

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of:**

**ADMINISTRATIVE PROCEEDING**

**File No: 3-17253**

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

**MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE**

Pursuant to SEC Rule of Practice 452, Respondent 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. Bases on additional evidence 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. Here is an excerpt from the October 15, 2018 Initial Decision on remand.

“With respect to conflicts of interest, I find that Respondents lacked scienter and therefore did not violate Securities Act Section 17(a)(1), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(1).”<sup>1</sup>

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<sup>1</sup> October 15, 2015 ID page 83

Respondents request leave to supplement the record with additional emails<sup>2</sup> correspondence from William Cooper, Attorney at Law to Benjamin J. Hanauer, Senior Trial Counsel with SEC Division of Enforcement. This email provides further support for the Respondent's advice of counsel defense. The fact that Greensfelder advised Respondents that sale of the Royalty Units to advisory clients was acceptable was never in dispute prior to the to the Order Instituting Proceedings<sup>3</sup> or the Administrative Law Judge hearing by the Division or Greensfelder. Additionally, Respondents request leave to supplement the record with an affidavit of William E. Cooper along with copy of email he sent to Benjamin J. Hanauer. Mr. Cooper represented Respondents in settlement negotiations with Greensfelder and was in communications with Mr. Hanauer and the Division in late 2015 and early 2016.

## **II. ANALYSIS**

The email and 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 there were reasonable grounds for the 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**

Exhibit A along with its' Exhibit 1 support Respondents' advice of counsel defense and rebut the Division's claims that scienter-based sanctions should be imposed on Respondents. Furthermore, it shows that the Division known or should have known that the Initial Decision of March 20, 2017 was factually incorrect. Here is the excerpt from the March 20, 2017 Initial Decision:

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<sup>2</sup> Exhibit A – Affidavit of William E. Cooper and April 3, 2017 Emails from William E. Cooper to Benjamin J. Hanauer

<sup>3</sup> OIP May 19, 2016

“All agree that Morgan was an experienced securities practitioner, and it is not conceivable that he would have blessed this scheme in the absence of any documentation or correspondence to show how he arrived at the advice that Winkelmann recalls receiving. Yet there is nothing at all in writing.”<sup>4</sup>

In Exhibit 1 of Exhibit A Mr. Cooper recites relevant and compelling facts that were left out of the hearing and evidence record this email was sent to Mr. Hanauer on April 3, 2017 at 2:31 PM. Page 2 of Exhibit 1 was sent on the same date at 3:23 PM, less than an hour later clearly indicates that Mr. Hanauer addressed the concerns raised by Mr. Cooper. Clearly the above excerpt and reasoning for the March 20, 2017 Initial Decision is not correct. Why Mr. Hanauer and the Division chose to ignore these facts in preparing the OIP in May 2016 or in its assessing of the Initial Decision of March 20, 2017 and their subsequent briefs on the review by the Commission is not known.

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

Respondents were not a recipient party to Exhibit 1 (April 3, 2017 emails) of Exhibit A. Respondents recently learned of the communication and requested a copy from Mr. Cooper. Mr. Cooper provided copies to Respondents on May 19, 2020. The Division has been in receipt of the emails in Exhibit A since April of 2017, yet the Division chose to withhold the facts conveyed in this exculpatory evidence from record.

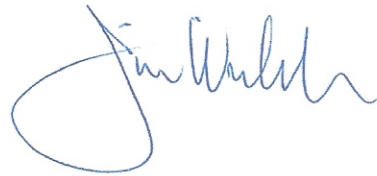
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<sup>4</sup> March 20, 2017 ID page 61

### III. CONCLUSION

For the reasons and circumstances stated above Respondents respectfully request that the Commission accepts Exhibit A, Mr. Cooper's affidavit and its' Exhibit 1, the April 3, 2017 copy of email from William E. Cooper to Benjamin J. Hanauer into the record.

Dated May 22, 2020



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James A. Winkelmann, Sr.  
Pro Se Respondent  
23 Glen Abbey Drive  
Saint Louis, MO 63131  
(314) 226-7411  
[Jim@BlueOceanPortfolios.com](mailto:Jim@BlueOceanPortfolios.com)

Exhibit A

UNITED STATES OF AMERICA

Before the

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JAMES A. WINKELMANN, SR. AND

File No. 3-17253


BLUE OCEAN PORTFOLIOS, LLC,

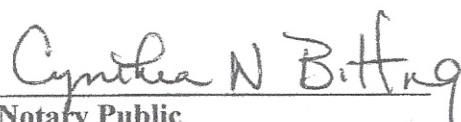
Respondents.

