

**HARD COPY**

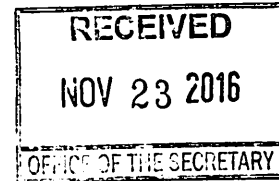
**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of:**

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

**Respondents.**

**ADMINISTRATIVE PROCEEDING  
File No. 3-17253**



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

<b>FOF#</b>	<b>Finding of Fact</b>	<b>Record Citation</b>	<b>Quotation</b>
1:	James A. Winkelmann, Sr. is the current CEO, CCO and Manager of Blue Ocean Portfolios.	Tr.: 423: 11-21 (Winkelmann).  Tr. 437: 5-10 (Winkelmann).	Q And you are the CEO of Blue Ocean, right? A: At that time, right.  Q And since its inception, you have been Blue Ocean Portfolio's chief compliance officer? A Yes Q And as chief executive officer – you are also the manager of Blue Ocean Portfolios, correct? A Yes
2:	In 2010, following a cancer diagnosis and upon the advice of his estate planning attorney, Mr. Winkelmann transferred his ownership of Blue Ocean into a limited family partnership, 23 Glenn Abbey Partners ("Glenn Abbey"), owned by his wife, Patty, and his three children. Mr. Winkelmann remained the Manager of Glenn Abbey at all times relevant.	Tr.: 433: 13-22 (Winkelmann)  Tr. 1275: 25; 1276: 1-6 (Winkelmann).  Tr. 1525:23-1256:5 (Winkelmann).	Q Okay. Well, we already have some testimony in the record from Mr. Collins about payments made to Mr. Binkholder, so I think we can move on from this. You can take that down, please, Byron. In early 2011, around the time that you removed Mr. Binkholder as the owner of Blue Oceans, you conveyed your ownership interest in Blue Ocean Portfolios to 23 Glen Abbey Partners? A We did as of January 1 <sup>st</sup> , 2010.  Q Well, what is 23 Glen Abbey Partners again? A 23 Glen Abbey is an LLC that my wife and children are members of. They're the biggest shareholder back there in the corner. Patty is 40 percent, Jimmy is 20 percent, Claire is 20 percent, and Gracie is 20 percent.  Q And your family owns the business through 23 Glen Abbey Partners, right? A Correct.  Q And you don't have any ownership interest in either Blue Ocean Portfolios or 23 Glen Abbey Partners, right? A That's the result of the estate plan for my cancer diagnosis.

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

3:	Blue Ocean Portfolios was founded by Mr. Winkelmann in 2009 and is a registered investment adviser.	Tr. 412:17-23 (Winkelmann).	Q So I want to talk about the genesis of Blue Ocean Portfolios, how that company came into being, and in April 2009, you heard Mr. Binkholder's Financial Coach radio show and you contacted him about working together? A Well, contacted him just to kick around some ideas to learn more about each other.
		Tr. 413: 6-14 (Winkelmann).	Q And eventually through your communication with him, you decided to go into business with Mr. Binkholder? A In August of 2009. Q August 2009? A Yes. Q And that's when you and Mr. Binkholder formed Blue Ocean Portfolios? A That's correct.
		Tr. 1243: 21-1244:1 (Winkelmann).	Q Okay. We'll get to that. So Blue Ocean Portfolios was a investment advisor when it was formed in 2009? A Yeah. So we originally registered under Missouri as a registered investment advisor in 2009.
4:	Blue Ocean provides its advisory clients with portfolio allocation services on a fee-only basis. Its clients are a mix of individuals and small-to-midsize institutional clients.	RX-001, pp. 7-9	Round 1 Offering Memorandum:  Blue Ocean Portfolios creates value for its clients by eliminating conflicts of interest, sales commissions and hidden fees while at the same time reducing anxiety. The firm does this by applying portfolio allocations and rebalancing strategies utilizing index funds and US guaranteed bonds and CDs. [Page 7].  Blue Ocean Portfolios has developed five different model portfolios that have varying degrees of risk/reward to

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>implement in most client situations. These model portfolios use a blend of equity index funds, commodity price index funds and Treasury / CDs. The model portfolios utilize the principle of "Constant Proportionality." [Page 8].</p> <p>Currently Blue Ocean Portfolios manages a handful of commercial pension and institutional accounts. This market is currently dominated by large Wall Street Firms that charge a significant premium for their services that are difficult to justify. A successful penetration into this market place would mean a quicker payback for the investors and faster path to renewable bonuses for the employees. [page 9]/</p>
5:	Blue Ocean's investment approach focuses on portfolio allocation.	Tr. 1242:13-23 (Winkelmann);	<p>Q So what led you to create Blue Ocean Portfolios in 2009?</p> <p>A Well, after almost 30 years in the business at that point, I kind of recognized that the securities - - the wealth management industry is really full of beans. You really cannot predict the outcomes of any business activities. You can't predict the outcomes of stocks, bonds, and it makes the most sense to just focus on low-cost index funds and focus on the allocation rather than the individual security selection.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 1243:12-20 (Winkelmann).	<p>Q So if you had to use a sentence or two or three to describe Blue Ocean's business model, what would you say?</p> <p>A I believe we tell people the truth, that you can't predict the outcome. You have to focus on allocation and keep your costs low. And to get that message out there, we buy messaging or had been buying messaging on various media outlets around the St. Louis area.</p>
--	--	------------------------------	--

**The Royalty Unit Offerings**

6:	Blue Ocean issued four rounds of Royalty Unit investments.	RX-001 – RX-004.	Offering Memoranda Rounds 1-4
7:	The proceeds from the issuance of the Royalty Units were used to fund Blue Ocean's advertising campaign as set forth in each offering memorandum.	<p>RX-001, p. 10</p> <p>RX-002, pp. 15-16</p> <p>RX-003, p. 13</p> <p>RX-004, p. 13.</p>	<p>Offering Memoranda Rounds 1-4</p> <p>Round 1, p. 10: Blue Ocean Portfolios Intends to issue up to 40 (forty) Royalty Units to accredited outside investors. Investors will purchase each Royalty Unit for \$25,000 in cash. In exchange for each \$25,000 Royalty Unit, the investor will receive no less than 0.25% of the cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$75,000. Of course no one can predict the future; actual rates of returns will depend on several variables. It is important for investors considering the purchase of royalty units to realize the sensitivity of the key drivers that will impact their return...</p> <p>Round 2 pp. 15-16:</p> <p>Round 3, p. 13</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Royalty Financing enables investors to buy into existing revenue streams with rights for minimum payments and participate in the streams until they receive a certain dollar amount back, for example 2.25x the original investments. The faster the investors are paid this amount, the higher their return. Once they are paid this amount, the investors' royalty rights have been fully retired and there is no other obligation to the Royalty Unit holders. Unlike equity holders, royalty holders have a right to the actual revenue streams and cash receipts from any activities of the company. So the royalty holders receive a preferred early return. In addition, if there are additional financing activities of any type, the royalty holders get a portion of cash received from that activity as a credit toward their payback number. So the royalty unit holders' returns are never diluted by additional financing activity, and they have a steady cash stream until they are paid back. This is the optimal way to finance the expansion of an early stage business that has a proven track record of recurring and growing revenue streams. The royalty holders have an incentive to refer business and to see the business revenues grow into other areas. The interests of the owners, employees and royalty holders are aligned to create the fastest growth.</p> <p>Blue Ocean Portfolios intends to issue up to 26 (twenty six) \$25,000 Royalty Units<sup>12</sup> to outside investors. In exchange for each \$25,000 Royalty Unit, the investor will receive no less than 0.10% of the future cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$56,250 (2.25x original unit). Of course, no one can predict the future; actual rates of returns will depend on several variables. It is important for investors considering the purchase of royalty units to realize the sensitivity of the key drivers that will impact their return:</p>
--	--	--	---

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Round 4, p. 13:</p> <p>Royalty Financing enables investors to buy into existing revenue streams with rights for minimum payments and participate in the streams until they receive a certain dollar amount back, for example 2.50x the original investments. The faster the investors are paid this amount, the higher their return. Once they are paid this amount, the investors' royalty rights have been fully retired and there is no other obligation to the Royalty Unit holders. Unlike equity holders, royalty holders have a right to the actual revenue streams and cash receipts from any activities of the company. So the royalty holders receive a preferred early return. In addition, if there are additional financing activities of any type, the royalty holders get a portion of cash received from that activity as a credit toward their payback number. So the royalty unit holders' returns are never diluted by additional financing activity, and they have a steady cash stream until they are paid back. This is the optimal way to finance the expansion of an early stage business that has a proven track record of recurring and growing revenue streams. The royalty holders have an incentive to refer business and to see the business revenues grow into other areas. The interests of the owners, employees and royalty holders are aligned to create the fastest growth.</p> <p>Blue Ocean Portfolios intends to issue up to 75 (Seventy-Five) \$5,000 Royalty Units" to outside investors. There is a minimum purchase of five units (\$25,000). In exchange for each \$5,000 Royalty Unit, the investor will receive no less than 0.05% of the future cash receipts of Blue Ocean Portfolios, LLC on a quarterly basis until such time as the Royalty Unit holder</p>
--	--	--	---

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>receives a total of \$12,500 (2.5x original unit price). Of course, no one can predict the future; actual rates of returns will depend on several variables. It is important for investors considering the purchase of royalty units to realize the sensitivity of the key drivers that will impact their return:</p>
<p>8:</p>	<p>Through the Royalty Unit offerings, Blue Ocean portfolios intended to increase its advertising presence and spread its core message of low-fee, allocation-focused investing.</p>	<p>RX-001, p. 8-9; RX-002, pp. 7-8; RX-003, pp. 7-8; RX-004, pp. 7-8.</p>	<p>Stated objective as set forth in Offering Memoranda Rounds 1-4.</p> <p>The language of each section is very similar. For example, Round 3:</p> <p>The drum beat of the Blue Ocean Portfolios message is that investors are misled by overly priced active portfolio management and stock picking and that the majority of so-called financial advisors are really Just salesmen. Blue Ocean Portfolios uses a combination of on-air, online, direct mail, and print advertising to get this message out and attract people who are dissatisfied with their current situation. This overt and provocative message creates leads and clients which results in recurring revenue streams.</p> <p>Blue Ocean Portfolios entered into an exclusive agreement with The Financial Coach Show. Hosted by Bryan Binkholder, The Financial Coach Show is aired every Saturday at 10:00 AM — Noon on WestPlex News Talk Radio 1280 AM in the St. Louis suburban market. Blue Ocean Portfolios has been the sponsor of the show since January of 2010. The show gives an up-beat analysis of the economic and political news, while providing valuable insights on the traps and cons that typical Wall Street firms sell. The show drives people to The Financial Coach website where they can request free information on</p>



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>retirement, wealth management topics, taxes and insurance. Under the agreement, Blue Ocean Portfolios sponsors The Financial Coach Show website and owns the leads. These leads are distributed to the Blue Ocean Portfolios representatives who contact and follow up. The representatives are paid a percentage of the first year revenue that a new account creates. Each radio show is podcasted and can be found on Tunes under The Financial Coach Show. It is also broadcast live via the Tune in Radio app on 'Phone or Droid.</p> <p>Additionally, Blue Ocean Portfolios is a sponsor of The Charlie Brennan Radio Show that is aired each weekday on AM 1120 in the St. Louis market. The message drives the listeners to an 800 numbers and/or the Blue Ocean Portfolios website (<a href="http://www.BlueOceanPortfolios.com">www.BlueOceanPortfolios.com</a>) where they can request a free report: "What Your Financial Advisor Won't Tell You". A Blue Ocean Portfolios representative follows up with the request, schedules an appointment, and closes business.</p> <p>Additionally, Blue Ocean Portfolios regularly airs a series of "Blue Ocean Minutes" that are meant to provoke people to reconsider the relationship they have with their current financial advisors.</p> <p>The Blue Ocean Portfolios system eliminates the very inefficient function of prospecting that is typical in the wealth management industry. Additionally, the vast majority of wealth managers are severely limited about what their advertising can say because they are usually associated with a broker/dealer who has strict rules regarding advertising, investment performance, etc. Blue</p>
--	--	---

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Ocean Portfolios' advertising is not "selling" or "promoting" any security or service, but rather targets investors who no longer trust their current advisor or do not have the skills to manage their own portfolios.</p>
		<p>Tr. 1242:13-1243:20 (Winkelmann).</p>	<p>Q So what led you to create Blue Ocean Portfolios in 2009?  A Well, after almost 30 years in the business at that point, I kind of recognized that the securities -- the wealth management industry is really full of beans. You really cannot predict the outcomes of any business activities. You can't predict the outcomes of stocks, bonds, and it makes the most sense to just focus on low-cost index funds and focus on the allocation rather than the individual security selection. This is how most -- my understanding of how most of the large insurance companies' endowments. They really focus on the investment policy over the manager selection, and I believed then and now that this message is not being drummed out there as best it could. I thought if we start -- the message would be well-received in any market we would go in. And the name comes after the book Blue Ocean Strategy published in 2005, How to Make Your Competition Irrelevant. So we don't want Edward Jones to change the way they do business because that sucks up our opportunities. Q So if you had to use a sentence or two or three to describe Blue Ocean's business model, what would you say?  A I believe we tell people the truth, that you can't predict outcomes. You have to focus on allocation and keep your costs low. And to get that message out there, we buy messaging or had been buying messaging on various media outlets around the St. Louis area.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

