an investment advisor repe

----- Original Message -----

From: "Michael Morgan" <mm@greensfelder.com>
To: "Jim" <jim@blueoceanportfolios.com>
Sent: Wednesday, March 23, 2011 5:20:28 PM
Subject: Re: ADV - more

No. Oops. I thought he was an outside accountant. I've closed it and printed it out, let me review it in hard copy, that's not a good mistake to make. MM

>>> Jim <jim@blueoceanportfolios.com> 3/23/2011 5:17 PM >>>e
He is a Investment Advisor Representative for Blue Ocean Portfolios - is that a problem?e

----- Original Message -----

From: "Michael Morgan" <mm@greensfelder.com>
To: "Jim" <jim@blueoceanportfolios.com>
Sent: Wednesday, March 23, 2011 5:09:36 PM
Subject: Fwd: Re: ADV - more

Whoa. I just saw the reference to compensation paid to David Smith. Are these cash payments for client solicitations? MM

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



(cc)l)e

314-241-9090 (main)e

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>>> Michael Morgan 3/23/2011 5:05 PM >>>e

1. There is a reference in Part II to the brochure being dated February 25, e
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elsewhere it is March 16.e

2.e would change Item 9 to read as follows:e

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that are material to your evaluation of Blue Ocean Portfolios or the integrity of Blue Ocean Portfolios' management.

While Blue Ocean Portfolios does not believe there are any such applicable events, please refer to Item 19 for information regarding a former management member of a firm in which James Winkelmann, the chief executive manager of Blue Ocean Portfolios, held a management role.

That's it for now.

MM

Michael Morgan
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██████████
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I got CRD numbers for Patty and the kids - here is are the final drafts. Wee need to submit this week.e

--

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

--

James A. Winkelmann, Principal

Blue Ocean Portfolios, LLC

From: Michael Morgan [mm@greensfelder.com]
Sent: Thursday, March 24, 2011 2:37 PM
To: Hennessy, Kelly
CC: Jim
Subject: Re: ADV - more

Sounds great. MM

>>> Kelly Hennessy <kelly.christanell@sbcglobal.net > 3/24/2011 2:33 PM >>>e
Hi Mike,e

Since we have already submitted ADV Part 2, I will update the reps U4's to include their middle initial under other names. I can also make a note to include the reps middle name or CRD# the next time we update ADV Part 2 if this is ok.

Also, the U4 does ask if the Rep is employed as an independent contractor and we have selected "Yes" for David Smith.

Thanks,

Kelly

From: Michael Morgan <mm@greensfelder.com >
To: Jim <jim@blueoceanportfolios.com >; Kelly Hennessy <kelly.christanell@sbcglobal.net >
Sent: Thu, March 24, 2011 2:20:08 PM
Subject: Re: ADV - more

OK the problem is the middle names. In your ADV you have only middle initials, and that will not pull them up with the SEC.

It's strange. I remember from years ago (and it's still probably true) that if you didn't include middle names in the application it would be kicked back. So that's how they are registered. But using the full middle name is pretty odd, and it isn't on most firms' marketing materials or brochures.

I do think it's important, because right now the ADV cross-refers to the SEC site (as it must) but if someone does it, as I did, they will get two other

David P. Smiths, but not ours.

I think there are two ways to solve this. Either include the middle name in the ADV (maybe in the part about the SEC lookup) or include their name with the middle initial in the "Other Names" in the IAR registration, which lots of firms do.

Still, Jim, I'm trying to think through Dave's status as an independent CPA. BOP is referred to in the registration as his "employer", which I'm sure it's not. I'm sure he is an independent contractor. But he is an IAR, and I don't think there is a place on the form to indicate that he is an independent contractor. That has to be OK - we know plenty of registered reps who are independent contractors, and they are not separately registered as firm with FINRA. (Well, as of some years ago - you would know better than I.)

The point with cash payments to solicitors is to avoid their having to do separate ADV's. Presumably the clients Jim solicits gets an ADV of BOP like everyone else, with him disclosed as an IAR.

So, thinking aloud, and not wanting to spend any time researching this, I think we can conclude that things are fine so long as the disclosure about Jim in your ADV conveys the same information that he'd convey if he were doing his own ADV.

I will say that in cases where he is also their CPA he could have conflicts, and maybe more importantly he will probably know - and the knowledge will be imputed to you - a lot more about those clients than the average IA would know. None of that is necessarily bad, it seems to me, if he is a super-careful and he makes clear that he is a registered rep of BOP when he suggests you to his clients.

MM

Michael Morgan
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10 S. Broadway, Suite 2000
St. Louis, MO 63102

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Michael Morgan

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That's it for now.

MM

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Cell: [REDACTED]

www.BlueOceanPortfolios.com

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

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