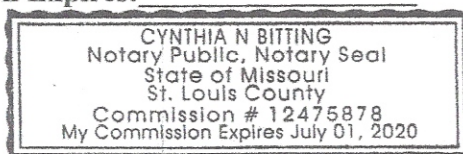
AFFIDAVIT OF WILLIAM E. COOPER

1. My name is William E. Cooper. I am a licensed attorney practicing in St. Louis, Missouri.
2. As legal counsel, I have represented Respondents in discussions with The Greensfelder Law firm of St. Louis, Mo in connection with their representation of Respondents as legal counsel during the time period resulting in the above Administrative Proceeding. I also represented former employees of Blue Ocean Portfolios, LLC through their on-the-record interviews with the Commission. As a result, I have personal knowledge of the facts set forth in Exhibit 1.
3. The email attached as Exhibit 1 to the Affidavit is a true and correct copy of an email that I sent to Benjamin J. Hanauer, attorney representing the Commission on April 3, 2017.

Subscribed and sworn before me this 19<sup>th</sup> day of May, 2020

  
\_\_\_\_\_  
William E. Cooper, Affiant

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

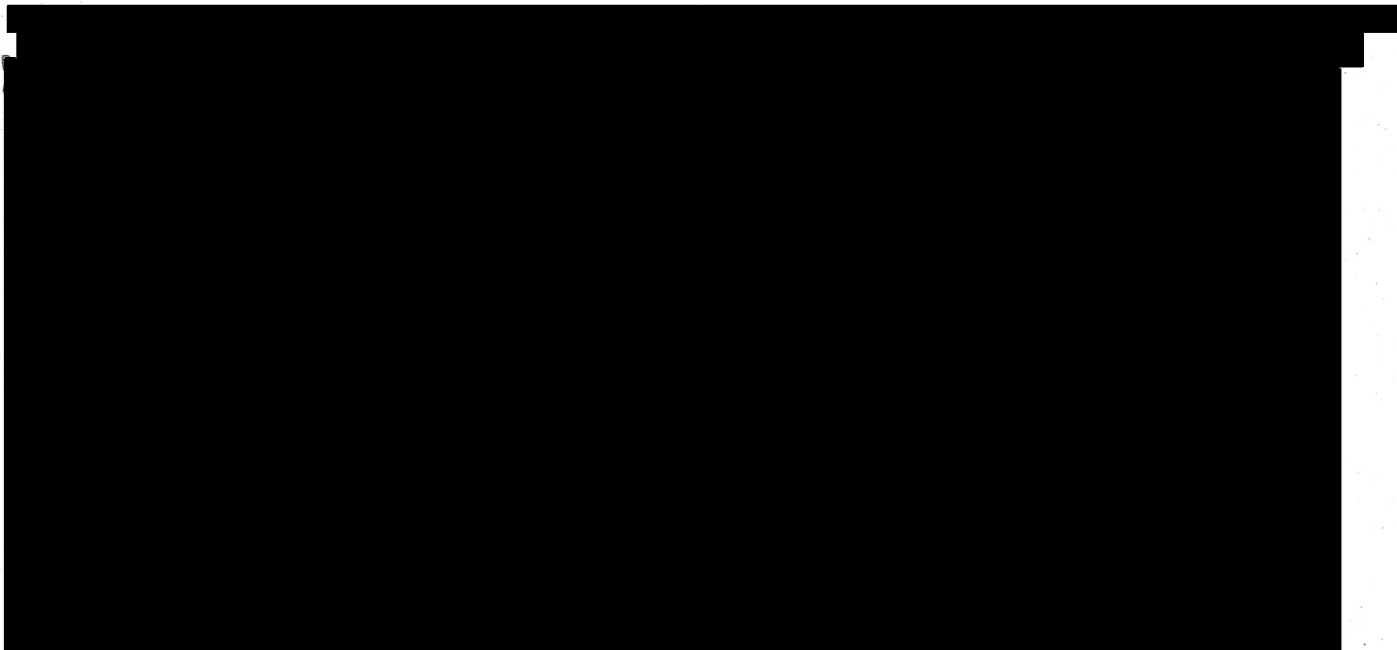




For Settlement Discussions Only-- BOP/SEC

Subject: For Settlement Discussions Only-- BOP/SEC  
From: WEC <bill@wcooperlaw.com>  
Date: 4/3/2017 2:31 PM  
To: "Hanauer, Benjamin J." <HanauerB@sec.gov>