<p>9:</p>	<p>Blue Ocean's advertising strategy was to selectively advertise by pursuing sources that were successful at bringing in new clients and eliminating sources that were unsuccessful or minimally successful.</p>	<p>Tr. 1252:10-19 (Winkelmann).</p>	<p>Q Did you have like, a standard pitch that you made to people about the offering, or was it something other than -- A Basically, I said, you know, it's a compelling client offering. If we get the message out there through advertising, can we convert this advertising spend into recurring revenue? That was basically the - - Q That's the gist of it? A The gist of it, high-level pitch.</p>
		<p>Tr. 1298:13-1299:9 (Winkelmann).</p>	<p>Q What did you have with those things? What did you do with them? What use did the company make of the ad factors that it was coming up with as a result of these monthly meetings? A Our primary goal was to monitor each dollar spent on different radio stations and the advertising venues and really look at what's working and what isn't. That's my recollection, that the advertising factor was an aggregation of these management decisions up to that point. So really is ESPN working or not? What's working better? KMOX Charlie Brennan or KMOX Late Show? What's working better? 97.1 during the week or 97.1 Financial Coach Show? And these - - the way we designed the lead tracking was very important for us to really make sure the money is being deployed efficiently. Q Are the ad factors that show up in various offering memoranda that are at issue in this case, did they derive from these management meetings? A Yes.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 861: 12-23 (Juris).</p>	<p>Q And why was the advertising so important at Blue Ocean Portfolios A Sure. We were a small company. And a lot of advertising dollars were being spent on different radio stations or different print or just different forms of marketing. And that's the way that we got our name out there and what we did and that's how we obtained leads and then ultimately clients. So the advertising was very important because that's how we gained new clients. That's how we increased our revenue. That's how the company grew.</p>
<p>10:</p>	<p>Advertisements that generated sufficient revenue were pursued.</p>	<p>Tr. 463: 23-464:12 (Winkelmann).</p>	<p>Judge Patil: Who made the ultimate decision about how to capture the spend versus the revenue that was reported in the offering in Memorandum Number 2.</p> <p>The Witness: The typical - - well, the business practice, regardless. Because we ran the business off this information. This information wasn't produced to issue these royalty units.</p> <p>This information was produced to help us optimally spend the advertising dollars to help us get the most bang for our buck. So we would sit down and meet, Jennifer and Sarah and I with all this data, elaborate data. Every month we'd see anomalies, hey, we have to make it better. What about this event? What about that event?</p> <p>And you will see they evolved to become more and more elaborate. That's my best explanation without digging into the math about it, which I'm a little uncomfortable to testify about the actual formulas and mathematics here.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 463:23-464:1 (Winkelmann);</p> <p>464:25-465:2 (Winkelmann).</p>	<p>Judge Patil: Who made the ultimate decision about how to capture the spend versus the revenue that was reported in the offering in Memorandum Number 2.</p> <p>The Witness: But it was real important to me that those dollars spent were getting the best yield. That was the purpose of these reports.</p>
		<p>Tr. 1292: 5-19 (Winkelmann).</p>	<p>Q And there's been a lot of discussion in this case about the advertising factor as it appears in these offering memoranda. Separate and apart from the use of the advertising factor in the offering memoranda, did - - did advertising factor, the conversion ratio, whatever phrase you want to put - - call it, did have that any role in Blue Ocean's business on an ongoing basis?</p> <p>A We -- yes. We monitored as closely as we could.</p> <p>Q Why?</p> <p>A We wanted to make sure that we were deploying the capital as efficiently as possible in converting that capital into recurring revenues, new recurring revenues.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 861:24-863:11 (Juris).</p>	<p>Q And did the firm have a process by which it was monitoring its advertising -- A Yes. Q -- performance? A We tracked -- it was a big piece. And all of us that answered phones knew that when someone new contacted the office, it was very important to determine -- Where did you hear us from? How did you learn about Blue Ocean Portfolios -- so that we could try and see what dollars were being spent the best, most efficient that way. So we knew to inquire where these people had heard us from and then we tracked that and then ultimately ran and generated reports so that we could review and see where we needed to make changes. make changes. Q And when you say "make changes," what do you mean? A Make changes in our advertising spend. So from month to month we could make changes or even from week to week we could make changes on whether we were running ads on the radio on a specific one or not, if we're running them on a specific radio show, you know, live reads, that way -- so we had control over that. And so it was important to determine where we put the dollars based off of, you know, the responses we were hearing from people. Q And this may seem obvious, but why was it important that you were able to see where you were translating into dollars? A It was important because that's how the business grew, that's how we obtained more clients, that's how we gained additional AUM. You know, it was in all of our benefits to have the company grow and become successful, and the advertising and then the generation of clients was a specific piece.</p>
--	--	---------------------------------------	---

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<i>See citations for proposed finding of fact 11, above.</i>	
11:	Advertisements that did not generate revenue were cut.	Tr. 1317: 4-22 (Winkelmann).	<p>Q Okay.</p> <p>A The cash flow projection was problematic because the business was eating more cash than it anticipated to support the business plan going forward in that current ad spend and overhead and administrative expenses.</p> <p>Q Did that factor -- did that development surprise you?</p> <p>A I was disappointed and it wasn't anticipated, but part of an early-stage company, you know, I made decisions to cut the advertising budget to dial it down. We had too many leads. We couldn't follow up.</p> <p>These reps turned out to be kind of lazy. They would rather deal with the new leads than the old leads, so we were trying to kind of deal with this new information that we had as a result of this too many leads coming in and not following up. We weren't closing enough.</p>
12:	For each of the four Royalty Unit Offerings, the structure was the same. Investors contributed capital to Blue Ocean in exchange for the right to receive a certain minimum percentage of the Firm's cash receipts.	FOF 7, 9, 11 and 13.	

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

<p>13:</p>	<p>The percentage of cash receipts the Royalty Unit holder was entitled to depended on the offering and ranged from 0.05% to 0.25%.</p>	<p>RX-001, p. 10; RX-002, p. 15; RX-003, p. 13; RX-004, p. 13.</p>	<p>Relevant pages of Offering Memoranda Round 1-4.</p> <p>Round 1:</p> <p>Blue Ocean Portfolios intends to issue up to 40 (forty) Royalty Units to accredited outside investors. Investors will purchase each Royalty Unit for \$25,000 in cash. In exchange for each \$25,000 Royalty Unit, the investor will receive no less than 0.25% of the cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$75,000. Of course, no one can predict the future; actual rates of returns will depend on several variables.</p> <p>Round 2:</p> <p>Blue Ocean Portfolios intends to issue up to 14 (fourteen) \$25,000 Royalty Units to outside investors. In exchange for each \$25,000 Royalty Unit, the investor will receive no less than 0.25% of the future cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$62,500 (2.50x original unit price). Of course, no one can predict the future; actual rates of returns will depend on several variables.</p> <p>Round 3:</p> <p>Blue Ocean Portfolios intends to issue up to 26 (twenty six) \$25,000 Royalty Units to outside investors. In exchange for each \$25,000 Royalty Unit, the investor will receive no less than 0.10% of the future cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$56,250 (2.5x original unit price). Of course, no one can predict the future; actual rates of returns will depend on several variables.</p> <p>Round 4:</p> <p>Blue Ocean Portfolios intends to issue up to 75 (Seventy-</p>
------------	---	--	--



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 1259: 20-1260:12 (Winkelmann).</p>	<p>Q Let's talk about payments, payments to yourself or payments to affiliates, okay? Just changing topics a bit. Now, under the terms of the four offerings, we have seen that the investors were entitled to receive a stated minimum percentage each month of Blue Ocean's cash receipts, right?  A Correct.  Q From offering to offering, one to two, two to three, three to four, did that minimum percentage change?  A It was .25 percent of the cash receipts from the first two offerings. The third offering was .10 percent. And the third offering was back to .25 percent. Even though the units were smaller, we -- there was \$5,000 units at five basis points each, so if you extrapolated that out, the \$25,000 would have been 25 basis points.</p>
		<p>Tr. 45:3-10 (Swardson).</p>	<p>Q And so when you reviewed this offering memorandum and -- memoranda and you read that paragraph, you understood that what you were entitled to was .1 percent of future cash receipts, correct?  A Correct.  Q That's not profits, correct?  A Correct.</p>
		<p>Tr. 188: 1-9 (Collins).</p>	<p>Q And investors were entitled to a certain percentage of cash receipts brought in by Blue Ocean, correct?  A That's correct.  Q And so investors were paid regardless of whether or not the company was profitable for any particular time period, correct?  A Correct. Again, it's based on the cash receipts.</p>
		<p>Tr. 189:17-190:1</p>	<p>Q So when we look at this chart, regardless of what Mr.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		(Collins).	Winkelmann's compensation was, the Royalty Unit holders, at least here for round one, were going to get their set percentage of what was paid, correct? A Yes. Again, as long as cash is coming into Blue Ocean. Q Right. It was dependent on cash receipts not on profits? A Correct.
		Tr. 1273: 5-9 (Winkelmann).	Q Assuming that the firm had net profits at the end of any given month, were Blue Ocean portfolio investors entitled to a share of those profits? A No
		Tr. 1273:15-25 (Winkelmann)	Q All right. Let's say there were no net profits at the end of some given month, whether it was because revenues were low or expenses were high, or both, or for whatever reason, there's no net profits at the end of a given month. Did that impact Blue Ocean's requirement to pay the monthly minimum of the cash receipts? A No. There was no correlation between the - - the cash flow results or profitability results of the company to what we were obliged to pay investors.
14:	Because investors were paid based on cash receipts, they received their regular percentage payment regardless of whether the Firm was profitable that same period.	Tr. 277:2-7 (Laby)	Q Okay. So you would agree with me, then, as I just said, you didn't see anything, therefore, you must agree with me that Blue Ocean had no duty to share profits with its investors? A That's right, I didn't see this as a profit sharing memorandum.
		Tr. 188: 25-25, 189:1-4 (Collins).	Q And investors would have been paid their - - their set percentage regardless of whether Mr. Winkelmann did or did not draw a salary, correct? A As long as there are cash receipts coming out of the





**RESPONDENTS' PROPOSED FINDINGS OF FACT**

<p>16:</p>	<p>Because investors were paid based on cash receipts, the number or amount of expenses incurred by the Firm in a particular month had no impact on the percentage payments.</p>	<p>Tr. 46: 17-25 (Swardson).</p> <p>Tr. 1402:25-1403:1-8 (Winkelmann).</p>	<p>Q Okay. But your royalty investment is still paying, correct? A Yes. At the absolute minimum.</p> <p>Q With all that said, has Blue Ocean ever missed any of the payments it owes investors under the terms of any of the offerings? A Never.</p> <p>Q Is it still current with all the payments? A We just accrued about \$25,000 yesterday for a payment that's scheduled to go out at the end of the month.</p>
<p>17:</p>	<p>Blue Ocean has made every payment required by the offering documents for each Round in full and on time.</p>	<p>Tr. 45:20-23 (Swardson).</p> <p>Tr. 1248:20-25; 1249: 1-10 (Winkelmann).</p>	<p>Q And so also under the terms of this offering, the higher the firm's revenue, right, the higher your payment was going to be, correct? A That's the way I understood it.</p> <p>Q Well, why did you believe that your interests are aligned with those of your investors as a result of the Royalty Unit structure? A Because the Royalty Unit holders explicitly get paid on the cash receipts of the company, the revenue, primarily revenue of the company. So every time the revenues went up, their royalties went up. Every time the revenues went up as a result of new clients, the most - - some of the administrative staff got a bonus. Every time the revenues went up, the inherent value for the shareholders went up because it was just more recurring revenue that later could be monetized of some sort. So everyone's interests were aligned to grow the top line of the company.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 1248:20 1249:10 (Winkelmann).	<p>Q Well, why do you believe that your interests are aligned with those of your investors as a result of the Royalty Unit structure?</p> <p>A Because the Royalty Unit holders explicitly get paid on the cash receipts of the company, the revenues, primarily revenue of the company. So every time the revenues went up, their royalties went up.</p> <p>Every time the revenues went up as a result of new clients, the most -- some of the administrative staff got a bonus. Every time the revenues went up, the inherent value for the shareholders went up because it was just more recurring revenue that later could be monetized of some sort. So everyone's interests were aligned to grow the top line of the company.</p>
18:	The higher the Firm's revenue, the higher percentage payment the Royalty Unit holder received.	<i>Id.</i>	<i>Id.</i>
19:	At all times relevant, Mr. Winkelmann believed that Blue Ocean's interests were in alignment with those of its investors.	Tr. 1248:20 1249:10 (Winkelmann).	<p>Q Well, why do you believe that your interests are aligned with those of your investors as a result of the Royalty Unit structure?</p> <p>A Because the Royalty Unit holders explicitly get paid on the cash receipts of the company, the revenues, primarily revenue of the company. So every time the revenues went up, their royalties went up.</p> <p>Every time the revenues went up as a result of new clients, the most -- some of the administrative staff got a bonus. Every time the revenues went up, the inherent value for the shareholders went up because it was just more recurring revenue that later could be monetized of some sort. So everyone's interests were aligned to grow the top line of the</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			company.
20:	The Firm's client acquisition cost was a key business driver	RX-001, p. 10.	Blue Ocean Portfolios intends to issue up to 40 (forty) Royalty Units for \$25,000 in cash. In exchange for each \$25,000 Royalty Unit, the Investor will receive no less than 0.25% of the cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$75,000.
		RX-002, p. 15.	Blue Ocean Portfolios intends to issue up to 14 (fourteen) \$25,000 Royalty Units to outside investors. In exchange for each \$25,000 Royalty Unit, the investor will receive no less than 0.25% of the future cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$62,500 (2.50x original unit).
		RX-003, p. 13.	Blue Ocean intends to issue up to 26 (twenty six) \$25,000 Royalty Units to outside investors. In exchange for each \$25,000 Royalty Unit, the investor will receive no less than 0.10% of the future cash receipts of Blue Ocean Portfolios, LLC on a monthly basis until such time as the Royalty Unit holder receives a total of \$56,250 (2.25x original unit).
		RX-004, p.13.	Blue Ocean Portfolios intends to issue up to 75 (Seventy-Five) \$5,000 Royalty units to outside investors. There is a minimum purchase of five units (\$25,000). In exchange for each \$5,000 Royalty Unit, the Investor will receive no less than 0.05% of the future cash receipts of Blue Ocean Portfolios, LLC on a quarterly basis until such time as the Royalty Unit holder receives a total of \$12,500 (2.5x original unit price).





**RESPONDENTS' PROPOSED FINDINGS OF FACT**

24:	Mr. Winkelmann retained Michael Morgan and the law firm of Greensfelder Hemker & Gale, P.C. ("Greensfelder") to draft each of the four offering memoranda.	Tr. 1318:24-1319: 15 (Winkelmann).	<p>Q Can you explain how it was that you came to select Greensfelder as your counsel?</p> <p>A Mike Morgan had been - - when he was a partner at Bryan Cave here in town back in 1995, was assigned to work with us on a sub-advisory agreement with an insurance company. He did a very good job.</p> <p>Later, Mr. Morgan joined Huntleigh Capital or Huntleigh - - Moses.com Securities, our online attempt to be in-house counsel. We were pretty good friends. He was very knowledgeable. Did all the offerings in that round.</p> <p>Q Knowledgeable about what?</p> <p>A Securities offerings, regulatory filings. His job at Moses was to make sure the offering documents were accurate, all the regulatory filings were accurate.</p>
25:	Mr. Morgan was an experienced attorney who specialized in all aspects of securities law and regulatory compliance, specifically including the preparation of offering documents.	FOF 51-55.	<p>Q: Can you explain how it was that you came to select Greensfelder as your counsel?</p> <p>A Mike Morgan had been - - when he was a partner at Bryan Cave here in town back in 1995, was assigned to work with us on a sub-advisory agreement with an insurance company. He did a very good job.</p> <p>Later, Mr. Morgan joined Huntleigh Capital or Huntleigh - - Moses.com Securities, our online attempt to be in-house counsel. We were pretty good friends. He was very knowledgeable. Did all the offerings in that round.</p> <p>Q Knowledgeable about what?</p> <p>A Securities offerings, regulatory filings. His job at Moses was to make sure the offering documents were accurate, all the regulatory filings were accurate.</p> <p>Greensfelder Website</p>
		RX-114, 115, p. 1.	
		FOF 51-55.	

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 1326: 17-23 (Winkelmann).	Q So what role, if any, did Greensfelder have with regard to the preparation and filing of your forms ADV? A Greensfelder reviewed our ADV drafts to make sure that they depicted, accurately depicted the services of Blue Ocean Portfolios and the disclosures that were required.
26:	Mr. Winkelmann engaged Greensfelder to provide advice on drafting and reviewing disclosures in the offering documents.	Tr. 1325:6-16. (Winkelmann)	Q So what's the financing matter? A Financing matter would have been relative to the discussions and the research for round one, the royalty round one, which would include the review of the -- the offering memo PPM or OM, interchange words. It would have been the drafting of the subscription document. It would have been a review of all the disclosures. It would also -- Q So disclosures in the offering document? A In the offering document, yes.
27:	Greensfelder provided Mr. Winkelmann and Blue Ocean advice about the risk disclosures that were included in each subscription agreement.	Tr. 1347:4-12 (Winkelmann).	Q And then Mr. Morgan responds. The question is simple: Did Greensfelder provide you advice about the risk disclosures that were included in the subscription agreement for round one? A Yes, they wrote it. Q Was that true for the other rounds as well? A In each and every offering.
28:	Greensfelder provided Mr. Winkelmann and Blue Ocean advice about the cover letter that was used to send the offering memoranda.	Tr. 1347:13-24 (Winkelmann).	Q Let's go to page 110 from 106. This is an email from Mr. Morgan to you dated March 15th, 2011, regarding cover letter. Do you see the attachment is BOP offering cover letter. Do you see that? A Correct. Q Did Greensfelder have involvement in the drafting of the cover letter that was used to send to prospective investors in connection with the round one offering? A They wrote the initial draft. And

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			they've reviewed the final draft.
29:	Greensfelder participated in the drafting of the business plan that was included in the offering memorandum for Round 1.	Tr. 1347:25-1348:10 (Winkelmann).	Q Let's go to 112, page 112. This is an email from Mr. Morgan to you dated March 15, 2011, "Subject: Comments business plan," and the attachment is the BOP revised business plan; do you see that? A Yes. Q All right. Question is, did Greensfelder have involvement in the drafting of the business plan that was included in the offering memorandum for round one? A Yes.
30:	This included the creation of the deal-related documents, such as the subscription agreement and the exclusive marketing agreement.	Tr. 1325:22-1326:13. (Winkelmann)	Q Okay. What about the documents that were associated with the offering? So far in this case we've seen -- we've seen the subscription agreement and investor questionnaire. We've seen a certificate. We've seen -- there's the exclusive marketing agreement with Mr. Binkholder. Did you retain Greensfelder to help you with the creation of any of those deal-related documents? A Well, they drafted the certificate. They drafted the subscription agreement. They reviewed the exclusive marketing agreement. They reviewed and I thought proofed the PPM or the offering memo. Any kind of investor-facing or regulatory-facing document, they would have had at least a review role, if not a drafting role, on that document.
31:	Mr. Winkelmann retained Michael Morgan and Greensfelder to provide advice on the Firm's ADV filings during	RX-113, pp. 23, 47, 49, 50, 54, 61, 69.	Greensfelder Invoices

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	the same period.	FOF 52	
		Tr. 439: 16-440:4 (Winkelmann).	Q So that gets us here to what brought us here, the royalty units. In early 2011, you came up with the idea of offering Blue Ocean Portfolios royalty units? A Mike Morgan at Greensfelder and I came up with the idea. Q But it was your idea? A I had a lot of conversations with Mr. Morgan. Q It was your idea to offer royalty units to Blue Ocean - - or to offer Blue Ocean Portfolio's royalty units? A After consultation with outside counsel, yes.
		Tr. 1324:22-1325:5 (Winkelmann).	Q For what did you engage Greensfelder in early 2011? A Well, again, we engaged them to provide advice on accurately making the necessary regulatory filings and disclosures on the ADV and U4 forms. Q Is that the securities compliance matter on this? A Yes.
32:	Mr. Winkelmann settled on the Royalty Unit structure following several discussions with Mr. Morgan.	RX-1, p. 1	Offering Memorandum Round 1
33:	The first Royalty Unit offering occurred on March 31, 2011 ("Round 1").	Tr. 508: 15-19 (Winkelmann).	Q And so before you began circulating the first round offering memorandum to investors, you reviewed and approved the final version? A Working with our Counsel at Greensfelder, of course.
34:	The Round 1 Offering Memoranda was drafted by Mr. Winkelmann and Mr. Morgan.	Tr. 509: 10-13 (Winkelmann).	Q So you reviewed and approved the subscription agreement? A Like Michael Morgan wrote it and I reviewed it and approved it.

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 506: 23-507:2 (Winkelmann).	Q Okay. And you authored the initial draft of the first offering? A The draft, yes, would have been sent over to Greensfelder for review. My draft would have been sent to Greensfelder.
		Tr. 508:15-19 (Winkelmann).	Q And so before you began circulating the first round offering memorandum to investors, you reviewed and approved the final version? A Working with our Counsel at Greensfelder, of course.
		Tr. 402:2-5 (Winkelmann).	Q Your counsel at Greensfelder didn't review that letter, did they? A They absolutely reviewed all the subscription documents and offering memos.
35:	Prior to issuance of Round 1, Mr. Morgan and his associate at Greensfelder, Giles Walsh, reviewed and revised the draft offering memoranda.	RX-113, pp. 1-10	Greensfelder Invoices
		FOF 53-54	



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		FOF 53 and 55.	
		FOF 53, 54 and 55.	
37:	Mr. Morgan and Mr. Walsh also drafted the associated offering documents, including the subscription agreement, warrants, and cover letter.	Tr. 506: 19-22 (Winkelmann).	Q And the first round offering raised \$650,000 from 14 investors? A That sounds right. I could be - - don't hold me to the 14 investors but the 650, definitely.
38:	Each subscription agreement contained an integration clause wherein the subscriber warranted that he or she had not relied upon any representations or information other than that provided by the Company pursuant to the offering.	RX-001 p. 96	The subscriber has not relied upon representations or other information (whether written or oral) other than documents or information provided by the Company under Section 2(K) above.
		DX-124 p. 3 (paragraph (j))	The subscriber has not relied upon representations or other information (whether written or oral) other than documents or information provided by the Company under Section 2(i) above.
		RX-003 p. 130 (paragraph (j))	The subscriber has not relied upon representations or other information (whether written or oral) other than documents or information provided by the Company under Section 2(i) above.

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		RX-004 p. 131 (paragraph j)	The subscriber has not relied upon representations or other information (whether written or oral) other than documents or information provided by the Company under Section 2(i) above.
39:	Mr. Morgan and Mr. Winkelmann discussed the prospect of offering Royalty Units to the Firm's advisory clients.	Tr. 1249:17-23. (Winkelmann)	Q Client means advisory clients of Blue Ocean Portfolios? A Yes. Q Did you have any discussions with Mr Morgan about the prospect of offering Royalty Units to your advisory clients? A Yes.
		Tr. 1251:5-23. (Winkelmann)	Q Tell us about conversations you had, if any, with Mr. Morgan about the propriety of offering the Royalty Units to advisory clients. A When I would bring this up with Mr. Morgan, he goes, "That's the beauty of the structure, Jim, because there is no conflict of interest." Q So did Mr. Morgan have an opinion on whether it was proper or not to offer Royalty Units to your advisory clients? A Yes. Q What was his opinion? A That under this structure, it would be appropriate. It would be no problem. Q Did you follow that advice? A Yes. Q Did you have any reason to doubt the efficacy of that advice? A No.



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

40:	Mr. Morgan advised Mr. Winkelmann that there was no problem selling Royalty Units to Firm clients because the offerings did not pose a conflict.	Tr. 1251:5-23. (Winkelmann)	<p>Q Tell us about conversations you had, if any, with Mr. Morgan about the propriety of offering the Royalty Units to advisory clients.</p> <p>A When I would bring this up with Mr. Morgan, he goes, "That's the beauty of the structure, Jim, because there is no conflict of interest."</p> <p>Q So did Mr. Morgan have an opinion on whether it was proper or not to offer Royalty Units to your advisory clients?</p> <p>A Yes.</p> <p>Q What was his opinion?</p> <p>A That under this structure, it would be appropriate. It would be no problem.</p> <p>Q Did you follow that advice?</p> <p>A Yes.</p> <p>Q Did you have any reason to doubt the efficacy of that advice?</p> <p>A No.</p>
41:	Mr. Winkelmann relied upon and followed Mr. Morgan's advice.	<i>Id.</i>	<i>Id.</i>

**Blue Ocean Portfolios Advertising Campaign and Tracking of the Advertising Factor**

42:	The firm began tracking the revenue generated by advertising in June of 2010.	RX-006	<p>Master Advertising Spreadsheet.</p> <p>Note that the first contact date input is May 20, 2010.</p>
-----	---	--------	---

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 1465:25-1466:9 (Winkelmann).</p>	<p>Q But we don't have anything in realtime showing, okay, this is the formula for doing it? A I just told you. I mean, if we went back to June of 2010, took the average that we spent each month looking back from the time the OM was published, reconciled that and used the new business, the new first year revenue that we're anticipating from the business that came in during that current - - recent current period, that's 22 over a hundred.</p>
		<p>Tr. 1179:3-8. (Palubiak).</p>	<p>Q Right. So you understood that Blue Ocean's figures says \$2.5 million of new AUM came in as a result of that advertising, right? A Advertising back to June 2010 resulting in about 2.5 million per additional AUM at approximately a \$5500 spend rate on advertising.</p>
		<p>Tr. 1227:16-1228:13. (Palubiak).</p>	<p>Q But the computation of the advertising factor commenced in June of 2010; do you recall that? A Yes. Q Heidi, can you pull up RX6, please? This was the first document Mr. Hanauer showed you on cross-examination. Do you recall seeing this, sir? A Yes. Q If you look at the date column, which looks like it's the sixth column moving left to right. A Correct. Q Can you tell us when Blue Ocean Portfolios started to track the - - the source of the leads that resulted in additional revenues coming in? A Based on this document, May 20, 2010. Q Right. In May 2010, right? A Yes. Q Did they start tracking this as of January 1, 2010? A Not based on this document.</p>
		<p>RX-008.</p>	<p>2010 Advertising Expenses; Little spending occurred prior</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		to June of 2010.
	Tr. 525:15-19 (Winkelmann).	Q But you're saying now it wasn't based on the longest statistics, it was only going back to June 2010, correct? A That's where the 22 came up. The .22 factor came from June.
	Tr. 1227:16-1228:13 (Palubiak).	Q But the computation of the advertising factor commenced in June of 2010; do you recall that? A Yes. Q Heidi, can you pull up RX6, please? This was the first document Mr. Hanauer showed you on cross-examination. Do you recall seeing this, sir? A Yes. Q If you look at the date column, which looks like it's the sixth column moving left to right. A Correct. Q Can you tell us when Blue Ocean Portfolios started to track the - - the source of the leads that resulted in additional revenue coming in? A Based on this document, May 20, 2010. Q Right. In May 2010, right? A Yes. Q Did they start tracking this as of January 1, 2010? A Not based on this document.