Exhibit 1  
Page 1



Please get back to me with your thoughts on this matter

--  
William E. Cooper  
Attorney at Law  
9909 Clayton Road, Suite 227  
Saint Louis, MO 63124  
314-581-4091  
[bill@wcooperlaw.com](mailto:bill@wcooperlaw.com)

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Re: For Settlement Discussions Only-- BOP/SEC

**Subject:** Re: For Settlement Discussions Only-- BOP/SEC

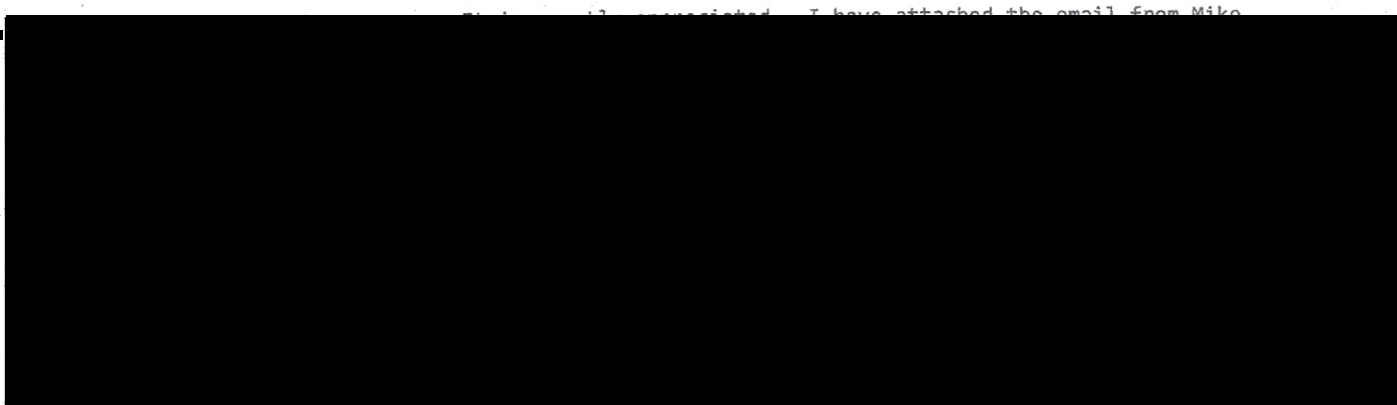
**From:** WEC <bill@wcooperlaw.com>

**Date:** 4/3/2017 3:23 PM

**To:** "Hanauer, Benjamin J." <HanauerB@sec.gov>

Exhibit 1  
Page 2

Ben:



--  
William E. Cooper  
Attorney at Law  
9909 Clayton Road, Suite 227  
Saint Louis, MO 63124  
314-581-4091  
[bill@wcooperlaw.com](mailto:bill@wcooperlaw.com)

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Attachments:

Email Morgan BOP - Shields04032017.pdf

185 KB

**CERTIFICATE OF SERVICE**

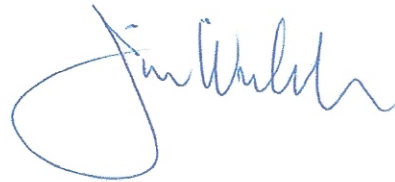
I hereby certify that on May 22, 2020 I served a copy of the foregoing **RESPONDENTS' MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE.**

Original and three copies  
Via Facsimile transmission  
& Overnight Delivery

Office of the Secretary  
U.S. Securities & Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549  
FAX (202)772-9324

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](mailto:bensond@sec.gov)  
[hanauerb@sec.gov](mailto:hanauerb@sec.gov)

A handwritten signature in blue ink, appearing to read "Jim Winkelmann", with a large, stylized initial "J" and "W".

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James A. Winkelmann, Sr.