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

43:	Over the years, the tracking system used by the Firm evolved and became more sophisticated and elaborate.	Tr. 449: 3-6 (Winkelmann).	Q And you meticulously tracked Blue Ocean Portfolios advertising yield data? A Our business practices continually evolved the tracking of the advertising spent.
		Tr. 471:24-472:6 (Winkelmann).	Q All right. So when you say, as a result, so what are you saying is to calculate the 2011 factor, you can be looking at revenues that came in during calendar year 2012 as long as you could tie them to advertising that ran in 2011? A Yes. And our system, our evolving system attempted to attribute every new client to the point in time when the lead came in initially.
		Tr. 463: 5-10 (Winkelmann).	As you can see throughout 2012, you will see later, each month tracking became more and more elaborate to make sure that we are attributing the revenues -- the revenues was coming in the firm to the appropriate month to spend, the appropriate year to spend.
		Tr. 692:23-693:3 (Winkelmann).	Q So this was an even more refined process for round three than it was for round two, right? A As I testified yesterday, our process was continually evolving to try to make sure that the appropriate revenue was applied to the appropriate month spend.
		Tr. 891:1-4 (Juris)	Q And going forward from March of 2012, did the monthly advertising reports, did they continue to evolve over time? A Yes.
	Compare RX-36 and RX-120	February 2012 Monthly Advertising report and December Monthly Advertising Report.	
44:	The Firm implemented monthly advertising reports in January of 2012.	RX-54	Monthly advertising Reports for 2012

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 871:5-872: 1 (Juris).	<p>Q Okay. Alan, can you pull up our Exhibit 36. And do you recognize this document?</p> <p>A I do.</p> <p>Q And what is this document?</p> <p>A This document, it's titled February at the top. So this is the February 2012 report that we would generate to review what had - - what had happened. This report would have been generated after February had ended. So ideally the first five days, five business days of - - of the previous month; so in March we would generate this report to see, you know, what had happened in February.</p> <p>Q And was this type of report a document regularly created and maintained by Blue Ocean Portfolios?</p> <p>A Yes. We went through and we would update this each month to include, you know, new formulas to pull the appropriate entries from that master spreadsheet related to the month and then we would generate the reports.</p>
45:	The January and February 2012 chart tracked the monthly advertising for November 2011, December 2011, January 2012 and February 2012 data using three sets of variables	RX-054 pp. 1-15; RX-36, and RX-37.	January and February 2012 monthly advertising reports
		Tr. 872: 25-873:7 (Juris).	<p>Q What time period does this chart offer?</p> <p>A So this chart is showing November 2011 data through February. And then it appears that we had also then in the beginning of March, just updated the formulas to begin pulling March data. Although this would have been created, you know, the first week or so of March that way; so that's why there's - - it's really a February report.</p>
46:	The February 2012 chart would have been generated within the first 10 days of March 2012.	Tr. 872:25-873:7 (Juris).	<p>Q What time period does this chart cover?</p> <p>A So this chart is showing November 2011 data through February. And then it appears that we had also then in the beginning of March, just updated the formulas to begin pulling March data. Although this would have been created,</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			you know, the first week or so of March that way; so that's why there's - - it's really a February report.
47:	The Firm met in March of 2012 to review the February 2012 chart.	Tr. 883:22-884:3 (Juris).	Q And so would this be how the report would have been pulled for your meeting, the monthly meeting?  A Yes, we would have generated these reports and then we could have looked at this data, looked at these charts, and then made different decisions that way
		Tr. 885:3-16. (Juris).	Q And what would be the purpose of - why would you be writing notes on RX37?  A So I would have been the one that generated the reports from -- pulled from the data to make these pretty charts and update the formula that way. And then we would have our meeting, the management meeting, and then we would talk about different things.  And, you know, we would say okay, well, can we view the data this way or maybe it makes sense to see it this way. Or just different notes that occurred in a meeting. As you sit in a meeting and take notes on documents, that's what these handwritings are.
48:	Mr. Winkelmann and Ms. Juris were present at the management meetings.	Tr: 899:9-11 (Juris).	Q Yeah. When you say "presented to management," who is management? A Jim is management.
		Tr: 908:20-909:7 (Juris).	Q We'll come back to that in a second, but can you just -- when you would sit down for a management meeting, who - - I mean, maybe it changes, maybe it doesn't. But who generally would be in those meetings?

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 1295: 15-1296: 5 (Winkelmann).</p>	<p>A Generally it would be Sara -- at the time she was Meystadt -- myself, Jim, if Kelly was in the office, she may have participated, but she was -- she worked from home and was out on leave; so she mainly did not participate. So the three of us.</p> <p>Q Were there any other regular attendees?</p> <p>A No.</p> <p>So you heard Ms. Juris testify about these management meetings where you-all discussed the ad factor. Can you -- I want to hear from you about these management meetings. What were they?</p> <p>A Well, that was the - - no less than monthly we sat down, Jennifer, Sara Meystadt, occasionally Binkholder would be there. We would look at these statistics that Jennifer was talking about. I would ask her questions about, are we considering this? Are we considering that?</p> <p>So it would be a collaboration of dialogue, and Jennifer would take this collaborative effort and try to make the numbers better as far as being more accurate of where these leads are coming from and what the result is.</p>
<p>49:</p>	<p>Frequently, the Firm would need to update its advertising spend data for a particular month based on corrections to the advertising spend.</p>	<p>Tr. 892:17-893:23 (Juris).</p>	<p>Q And if you look next to January 2012, you can see there's a number that's crossed out and there's another number that's been written on the chart. Do you see that?</p> <p>A Yes, I do.</p> <p>Q Can you explain why there would be corrections made to the chart?</p> <p>A Yes. So when I was creating a report, I would have entered in the amount from the QuickBooks, whatever that QuickBooks advertising spend was. In our meeting we would have been discussing about what ads had been run,</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>which ones had not. It could have come to light or it could have learned that in the meeting that we canceled ads that were already changed. So we would then adjust the advertising spend based off of those additions or removals from talking in the management meetings.</p> <p>Q And how frequently would you say adjustments were made to the figures on the charts based on what came up in these management meetings?</p> <p>A Frequently. The -- you know, there were always changes in the advertising bookings. Again, as I had mentioned before, sometimes there would be errors or there would be adjustments, sometimes we would stop ads, sometimes we would kick ads back up. And then at this moment when we were creating it, we would, you know, adjust the number to reflect the actual advertising that was spent known to us at that point in time.</p>
50:	Frequently, the Firm would need to update a prior months' assets under management and estimated new revenues weeks or months after that month had ended.	Tr. 896:1-13 (Juris).	<p>Q And can you explain for us why that would happen?</p> <p>A Sure. If someone became a lead first, contacted Blue Ocean Portfolios in November of 2011, but didn't actually become a client, didn't decide to become a client of ours until, you know, January or February, this figure is allocating their AUM dollars back to whenever they first became a lead.</p> <p>Q So information that you didn't have in January of 2011 may be included for January and February 2012.</p> <p>A Correct.</p>
51:	Because the Firm attributed client assets (and its resultant estimated revenue) to particular advertisements, the Firm often attributed revenue to months that had long	Tr. 896:1-13 (Juris).	<p>Q And can you explain for us why that would happen?</p> <p>A Sure. If someone became a lead first, contacted Blue Ocean Portfolios in November of 2011, but didn't actually become a client, didn't decide to become a client of ours</p>



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	ended.		<p>until, you know, January or February, this figure is allocating their AUM dollars back to whenever they first became a lead.</p> <p>Q So information that you didn't have in January of 2011 may be included for January and February 2012.</p> <p>A Correct.</p>
52:	The top chart of the February 2012 report tracked, for the month of February 2012, the number of leads, the number of appointments from that month's leads, the number of clients derived from that month's leads, the percentage of appointments set, the percentage of clients set and the new AUM generated from that month's leads.	RX-036.	February 2012 Monthly Advertising Report
		Tr: 872:19-874:3 (Juris).	<p>Q And let's just make sure we all understand the chart. So if we -- so if we start on the -- from the left-hand column looking at the top -- up on the top chart, the top set of rows.</p> <p>Q What time period does this chart cover?</p> <p>A So this chart is showing November 2011 data through February. And then it appears that we had also then in the beginning of March, just updated the formulas to begin pulling March data. Although this would have been created, you know, the first week or so of March that way; so that's why there's -- it's really a February report. Q And the next column to the right is titled advertising costs. What -- what advertising costs does that refer to?</p> <p>A Yes. So the advertising costs that went in this, the initial value was pulled from a QuickBooks report. Again, this is my handwriting on here and I created that document that I would have had to request, you know, an advertising report generated from QuickBooks from Kelly and we would have that -- that figure.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Oftentimes the advertising that was booked would have forward looking and arrears data in that month. So if we pulled a February advertising cost, there could have been charges related to January of 2012 or there could have been charges that are forward and relating to March of 2012. So in doing our best to determine the costs for what was actually spent just in February, we would account for these bookings forward looking and in arrears.</p>
		<p>Tr. 875:10-876:19 (Juris).</p>	<p>Q Okay. If you go to the next column, the number of leads, what does this column represent?</p> <p>A The number of leads, that would be new leads that contacted us during that month. So in January 2012, we had 152 people contact us after hearing our ads or some form or fashion, 152 new leads had contacted us.</p> <p>Q And the next column it may seem obvious, but why don't you tell us what the next column is.</p> <p>A Uh-huh. It's of those leads how many became, you know -- came in for an appointment.</p> <p>Q Okay. And then going on to the next column, it's number of clients from month's leads, what is that column?</p> <p>A Yes. Ultimately, then, of those people that came in for the appointment, how many of them became clients. So the 152 is how many people had contacted us. Of those 152 people, 13, you know, came in for appointments with us and ultimately five became clients at this time we were generating the report.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Q And then the final -- I want to skip to the final column. The final column new AUM for month leads, what is that column?</p> <p>A That is the AUM that we would have been under. As we had talked before, the estimated AUM when they were signing the paperwork, we would have seen all of their statements, everything they were transferring under our management. That is the new AUM figure that shows in that last column.</p> <p>Q And when you -- for these figures that we're looking at on this document, those would have been the numbers as of about what date?</p> <p>A These would have been the numbers the first week of March.</p>
53:	The second chart on the February 2012 report tracked the number of appointments that came into the office.	Tr. 876:24-877:18 (Juris).	<p>Q This is the middle chart on the page.</p> <p>A Uh-huh.</p> <p>Q It has the same, most of the same headers. Can you explain what is different about this one versus the one on top?</p> <p>A Sure. So this one is different because this one is looking solely at how many appointments came in to our office during that month to meet with us; so it doesn't care when they first became a lead. They first could have been a lead in 2010, December of 2011, it could have -- they could have first been a lead in February of 2012. But this tracking metric doesn't -- doesn't care about that. It's saying solely of people that came into our office this month, you know, how many was that. And then the next column, then, is how</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>many of those did we close, how many became clients. It doesn't care when they first became a lead or first raised their hand to the company.</p>
<p>54:</p>	<p>The third chart on the February 2012 report calculated the "factor" for each month on the report (November 2011 – February 2012).</p>	<p>Tr. 877: 23-879:10 (Juris).</p>	<p>Q So then let's look at the bottom chart. And you see the final column on there? It has a heading for factor?  A Correct.  Q And can you tell us how is that number is computed?  A That number is computed - -  Q Computed.  A I'm following you.  Q Just go ahead.  A Calculated - - that number is pulling the advertising costs from up in the first section, the advertising costs, and it's dividing it by the estimated first year revenues in 2012 which is in that bottom section right before the factor. So it's looking at how much we spent for how much we're receiving in revenues.  Q Okay. So you're taking the number in the top - - in the top chart on the left column, advertising costs, and dividing it by the sum of the estimated first year revenue down there in the bottom right?  A Correct.  Q Looking at the estimated first year revenues for 2012, do you know where those numbers come from?  A Those numbers are calculated off of the new AUM from clients signed during the month, that last column in, yes.  Q Okay. And how do you calculate from the thing Alan has highlighted, the new AUM from clients signed during this month, how do you calculate the estimated first year revenue for 2012?  A It's 1 percent. It's assuming 1 percent management fee. So it's taking those values and multiplying it by the 1 percent and then calculating the factor off of it.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

55:	The notes on the February 2012 report are Ms. Juris' and were taken during the management meeting with Mr. Winkelmann.	Tr. 872:11-18 (Juris).	Judge Patil: Could you go back down to that exhibit? What do you know about whose handwriting this is at the top and bottom? The Witness: Uh-huh. That is my handwriting. Judge Patil: Go ahead. Ms. VonderHeide: Thank you.
		RX-036.	February 2012 Monthly Advertising Chart.
56:	Page 3 of the February 2012 report was the advertising expense ledger for the month of February, showing the Firm's advertising expenses for that month. The advertising costs used in the charts on page 1 of the report, derived from the ledger on page 3.	Tr. 882:5- 883:7 (Juris).	Q Go to the next page, Alan. And page 3 of RX36, what's that page? A This is a advertising report generated from QuickBooks and it shows the different charges. Q Okay. And what would the QuickBooks advertising data have been used for? A The QuickBooks advertising data would have been used to enter it into the - - into the spreadsheet back on the front and then we could look at the charges and stuff here and as referred to before, if things were booked in a month that - - that weren't actually turned into dollars spent for advertising in that month, we could make adjustments based off of the memo that we saw here. Q Page 4, Alan. What about this page? What was the importance of this page? A The importance of this page was to just look for - - at February we had the 99 leads come in and, you know, where did they come from? Just from, you know, the number of leads that came from a source. So we had, you know, 30 responses from people from 97.1, 12 from The Post Dispatch, and it just put it in a visual in a chart for us to kind of look and see where the biggest responses were coming from.
57:	The Firm used a chart substantially similar in form to the February 2012 chart	Compare RX-036 and	Monthly Advertising Report for February and March, 2012, respectively.

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	for March of 2012.	RX-037	
58:	In April 2012, the chart remained substantially similar, but added an average advertising factor calculation and a geometric mean factor calculation.	Compare RX-054 pp. 1-8 to RX-054 pp. 28-38.	Monthly Advertising Report for January – April 2012.
59:	In May of 2012, the monthly report changed in form.	RX-054, p. 40.	May Monthly Advertising Report
60:	Instead of three charts, the May 2012 report contained a single chart that tracked the advertising factor in three different ways.	RX-054, p. 40.	May Monthly Advertising Report
61:	The May 2012 chart also began tracking a “Trailing 6-month” average and geometric factor.	RX-54, p. 40.	May Monthly Advertising Report
62:	The monthly report charts for June 2012 through February 2013 were substantially similar in format and appearance to the May 2012 Chart.	RX-54, pp. 52-110 RX-55	Monthly Advertising Report for June 2012 – February 2013.

**Round 1**

63:	The Offering Memoranda for Round 1 states: A key business driver for Blue Ocean Portfolios is the client acquisition cost. Currently Blue Ocean Portfolios is spending approximately \$5,500 per month on advertising that generates leads for the sales staff to follow up on. This \$5,500 advertising spend is currently converting into approximately \$2.5 million in new assets that are generating \$25,000 in new	RX 1, p. 9.	Offering Memorandum Round 1.
-----	--	-------------	------------------------------

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	annually recurring revenue. So, if this trend continues, each \$10,000 in new recurring revenue will cost Blue Ocean Portfolios \$2,200 in advertising – a 22/100 ratio. No assurance can be given that business will continue to experience growth at this conversion ratio of 22/100.		
64:	The Division alleged that the stated “conversion ratio” or “advertising factor” of .22 was incorrect and that the actual factor was .45	OIP ¶7.	7. The first offering memorandum, dated March 31, 2011, misrepresented the advertising conversion rate by more than 100%, as it incorrectly stated that “each \$10,000 in new recurring revenue will cost [Blue Ocean] \$2,200 in advertising – a 22/100 ratio.” In reality, each \$10,000 in new recurring revenue cost Blue Ocean \$4,548 in advertising – a 45/100 ratio.
65:	The final offering document for Round 1 was dated March 31, 2011.	RX-001, p. 1	Round 1 Offering Memorandum
66:	The Round 1 Offering Memoranda included a detailed overview of the Firm’s sales and marketing plan, which it hoped would attract new leads and, ultimately, increase the Firm’s revenue.	RX-001, p. 8.	Round 1 Offering Memorandum:  The Blue Ocean Portfolios message is: "Your Advisor is Lying To You if You Are Not Hearing About Index Funds. Call Blue Ocean Portfolios When You Are Fed Up — Blue Ocean Portfolios, The Best Value in Wealth Management." The plan is to own that message and be the "go to" solution when investors are fed up with the conflicts of interest from their advisor/broker. This message is currently being broadcasted through advertising.  Blue Ocean Portfolios has entered into an exclusive marketing/sponsorship agreement with The Financial Coach Show. Hosted by Bryan Binkholder dba "The Financial Coach", - a Registered Investment Advisor - The Financial

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Coach Show is aired every Sunday at 6:00 PM on FM News Talk Radio 97.1 in the St. Louis market. According to Arbitron, the radio show has between 7,000 and 8,000 listeners every week. Blue Ocean Portfolios has been the sponsor of the show since January of 2010. It is planned that the radio show could be syndicated to other markets in the United States as well. The show gives up-beat analysis of the economic and political news while providing valuable insights on the traps and cons that typical Wall Street firms sell. The show drives listeners to The Financial Coach website (<a href="http://www.FinancialCoachShow.com">www.FinancialCoachShow.com</a>) where they can request free information from Blue Ocean Portfolios on retirement, wealth management topics, life insurance, and other investment related topics. Under the exclusive marketing/sponsorship agreement, Bryan Binkholder receives a monthly retainer that is tied to the overall revenues of Blue Ocean Portfolios, LLC, regardless of where the leads come from. Overall Mr. Binkholder has no direct relationship or contact with his listeners who become prospective clients of Blue Ocean Portfolios; however from time to time Bryan Binkholder may have direct contact with clients and/or prospective clients of Blue Ocean Portfolios. In this event Mr. Binkholder will give the client an exclusive marketing agreement and the client will receive a copy of the ADV Form.</p> <p>Mr. Binkholder receives no direct compensation from any Blue Ocean Portfolio client for investment advisory services or insurance products or revenue of any kind. From time to time Mr. Binkholder could be directly compensated for speaking engagements or from other unrelated parties. If those other parties would also happen to be Blue Ocean Portfolio clients it would be purely coincidental and not</p>
--	--	---



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>linked to any relationship that the third party would have with Blue Ocean Portfolios.</p> <p>Additionally, Blue Ocean Portfolios is a sponsor of The Charlie Brennan Radio show that is aired each weekday on AM 1120 in the St. Louis market. The message' directs the listeners to an 800 numbers and/or The Blue Ocean Portfolios website (www.BlueOceanPortfolios.com) where they can request a free report "What Your Broker Won't Tell You6". A Blue Ocean Portfolios representative follows up with the request, schedules an appointment and closes business.</p> <p>Going forward, Blue Ocean Portfolios intends to expand its advertising to incorporate print ads, social media, YouTube and Google Adwords to generate additional leads. Additionally, there are plans to syndicate The Financial Coach Show and Blue Ocean Portfolios to other markets like Chicago, IL, Springfield, MO and Sarasota, FL. These markets will need at least one rep in the region to close business. Blue Ocean portfolios will use a substantial portion of the proceeds of this offering and future cash flows to fund media buys for both Blue Ocean Portfolios and The Financial Coach Show. The media buys will be ongoing and targeted toward the over-45 college graduate markets place. The initial media buy plan will focus on radio with TV and direct mail.</p>
67:	The offering document also included a list of the "business drivers," and identified both as "a key business driver" and "the key business driver" for Blue Ocean its "client acquisition cost," i.e., how much money it took in advertising to bring in	RX-001, p. 9.	Round 1 Offering Memorandum

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	new clients		
68:	In 2011, the Firm worked with Greensfelder to prepare the Offering Memorandum for Round 1	FOF 53.	
69:	Mr. Winkelmann prepared the initial draft of the document, and that included an overview of the Firm's advertising campaign as of that time period	FOFs 52, 53.	
70:	After many discussions with his attorney, Michael Morgan, Mr. Winkelmann and Mr. Morgan settled on a Royalty Unit structure	Tr. 1246:10-1248:8 (Winkelmann).	<p>Q Okay. But we know that you ended up selecting Royalty Units as the particular investment vehicle?</p> <p>A Yes.</p> <p>Q Did you consider any other alternatives before you selected Royalty Units?</p> <p>A Well, of course we considered just plain equity and also debt and preferred stock.</p> <p>Q Did you reject those alternatives?</p> <p>A Well, Mike Morgan and I were kicking these things around, and we thought without question the royalty structure, the structure of the Royalty Unit reduced or really eliminated any conflict of interest we would have with -- with the investors.</p> <p>Q First of all, who is Mike Morgan?</p> <p>A Mike Morgan is deceased now. He died in March of 2000 -- February of 2015. He was a general securities practitioner here in St. Louis for 30 years.</p> <p>Q Okay. So --</p> <p>A 40 years.</p> <p>Q So did you come up with the idea of Royalty Units yourself or with assistance from anybody?</p> <p>A Just collaborating with Mike Morgan.</p> <p>Q So you said that Royalty Units, they were attractive because they --</p> <p>A Well, in an early-stage company, you have this problem</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>with the issued stock of a valuation. How do you value the company? An early-stage company is very difficult. I think I would call clumsy, I mean, because we would be trying to sell the least amount of interest in the company for the most amount of money and the buyers which would be --</p> <p>Q You're talking about an equity raise?</p> <p>A Yes. The buyers would be trying to buy the most amount of equity for the least amount of money. And in a debt structure, the bondholder would be trying to advocate for the highest rate with the most -- what do they call it -- security. And the issuer would try to get the lowest rate with the least amount of collateral or security.</p> <p>So there was inherent conflicts in both, but Mike and I -- and he agreed -- that this royalty methodology either mitigated or eliminated all of these inherent conflicts that would be there with an equity or a bond raise.</p>
		<p>Tr. 1249:11-1250:16 (Winkelmann).</p>	<p>Q Okay. When you and Mr. Morgan came up with the idea of raising capital for Blue Ocean Portfolios through his offering of Royalty Units, who at the time did you imagine would be your prospective investors?</p> <p>A Friends and clients.</p> <p>Q Client means advisory clients of Blue Ocean Portfolios?</p> <p>A Yes.</p> <p>Q Did you have any discussions with Mr. Morgan about the prospect of offering Royalty Units to your advisory clients?</p> <p>A Yes.</p> <p>Q Tell us about those discussions.</p> <p>A Well, again, we had this provocative message out there in 2010 about these low-cost index funds and early 2011, throughout 2011, 2012. The people say, you know, "Jim, I really like this message. This is the way it should be done." I said, "Well, let me tell you about our business, how it's growing. It's growing because it's advertising."</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			I said, "We are planning to raise or planning to expand the business. Would you be interested in it?" And if you're an enthusiastic client of Blue Ocean, I think you want to hear about, yes, we're growing and this is how we plan to grow. And I shared that with - - you know, with Mike as, you know, as this is the conversations we would have with, you know, clients and friends.
71:	Between June 2010 and the end of February, 2011, the Firm spent a total of approximately \$45,000 in advertising expenses	RX-008.	Expenses incurred between June 2, 2010 and December 25, 2010 = \$32,092
		RX-022 & RX-023.	Advertising Expenses for January 2011 (\$3,624) and February 2011 (\$10,894) total = \$13,078.
72:	$\$32,092 + \$13,078 = \$45,170$		
73:	Advertising expenses for June 2011 were \$2,600	RX-008.	2010 Advertising Expenses
74:	Advertising expenses for July 2011 were \$3,640.	RX-008.	2010 Advertising Expenses
75:	Advertising expenses for August 2011 were \$113.	RX-008.	2010 Advertising Expenses
76:	Advertising expenses for September 2011 were \$4,490	RX-008.	2010 Advertising Expenses
77:	Advertising Expenses for October 2011 were \$5,469.	RX-008.	2010 Advertising Expenses
78:	Advertising Expenses for November 2011 were \$5,928	RX-008.	2010 Advertising Expenses
79:	Advertising Expenses for December 2011 were \$9,854.	RX-008.	2010 Advertising Expenses
80:	Advertising Expenses for January 2012 were \$3,024.	RX-010	2011 Monthly Advertising breakdown.
81:	Mr. Winkelmann "approximated" the Firm's monthly advertising spend at \$5,500.	Tr. 501:13-502:5 (Winkelmann).	Q Okay. And Exhibit 159 has the methodology, which you're now saying is the right methodology, advertising spend in a period divided by revenues attributable to that advertising spending, correct?

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>A May I elaborate, Judge?          JUDGE PATIL: You should answer, yes or no. And if neither, yes or no fairly accurately answers the question, then –          A A simple explanation will clear this up. May I?          JUDGE PATIL: Absolutely.          THE WITNESS: Around this time that the letter was written to Mr. Riney, I looked back to June of 2010, the average spend was about \$2200 or \$5500 and we knew that month in February we were getting in about 2.5 million in new assets. That's the calculus that I recall.</p>
82:	To determine the advertising spending, the Firm looked to its QuickBooks, which reflected all advertising expenses	<p>Tr. 873: 8-13 (Juris).</p> <p>Tr. 882: 6-20 (Juris).</p>	<p>Q And the next column to the right is titled advertising costs. What - - what advertising costs does that refer to?          A Yes. So the advertising costs that went in this, the initial value was pulled from a QuickBooks report.</p> <p>Q And page 3 of RX36, what's that page?          A This is a advertising report generated from QuickBooks and it shows the different charges.          Q Okay. And what would the QuickBooks advertising data have been used for?          A The QuickBooks advertising data would have been used to enter it into the -- into the spreadsheet back on the front and then we could look at the charges and stuff here and as referred to before, if things were booked in a month that -- that weren't actually turned into dollars spent for advertising that month, we could make adjustments based off of the memo that we saw here.</p>
83:	As of the date of the Round 1 Offering Memorandum, Mr. Winkelmann concluded that the Firm was realizing	Tr. 518:20-519:4 (Winkelmann)	Q So it's your testimony that the denominator, then, it wasn't any advertising resulting from -- any revenue -- strike that. So it's your testimony that it was not

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	<p>approximately \$25,000 in new, annually-recurring revenue.</p>		<p>revenue generated directly as a result of 2010 advertising data, correct?  A No. The new recurring revenue that came in as a result of, I think, as 2.67 million in new assets in February was a culmination of the advertising spend up to that point in time.</p>
		<p>Tr. 1464:1-16 (Winkelmann).</p>	<p>Q Okay. And at trial, at hearing you testified last week that the revenue piece of the factor calculation in the first offering memorandum was based on Blue Ocean's revenues just for February 2011, right?  A The period that was culminating right before the published offering memorandum. So the \$2.67 million of new assets that came in-between February 1st and March 1st would have resulted in about \$25,000 worth of new recurring revenue.  Q Right. So it was -- for the first memorandum it was the revenue that came in from February 1st, 2011 to March 1st, 2011, correct?  A That was the current period, yeah.  Q Correct?  A Correct.</p>
<p>84:</p>	<p>In February of 2011, the Firm's advertisements were bringing in about \$2.6 million in new assets under management</p>	<p>Tr. 518:23-519:10. (Winkelmann).</p>	<p>Q So it's your testimony that it was not revenue generated directly as a result of 2010 advertising data, correct?  A No. The new recurring revenue that came in as a result of, I think, as 2.67 million in new assets in February was a culmination of the advertising spend up to that point in time.  Q Okay. So if you are saying that the revenue component of this .22 factor was just the new revenue from February 2011, correct?  A That was the current period that the new business was</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			culminating as a result of advertising in the past.
		RX-011.	New assets between February 1 and March 1 2011 total \$2,627,000.
85:	\$2,627,000 x 1% = \$26,270.		
86:	In March 2011, when Mr. Winkelmann was preparing the Offering Memorandum, the Firm's January monthly report was available for review	Tr. 923:23-924:1 (Juris).	Q Okay. And in, you know, early to mid March of 2011, would the January data have been available to the firm in terms of new revenue and advertising spend? A Yes.
		Tr. 924:14-23 (Juris).	Q Sure. The question was, in early to mid March of 2011, would the Blue Ocean, as far as you know, have had access to the January numbers? A Yes. Q So if the firm is using a 1 percent management fee to calculate annual revenue generated by new AUM - - I think you did it for us in your head and it was \$13,514? Do I have that right? A Yes.
87:	In January 2011, the Firm's received new assets under management totaling \$1,351,432.	DX-159.	June 2012 Data relied upon by Mr. Collins in calculating the advertising factors.
88:	In January and February 2011 all of the Firm's revenue calculations assumed that clients paid an annual advisory fee of 1%	Tr. 923:23-924:1-2 (Juris).	Q Okay. And in, you know, early to mid March of 2011, would the January data have been available to the firm in terms of new revenue and advertising spend?

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	of their assets under management	Tr. 924:14-23 (Juris).	A Yes.  Q So if the firm is using a 1 percent management fee to calculate annual revenue generated by new AUM - - I think you did it for us in your head and it was \$13,514? Do I have that right? Yes.
89:	1% of \$1,351,432 is \$13,514.	Tr. 924:18-23 (Juris).	Q So if the firm is using a 1 percent management fee to calculate annual revenue generated by new AUM - - I think you did it for us in your head and it was \$13,514? Do I have that right? A Yes.
90:	The Firm's advertising spending for January 2011 came to \$3,024	Tr. 492:10-12 (Winkelmann).	Q: So what's the advertising spend for January 2011 on Exhibit 86. It's \$3,024? A Correct.
91:	To calculate the advertising factor, the Firm divided the monthly advertising spend by the new annually recurring revenue.	Tr. 475:18-476:3 (Winkelmann).	Q So Mr. Winkelmann, I believe before we broke for lunch, you stated that the way Blue Ocean Portfolios calculated the factor, the advertising factor, that you disclosed to the investors in offering memorandum was to divide advertising spending in a particular period by the recurring revenue specifically tied to that period of advertising? A I think to be clear, we took the advertising spend divided by the new recurring revenue.
92:	\$3,024 divided by \$13,514 equals 0.22.	Tr. 924:24-925:4 (Juris).	Q And so then just to humor us again, if you take the advertising spend for January, the 3,024, and divide it by a 1 percent fee - - I'm sorry, the revenue generated by a 1 percent fee, that 13,514, what factor do you get? A 0.22.

**Calculation of Round 2 Advertising Factor.**

93:	Round 2 was issued on March 10, 2012.	RX-002, p. 1.	Round 2 Offering Memorandum cover page.
94:	The Offering Memoranda for round 2	RX-002, p. 13.	Round 2 Offering Memorandum



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	<p>stated:                  The key business driver for Blue Ocean Portfolios is the client acquisition cost. Currently, Blue Ocean Portfolios is spending approximately \$15,000 per month on advertising which generates leads for the sales staff to follow up on. This \$15,000 advertising spend is converting to approximately \$2.42 million in new assets that are generating \$24,200 in new annual recurring revenue. So each \$10,000 in new recurring revenue is currently costing Blue Ocean Portfolios \$6,200 in advertising – a 62/100 ratio or an “advertising conversion factor” of .62.</p>		
95:	<p>The Division alleged that the advertising factor of 0.62, stated in the Round 2 Offering Memorandum, was incorrect and that true advertising factor at the time of the Round 2 Offering was 1.11</p>	OIP ¶ 8.	<p>8. The second offering memorandum, which Respondents began circulating in March 2012, misrepresented the advertising conversion rate by more than 75%. That memorandum incorrectly stated that "each \$10,000 in new recurring revenue is currently costing [Blue Ocean] \$6,200 in advertising — a 62/100 ratio or an 'advertising conversion factor' of 0.62," and falsely claimed that Blue Ocean's "advertising factor for 2011 was 0.78." In reality, the current advertising conversion factor was 1.11, not 0.62, and for 2011, this factor was 1.28, not 0.78.</p>
96:	<p>The Division further alleged that “[i]n reality the current advertising conversion factor was 1.11, not 0.62”</p>	OIP ¶ 8.	<i>See above.</i>
97:	<p>As of March 2012 used of monthly advertising reports to track the advertising</p>	RX-036.	February 2012 Monthly Advertising Report

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	data.	RX-037. Tr. 872:25-873:7 (Juris).	March 2012 Monthly Advertising Report Q What time period does this chart offer? A So this chart is showing November 2011 data through February. And then it appears that we had also then in the beginning of March, just updated the formulas to begin pulling March data. Although this would have been created, you know, the first week or so of March that way; so that's why there's -- it's really a February report.
98:	The data in the monthly advertising reports was pulled from the Firm's master spreadsheet, which contained data regarding, among many other things, the advertising expenses, assets under management, and newly recurring revenue.	Tr. 871:5-872:1 (Juris).	Q Okay. Alan, can you pull up our Exhibit 36. And do you recognize this document? A: I do. Q And what is this document? A This document, it's titled February at the top. So this is the February 2012 report that we would generate to review what had - - what had happened. This report would have been generated after February had ended. So ideally the first five days, five business days of - - of the previous month; so in March we would generate this report to see, you know, what had happened in February. Q And was this type of report a document regularly created and maintained by Blue Ocean Portfolios? A Yes. We went through and we would update this each month to include, you know, new formulas to pull the appropriate entries from that master spreadsheet related to the month and then we would generate the reports.
		RX-006.	Master Advertising Spreadsheet
99:	The reports were generated in the first week after the close of a month.	Tr. 871:5-872:1 (Juris).	Q Okay. Alan, can you pull up our Exhibit 36. And do you recognize this document? A I do. Q And what is this document? A This document, it's titled February at the top. So this is the February 2012 report that we would generate to review



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			month to include, you know, new formulas to pull the appropriate entries from that master spreadsheet related to the month and then we would generate the reports.
101:	After each monthly meeting, that report was placed in a binder and preserved	Tr. 885:3-886:2 (Juris).	<p>Q And what would be the purpose of - - why would you be writing notes on RX37?</p> <p>A: So I would have been the one that generated the reports from - - pulled from the data to make these pretty charts and update the formula that way. And then we would have our meeting, the management meeting, and then we would take about different things.</p> <p>And, you know, we would say okay, well, can we view the data this way or maybe it makes sense to see it this way. Or just different notes that occurred in a meeting. As you sit in a meeting and take notes on documents, that's what these handwritings are.</p> <p>Q And then after the meeting, the firm would preserve this document with your notes on it?</p> <p>A Yes. This went into a binder for us to review what the reports were generated at that month and we kept them.</p> <p>Q So for the management meetings, there would be a printed report preserved that showed what you had present with you at that management meeting?</p> <p>A Correct.</p>
102:	The monthly reports frequently contained Ms. Juris' handwritten notes, taken during the meeting.	Tr. 885:17-22 (Juris).	<p>Q And then after the meeting, the firm would preserve this document with your notes on it?</p> <p>A Yes. This went into a binder for us to review what the reports were generated at that month and we kept them.</p>
103:	In early March 2012, when Mr. Winkelmann was working with Mr. Morgan at Greensfelder to prepare the Round 2 Offering Memorandum, the most current monthly management report was	Tr. 872:25-873:4 (Juris).	<p>Q What time period does this chart offer?</p> <p>A So this chart is showing November 2011 data through February. And then it appears that we had also then in the beginning of March, just updated the formulas to begin pulling March data.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	the February report	Tr. 912:2-912:14 (Juris).	<p>Q So if the firm was preparing the offering memorandum in March of 2012, which reports would it have available to it?</p> <p>A It would have had the February report available.</p> <p>Q What about January?</p> <p>A It would have had January, any prior months. February would have been the last month it had available.</p> <p>Q And what about March?</p> <p>A The March report was generated the first week of April; therefore, this would not have been available.</p>
104:	The February report would have been available the first week of March.	Tr. 871:9-18 (Juris).	<p>Q And what is this document?</p> <p>A This document, it's titled February at the top. So this is the February 2012 report that we would generate to review what had - - what had happened. This report would have been generated after February had ended. So ideally the first five days, five business days of - - of the previous month; so in March we would generate this report to see, you know, what had happened in February.</p>
105:	The February 2012 advertising factor was calculated by dividing the advertising costs by estimated first year revenues.	Tr. 878:2-14 (Juris)	<p>Q And can you tell us how is that number computed?</p> <p>A That number is computed --</p> <p>Q Computed.</p> <p>A I'm following you.</p> <p>Q Just go ahead.</p> <p>A Calculated -- that number is pulling the advertising costs from up in the first section, the advertising costs, and it's dividing it by the estimated first year revenues in 2012 which is in that bottom section right before the factor. So it's looking at how much we spent for how much we're receiving in revenues.</p>
106:	As of the first week of March 2012, when the February report was generated, the Firm's current advertising cost was	Tr. 879:11-15 (Juris).	<p>Q So just for an example, February of 2012, the new AUM is \$2,200,000; the February 2012 estimated first year revenues would be \$22,000. That's 1 percent?</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	\$14,804 and its estimated first year revenues were \$22,000		A Correct.
		RX-036.	February 2012 Monthly Advertising Report showing advertising costs of \$14,804 and estimated first year revenues of \$22,000.
107:	\$14,804 divided by \$22,000 equals 0.67.	Tr. 879:11-880:5 (Juris).	Q So just for an example, February of 2012, the new AUM is \$2,200,000; the February 2012 estimated first year revenues would be \$22,000. That's 1 percent? A Correct. Q And so do you have a calculator in front of you? A I do. Q Let's just check the math on this. If you take the -- for February if you check the 14,804 in advertising costs. A Yes. Q And you divide that by the 22,000 in 2012 revenues. A Yes. Q What do you get? A .67. Q And is that the same as the factor that's on there? A Yes.
108:	When Mr. Winkelmann prepared the Offering Memorandum in March, he was able to access the master advertising spreadsheet.	Tr. 909:19-910:2 (Juris).	Q And what if someone, maybe yourself, wanted to look at a particular piece of data, not at the monthly meeting, but just interim during the month, would you have access to that information? A Yes. Q And would you necessarily print out and maintain a copy of it? A No, we would not.
109:	Mr. Winkelmann would have had the ability to access the spreadsheet in between monthly meetings and viewed the most current calculation advertising	Tr. 912:15-23 (Juris).	Q And would the firm also -- would someone at the firm also have been able in mid March to go into this data and see what the advertising factor was as of a particular date and month?

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	factor.		A Yes. Q And if someone had done that, would that document have ended up in your binder of monthly management meetings? A It would not.
110:	The March 2012 report was generated in the first week of April 2012.	Tr. 871:5-872:1 (Juris).	Q Okay. Alan, can you pull up our Exhibit 36. And do you recognize this document? A I do. Q And what is this document? A This document, it's titled February at the top. So this is the February 2012 report that we would generate to review what had - - what had happened. This report would have been generated after February had ended. So ideally the first five days, five business days of - - of the previous month; so in March we would generate this report to see, you know, what had happened in February. Q And was this type of report a document regularly created and maintained by Blue Ocean Portfolios? A Yes. We went through and we would update this each month to include, you know, new formulas to pull the appropriate entries from that master spreadsheet related to the month and then we would generate the reports.
111:	The March report, generated in April 2012 (after the second offering), showed the Firm's estimated first year revenues had increased to \$53,540 and the advertising factor had dropped to 0.35.	RX-037, p. 1.	March 2012 Monthly Advertising Report
112:	The monthly management reports included a graph that tracked the advertising factor over time	RX-054, pp. 11; 19; 33; 45; 69; 77; 87-88; 99.	Graphs of the advertising factor over time as they appear in the Monthly Advertising Reports for 2012.
113:	The February 2012 monthly management report showed a December 31, 2011 advertising factor between 0.80 and 1.00.	RX-036, p. 2.	February 2012 Monthly Advertising Report
114:	The March 2012 monthly management	RX-037, p.3.	March 2012 Monthly Advertising Report

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	report showed a December 31, 2011 advertising factor of exactly 0.80.		
115:	The Second Round offering memorandum stated that in 2011, the Firm invested "approximately \$328,000" in advertising which resulted in recurring annual revenues of 404,000."	RX-002, p. 5.	Round 2 Offering Memorandum
116:	\$328,000 divided by \$404,000 equals 0.81.		

**Round 3**

117:	Paragraph 9 of the OIP alleges that the Round 2 Offering Memorandum, dated September 1, 2012, misrepresented the advertising conversion rate when it stated that "each \$10,000 in new recurring revenue is currently costing [Blue Ocean] \$6,700 in advertising – a 67/100 ratio or an 'advertising conversion factor' of 0.67." The Division further alleged that "[i]n reality the current advertising conversion factor was 1.03, not 0.67"	OIP ¶9.	Order Instituting Proceedings:  9. The third offering memorandum, dated September 1, 2012, misrepresented the advertising conversion rate by more than 50%. That memorandum falsely stated that "each \$10,000 in new recurring revenue is currently costing [Blue Ocean] \$6,700 in advertising — a 67/100 ratio or an 'advertising conversion factor' of 0.67." In reality, the current conversion rate was 1.03, not 0.67. Moreover, the third offering memorandum contained the same misrepresentation about Blue Ocean's 2011 advertising conversion rate that was contained in the second offering memorandum.
118:	The Round 3 Offering Memorandum is dated September 1, 2012	RX-003.	Round 3 Offering Memorandum



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

119:	Mr. Winkelman prepared the offering memorandum for Round 3 with the advice and counsel of Mr. Morgan.	Tr. 1356:5-7 (Winkelmann).	Q You used Greensfelder for round three, right, for legal advice for round three? A Yes.
		Tr. 1356:14-22 (Winkelmann).	Q But as far as providing advice to -- as far as providing advice to you regarding the offering memoranda, the exhibits to the offering memoranda, the subscription agreement, the certificate, the nature of the advice that Greensfelder provided in round three, was it the same as the nature of the advice that they had provided regarding rounds one and two? A Yes.
		FOF 51, 53, 54, 55.	
		RX-106, p. 1209.	July 26, 2012 email from Jim Winkelmann to Mr. Morgan and G. Walsh, subject "Blue Ocean Round 3" and setting forth basic parameters of envisioned deal.
120:	At the time the Round 3 Offering Memorandum was prepared, the most recent monthly report would have been the July 2012 report.	RX-054, p. 62.	July Monthly Advertising Report.
		Tr. 913:5-23 (Juris).	Q Right. And I'll tell you that the memorandum is dated September 1 <sup>st</sup> , 2012. A Okay. Q Okay. So what reports - - if the firm is preparing the memorandum, for example, sometime in July of 2012, what reports would the firm have available to it? A If we were preparing the memorandum in July, we would have had June reports. If we were preparing in August, we would have had July reports. Q Sorry. I think I meant - - I think I missed an entire month of the year. So if it's - - if the memo is dated September 1 <sup>st</sup> and the firm was preparing the memo sometime in August, I apologize, what reports would it have had available to it?

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			A We would have had July reports available.
121:	The format and substance of the monthly advertising report had evolved since the last Royalty Unit offering in March 2012.	Compare RX-036 and RX-054, p. 62-63.	February 2012 and July 2012 monthly advertising reports.
122:	The July monthly advertising report included a computation of the trailing six month average advertising factor.	RX-054, p. 63.	July Monthly Advertising Report
123:	The trailing six month advertising factor as of the July report was 0.71.	<i>Id.</i>	July Monthly Advertising Report
124:	Mr. Winkelmann decided to use the six-month trailing factor in the Round 3 offering memorandum because he believed it to be the most accurate data.	Tr. 692:11-22 (Winkelmann).	Q And to calculate the factor for the third round memorandum, you used the same methodology as you used in the second round memorandum? A Well, the same basic formula but the advertising over the realized revenue. This is when we had a six year to date or six-month lookbacks that we were having as more elaborate process of attributing the revenue to the appropriate month. So this is - - would have been further into the evolution of our advertising analysis, and the .67 would have came out of that advertising analysis.
		Tr. 901:12-24. (Juris).	Q And if you look at underneath the chart, there's some - - some new data. There's something called trailing six months factor; do you see that? A Correct. A What does that reflect? A As it states it's the trailing six months that we had as we began these reports. Then we had more and more information; so we were able to analyze it over a period of time. So instead of looking at just one month which may not be the best representation of the data, we wanted to look at it from a trailing perspective.
125:	The advertising factor used in the September 1, 2012 Offering memoranda	Tr. 913:2-4 (Juris).	Q The round three offering, do you know when it was? A Round three was sent of 2012.

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	was computed in August of 2012.	Tr. 913: 17-25 (Juris).	So if it's - - if the memo is dated September 1 <sup>st</sup> and the firm was preparing the memo sometime in August, I apologize, what reports would it have had available to it? A We would have had July reports available. Q Okay. And June as well? A Yes.
		Tr. 914:16-915:1 (Juris).	Q And if you look just to the most recent months, month-end data, what is the factor that's been computed as of June 2012? A The factor was 0.68. Q Moving on. And again, this would have been information - - sorry. Would this have been information that was available to the firm in August when it was preparing the round three offering memoranda? A Yes. This report was generated the beginning of July of 2012.
126:	In August of 2012, the July report would have been the most recent monthly report available.	Tr. 980: 3- 16 (Juris).	Q And if we looked at it in August, we would have - - by using the July data, we would have gotten different factors down in the lower left for the trailing six month, trailing nine month, and trailing 12 month, right? A Correct. Because on the July report that we would have had available in early August, when the documents are being drafted, the trailing would not have included July, it would have been a look back of January through June. So it shifts the months depending on what report you're looking at. So this one - - this report was generated the first week of September; therefore, we had August data and we had changes that happened to July.
127:	When Mr. Winkelmann calculated the advertising factor for the Round 3	Tr. 692:11-22 (Winkelmann).	Q And to calculate the factor for the third round memorandum, you used the same methodology as

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	<p>offering, he used the Firm's (then most current) data, which showed the current factor was 0.67.</p>		<p>you used in the second round memorandum?  A Well, the same basic formula but the advertising over the realized revenue. This is when we had a six year to date or six-month lookbacks that we were having as more elaborate process of attributing the revenue to the appropriate month. So this is -- would have been further into the evolution of our advertising analysis, and the .67 would have come out of that advertising analysis.</p>
<p>128:</p>	<p>When Mr. Winkelmann communicated with investors regarding the status of the round 3 capital raise, he believed each statement was true and accurate based on the information he possessed at the time.</p>	<p>Tr. 710:7-18. (Winkelmann)</p>	<p>Q And that wasn't true, right, because Blue Ocean Portfolios only ended up bringing in \$27,000 for the round three offering, correct?  A Well, again, I had commitments from close --  Q Or \$275,000. I apologize.  A \$275,000. I had commitments from close friends that I had every reason to believe that once we consummate it they would just get a check. It was just a matter of picking up a check from, I think it was Bryan Swift. I think he said he's in for 200,000, maybe 3.</p>
		<p>Tr. 1365:9-1366:1 (Winkelman).</p>	<p>Q Did you tell these individuals that you'd raised that much in those emails?  A Yes.  Q Can you explain for the Court why you used those figures, 325 and 400?  A Because I knew I had a commitment from Bryan Swift for up to 200,000.  Q Even though -- had he paid you that money and did you have the cash in hand at the time?  A No.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Q But you still concluded it as money that had been, quote-unquote, raised?</p> <p>A I assumed that Bryan would have been good for his commitment.</p> <p>Q Why do you assume that or why did you assume that?</p> <p>A Because he told me.</p>
129:	Mr. Swift testified that when Mr. Winkelmann approached him with an offering "was always there for him, whatever he needed."	Tr. 1064:2-14 (Swift).	<p>Q So the fact that you decided not to purchase a Royalty Unit at this time had no bearing on whether there was or was not a regulator --</p> <p>A No.</p> <p>Q -- a regulator conducting an investigation of Blue Ocean, correct?</p> <p>A Typically what would happen is if Jim was really trying to raise money, he would talk to me personally and say, "Hey, you know, we're in round two, do you want to do it?" or "Hey, I think we've got enough for round two." And I was always there for him, whatever he needed.</p>

**Round 4.**

130:	Paragraph 10 of the OIP alleges that the Firm "misrepresented the advertising conversion rate by approximately 15%" when it "incorrectly stated that Blue Ocean's 2012 conversion rate was 0.89." The Division further alleged that the "actual" conversion rate for 2012 was	OIP ¶10	<p>Order Instituting Proceedings:</p> <p>9. The fourth offering memorandum, dated February 2013, misrepresented the advertising conversion rate by approximately 15%, as it incorrectly stated that Blue Ocean's 2012 conversion rate was 0.89. Blue Ocean's actual conversion rate for 2012 was 1.02.</p>
------	---	---------	--

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	1.02.		
131:	Round 4 was offered on February 15, 2013	RX-004.	Round 4 Offering Memorandum.
132:	The Round 4 offering memorandum was prepared in early February/late January of 2013.	RX-106, pp. 1955 - 2154	Email correspondence regarding Round 4, beginning with a January 28 <sup>th</sup> email from Jim Winkelmann to Michael Morgan subject line "Round 4" and concluding with a February 9, 2013 email from Mr. Morgan to Mr. Winkelmann attaching drafts of each document. .
133:	In late January/early February 2013, when the Round 4 Offering Memorandum was in preparation, the Firm had access to the December monthly advertising report.	RX-120.	December 2012 Monthly Advertising Report
		Tr. 864: 6-15 (Juris).	Q And how much of your time, given all your different duties at the firm, how much of your time was devote to something relating to the advertising campaign? A A large portion. Q You can ballpark. A It developed over time; so the initial compilation probably, you know, in a week was probably half of my week. And then we generated the reports in the beginning of each month.
134:	The December 2012 monthly advertising report would have been available to the Firm after the first week of January 2013.	Tr. 929:25-930:8 (Juris).	Q Alan, let's go to CX396 and it's page 4. You can zoom out. Zoom in on that, please. Okay. And do you recognize this document? A I do. Q And can you tell what time period this document is from? A This document shows data after December of 2012; so it would have been generated sometime in 2013.
135:	The December 2012 monthly advertising report calculated the 12-month trailing advertising factor (i.e., the factor for calendar year 2012) to be 0.89	RX-120.	December Monthly Advertising Report
136:	The 12 month period calculated in the	Tr. 906:1-8 (Juris).	Q Okay. And so what month was this report for again?

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	December 2012 monthly advertising report is calendar-year 2012.		A This report was for December 2012. Q And so what would have been - - the trailing 12 months, which months would those have been? A Those would have reflected the November 2012 through the prior December of 2011.
137:	The 0.89 figure that appear in the December 2012 monthly advertising report is the same figure that appears in the Round 3 offering memorandum.	Compare RX-120 and RX-004, p. 4.	December Monthly Advertising Report and 4 <sup>th</sup> Round Offering Memorandum

**Michael Collins**

138:	Michael Collins is a staff accountant employed by the SEC.	Tr. 55:4-5 (Collins).  Tr. 55:22-23 (Collins).	Q And, Mr. Collins, where do you work? A I work for the SEC.  Q And what is your title? A Staff accountant.
139:	Mr. Collins has an accounting degree but is not a CPA.	Tr. 121:15-16 (Collins).	Q Are you an accountant? A I'm not a CPA.
140:	Mr. Collins was not familiar with Schedule C to IRS form 1040?	Tr. 170: 9-11 (Collins).	Q Are you familiar with Schedule C to IRS form 1040? A I have a general familiarity.
141:	Mr. Collins did not perform the advertising ratio calculations that form the basis of the allegations in the OIP.	Tr. 175:16-20 (Hanauer).	Mr. Hanauer: All right. We will stipulate, Your Honor, that Mr. Collins would testify that he did not perform the ad ratio calculations that went that form the basis of the allegations in the OIP.
142:	None of Mr. Collins' calculations equal the "correct" advertising conversion factors pled in the OIP ¶ 7-9.	Compare OIP ¶7 with CX-440 OIP ¶8 with CX-442; OIP ¶9 with CX-443.	Comparison of Mr. Collin's Summary Exhibits and the Allegations in the OIP.
143:	Mr. Collins' calculations differ from those	<i>Id.</i>	Same as above.





**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr,: 1081:8-20.	<p>to the data and testimony that had been issued previously.</p> <p>Judge Patil: I just wanted to let you know that if you wanted to do that, that would be fine.</p> <p>Mr. Hanauer: Yeah, and let me think about that, your Honor. I mean, I just want to remind the Court that paragraph 6 of the OIP makes the general allegation that each of the offering memorandum contain material misrepresentations about the advertising conversion rate. Period. And I will stand by here today without needing to think about anything else that that allegation supports all of our fraud charges. That we offer specifics later on, but let me think about the specific - -</p>
146:	Mr. Collins calculations, reflected in Division Exhibits 440, 442, and 443, were created using the data contained in DX-159.	<p>Tr. 85: 1-15 (Collins);</p> <p>Tr. 97: 13:98-13 (Collins);</p>	<p>Q Okay. Let's go back to Exhibit 440, please. And where did you get the advertising spending numbers and the annual revenue numbers for the first three months of 2011?</p> <p>A That's - - those numbers are based on testimony in Exhibit 43.</p> <p>A And, Byron, can you pull up Exhibit 159. And can you actually just pull up the whole thing so we can see it? What's the testimony exhibit on trial exhibit 159?</p> <p>A 43.</p> <p>Q So are we talking about the same document here?</p> <p>A Yes, we are.</p> <p>Q And do you see how in Exhibit 442 there are columns for factor per most recent three months or per most recent month, most recent three months, most recent 12 months?</p> <p>A Yes, I do.</p> <p>Q Okay. And how did you calculate those numbers?</p> <p>A Similar to what we discussed before. It would have been - - for the most recent month, it would have been taking the advertising spend. So for here it would have been taking the</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 101: 3-5 (Collins)	<p>advertising spend for February 2012. Most recent three months, again, that would have been the sum of the advertising spend for the most recent three months. So December 2011 through February 2012 divided by the sum of the annual recurring revenue for December 2011 through February 2012. And then the same process for the most recent 12 months, would be just going back 12 months.</p> <p>Q Okay. So where did you get the 2011 revenue and advertising spend numbers from?</p> <p>A That's from testimony Exhibit 43.</p> <p>Q And that's the same trial Exhibit 149 that we've looked at a few times?</p> <p>A That's correct.</p>
		Tr. 103:13-15 (Collins).	<p>Q Okay. Exhibit 443, please. And who prepared this document?</p> <p>A I did.</p> <p>Q And where did you get the 2011 revenue and advertising spend data?</p> <p>A From testimony Exhibit 43.</p>
		DX-440, 442, 443.	Each of Mr. Collins' summary exhibits cites the source of the 2011 data as Testimony Exhibit 43. Testimony Exhibit 43 is DX-159.
147:	"Testimony Exhibit 43" cited by Mr. Collins is found at DX-159.	Tr. 92:6-15 (Collins).	<p>Q And where did you get the 2011 monthly annual revenue and advertising spend data that you put into Exhibit 441?</p> <p>A That came from testimony Exhibit 43.</p> <p>Q And I think we saw that that is the same as Exhibit 159. Can you show us that, please, Byron? Just to make sure, are we talking about the same thing, Mr. Collins?</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			A Yes, we are.
148:	DX-159 was pulled from the Firm's June 2012 Monthly Advertising Report.	Compare RX-054, p. 58 to DX-159.	June Monthly Advertising Report page versus Mr. Collin's source data.
		RX-54, pp. 51-61.	June Monthly Advertising Report
		Tr. 919:22-920:3 (Juris);	Q Okay. And just really quickly, let's compare this to what's been marked as CX159. I'm sorry, Division exhibit. And zoom in. Okay. And is this the same document that appeared at RX54, page 58? A It is the same.
		Tr. 920:4-9 (Juris);	Q Okay. I have a couple questions for you on this page. So I think you said - - correct me if I'm wrong - - these numbers are current as of the date of the report which was for June generated in July of 2012; is that right? A That is correct.
		Tr. 928: 17-22 (Juris).	Q And if you go back to CX159, Alan. And can you tell by looking at the numbers here whether a 1 percent assumption is used in the June 2012 data as of this July 2012 report. A It is not 1 percent.
149:	The annual revenue computations reflected in DX-159 each assume a 0.77% management fee.	Tr. 928: 17-22 (Juris).	Q And if you go back to CX159, Alan. And can you tell by looking at the numbers here whether a 1 percent assumption is used in the June 2012 data as of this July 2012 report. A It is not 1 percent.
		Tr. 929: 11-13	Q So does this document does compute the factor using the

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		(Juris).	new factor, the .77. A Correct. The new revenue basis points.
150:	The Firm changed its assumption to reflect a 0.77% management fee charge in April of 2012	RX-054, p. 29 (April) compared RX-054, p. 17 (March)	March 2012 Monthly Advertising Report: (New AUM of \$5,354,000 times 1.0% equals \$53,540 in estimated first year revenues).  April 2012 Monthly advertising Report: New AUM of \$6,449,000 times 0.77% equals estimated new revenues of \$49,657).

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 926:25-928:1 (Juris).</p>	<p>Q And can you explain why that change was made from applying a 1 percent assumption to a .77 assumption?  A Over time new AUM would come in and it was a tiered structure and new assets were charged the 1 percent. If they were a larger AUM amount, they fall to the second tier; so there would be some - - their overall management fee percentage would fall somewhere in between and it would be different for each client.  And so in trying to avoid running specific calculations based off of every new client that was in here and trying to update the revenue figure that reflected each client's in trying to do the math, that would take way too much time. Each quarter we would look at - - we would bill quarterly and we would have revenues come in and we would compare what the quarterly revenue amount would be received compared to what the AUM was we billed on. Whatever that was, we would annualize it and then that was the overall firm revenue that we received based off of the AUM we billed on.  So at some point in the reports, to reflect more accurate data, the basis point percentage changed to reflect the 77 - - to reflect what was actually happening in the business.</p>
<p>151:</p>	<p>In 2011 and January-March of 2012, the Firm's data assumed a 1% management fee charge.</p>	<p>Tr. 926:11-24 (Juris).</p>	<p>Q And I'm not trying to stretch your recollection. When you joined the firm in December of 2011, what was the management fee percentage the firm was using revenue – annual revenue from new AUM?  A We were using 1 percent.  Q Okay. And how about in January of 2012?  A It was the 1 percent assumption.  Q At some point did that change?  A Yes. At some point on the reports, we updated the annual revenue to reflect a different basis points percentage.  Q And what was that percent?</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			A That basis points was 77 basis points.
		RX-036 & RX-037.	February and March 2012 Monthly advertising reports.
152:	The Firm updated its master advertising spreadsheet to reflect a 0.77% management fee in April of 2012.	RX-054, p. 29 (April) compared RX-054, p. 17 (March).	April Monthly Advertising Report (New AUM of \$6,449,000 times 0.77% equals estimated new revenues of \$49,657);  March Monthly Advertising Report (New AUM of \$5,354,000 times 1.0% equals \$53,540 in estimated first year revenues).
153:	After that assumption was changed, all formulas in the spreadsheet that used the management fee as a variable computed Firm revenues assuming a 0.77% charge.	Tr. 926:25-927:2 (Juris);	Q: And can you explain why that change was made from applying a 1 percent assumption to a .77 assumption?
		927:23-928:1 (Juris).	A So at some point in the reports, to reflect more accurate data, the basis point percentage changed to reflect the 77 - - to reflect what was actually happening in the business.
		Tr. 928:23-929:24 (Juris).	Q Okay. So if someone was using the June 2012 data to go back and try to compute what the advertising factor would have been in a month where a 1 percent fee was being used at the time, would they be able to do that? A It would be different. Q So if someone tried to compute the -- let me ask it differently. So this document does compute the factor using the new factor, the .77. A Correct. The new revenue basis points. Q And this computation using .77 would be the same or different from said computations using a 1 percent? A It would be different. Q And if someone -- ignore the factor column for a second. If you did the same computation where you divided expenses into new revenue using these numbers, would you

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>be able to reproduce the numbers the firm calculated realtime in January, February, or March? A No.</p>
154:	<p>The revenue data used by Mr. Collins, (DX-159) showing the Firm's monthly advertising factors from January 2011 through June 2012 assume a 0.77% assumption.</p>	CX-159.	<p>June 2012 data used in Mr. Collins' calculations of the Division's advertising factors.</p>
		Tr. 928:17-22 (Juris).	<p>Q And if you go back to CX159, ... And can you tell by looking at the numbers here whether a 1 percent assumption is used in the June 2012 data as of this July 2012 report?  A It is not 1 percent.</p>
		Tr. 929:11-17 (Juris).	<p>Q So this document does compute the factor using the new factor, the .77. A Correct. The new revenue basis points. Q And this computation using .77 would be the same or different from said computations using a 1 percent? A It would be different.</p>
155:	<p>Mr. Collins' calculations are based on data that the Firm did not possess at the time it prepared the 1<sup>st</sup> and 2<sup>nd</sup> Round offerings.</p>	Tr. 929:18-24 (Juris).	<p>Q And if someone -- ignore the factor column for a second. If you did the same computation where you divided expenses into new revenue using these numbers, would you be able to reproduce the numbers the firm calculated realtime in January, February, or March? A No.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 920:16-921:24 (Juris).</p>	<p>Q So if we were to use this chart and we were going to try to compute the February 2011 factor using these numbers just as we did looking at the charts for those months or looking at the documents earlier, would you be able to use these numbers to come up with the February factor as you had done it for the February management meeting?</p> <p>A No.</p> <p>Q And why not?</p> <p>A This document was created in July of 2012; so we had different numbers for the AUM and the advertising spend. As mentioned before, the advertising spend would be adjusted given what we knew at that point in time based off of what ads had run; what, you know, radio spots had been canceled or not been canceled; what adjustments had been made to billing. So the advertising spend could have been adjusted over time. In February of 2011, that figure could have been different than what we would look at in July of 2012.</p> <p><i>[repeated question omitted]</i></p> <p>Q Sure. When this report was pulled in July as of June 2012, would it include data that may not have been available to the firm in a particular month? So, for example, this report may include data for April 2011 that may not have been available to the firm actually in April 2011.</p> <p>A That is correct.</p>
--	--	---------------------------------------	---



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 921:25-922:10 (Juris).	<p>Q And just once more, can you explain how that is?</p> <p>A Yes. The new AUM could have adjusted based off of, you know, additional client signing..The advertising spend, again, could have been adjusted based off of what we knew at that moment in time based off of what ads were being run, what that cost was, what ads were retracted, maybe we canceled ads, or maybe there was an error in billing. Any of those adjustments would be very different at April of 2011 versus July of 2012.</p>
156:	Mr. Collins calculation of the "correct" advertising factor for the Round 3 offering includes purported totals for the month of August.	CX-159.	Data as of June 2012 used in Mr. Collins' calculations of the Division's advertising factors.
157:	The Round 3 Offering Memorandum, issued September 1, 2012, was prepared during the month of August.	<p>Tr. 913:2-4 (Juris);</p> <p>Tr. 93: 17-25 (Juris);</p> <p>Tr. 914:16-915:1 (Juris).</p>	<p>Q The round three offering, do you know when it was?</p> <p>A Round three was sent of 2012.</p> <p>Q So if it's - - if the memo is dated September 1st and the firm was preparing the memo sometime in August, I apologize, what reports would it have had available to it?</p> <p>A We would have had July reports available.</p> <p>Q Okay. And June as well?</p> <p>A Yes.</p> <p>Q And if you look just to the most recent months, month-end data, what is the factor that's been computed as of June 2012?</p> <p>A The factor was 0.68.</p> <p>Q Moving on. And again, this would have been information - - sorry. Would this have been information that was available to the firm in August when it was preparing the round three offering memoranda?</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			A Yes. This report was generated the beginning of July of 2012.
		RX-106, pp. 1209-1543	Emails between Mr. Winkelmann and Greensfelder regarding Round 3.
158:	The Firm did not have the August figures until after the first week of September.	Tr. 913:5-15 (Juris).	Q Right. And I'll tell you that the memorandum is dated September 1st, 2012. A Okay. Q Okay. So what reports -- if the firm is preparing the memorandum, for example, sometime in July of 2012, what reports would the firm have available to it? A If we were preparing the memorandum in July, we would have had June reports. If we were preparing in August, we would have had July reports.
159:	The Division did not introduce any evidence of the "correct" factors listed in paragraphs 7-9 of the OIP other than that offered through Mr. Collins.	Tr. 128: 5-18 (Collins);  155:21-156:1 (Collins).	Q Sure. The question is whether the .44 that you can see listed under heading fact of the most recent three months - - there's a .44 which on this chart is the closest thing to .45. My question is, if you know, is that the number that - - that underlies paragraph 7 of the OIP? A Yeah, I don't know. These are my calculations. Judge Patil. Excuse me. When did you figure these calculations represented in Exhibit 440? The Witness: They came - - my work came after the numbers you see in the OIP. It was afterwards.  Q If you know, is that the number that the Division is referring to in paragraph 8 of the OIP? A No, it's not because, again, my work came after the order. My calculation would have been after.
160:	Mr. Laby's opinion as to whether the advertising conversion factors were material misrepresentations is based	Tr. 212:9-24 (Laby).	Q How, if at all, does Mr. Palubiak's report affect your opinions as set forth in Division Exhibit 363? A Well, Mr. Palubiak's report would only change my

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	<p>entirely on Mr. Collins' calculations.</p>		<p>opinions in one possible respect. Mr. Palubiak writes primarily about the advertising factors, the advertising ratios that are at issue in this case. And I did not undertake my own independent analysis of those advertising ratios. I relied on conversations I had with Mr. Collins. So to the extent that the - - that Mr. Winkelmann did not misrepresent advertising ratios then, of course, that would change my opinions with respect to that - - that particular issue, the advertising ratios, but only with respect to that issue.</p>
		<p>Tr. 215:12-216:16 (Laby).</p>	<p>Q All right. So it's not going on your resume this time either because you're not offering such an option, correct?  A That - - well, I offer an opinion with regard to the advertising factors, but relying on assumptions that were given to me by Mr. Collins.  Q It's a bootstrap opinion. I don't mean anything negative by that. But essentially if I read your opinion correctly on page 20 of your expert report, you're opining that if Mr. Collins's computation of the advertising yield is correct and if, therefore, that means that Mr. Winkelmann's computation is wrong, then there's a misstatement in the offering memoranda, correct, and at that misstatement maybe material?  A Well, I guess I would take issue with the word bootstrapping opinion. I'm here to testify in part about the customs and practices of investment advisors. And here I discuss that, the fact that a misrepresentation with respect to advertising yields would be something that's inconsistent with the customs and practices of advisors.  Q I agree. But my point is, your opinion is that if, in fact, the advertising yield is misstated in the offering memoranda and that misstatement is material, right, then there's a problem with the offering memoranda's representations,</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>correct?  A That's correct.</p> <p>Tr. 216:25-218:17  (Laby).  Q And Mr. Collins told you how he computed the advertising yield?  A Yes.  Q And he told you that his computation of the advertising yield differed from Mr. Winkelmann's computation of the advertising yield as depicted in the offering memoranda, correct?  A Yes. He explained that the figures were different, that they were --  Q And he also told you that the difference between his computation and Mr. Winkelmann's computation was material, correct?  A He did.  Q Or you assumed it to be material, if I read your opinion right?  A Yes, that is correct.  Q SO you didn't independently compute advertising yield, right?  A: I did not independently compute advertising yield.  Q So as far as you know, Mr. Collins's computation of the advertising yield and Mr. Winkelmann's computation of the advertising yield, they may both be right, as far as you know?  A As I say, I mentioned this earlier, if it turns out that Mr. Winkelmann did not materially misrepresent advertising yields, I would change this opinion.  Q All right. Let me ask my question again. And if I misstate something, let me know and I'll do my best to rephrase it to the point you're able to understand and it and provide an answer.  As far as you know sitting here, Mr. Collins's computation</p>
--	--	--	--

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>of advertising on the one hand and Mr. Winkelmann's computation of advertising yield they may both be correct, as far as you know?</p> <p>A I don't - - I would not agree to that characterization of my opinion, no. It doesn't - -</p> <p>Q Tell me why that's wrong then.</p> <p>A Because it seems to me that it's not possible for both calculations to be correct.</p>
161:	If Mr. Collins' calculations are wrong, Mr. Laby's opinion is wrong.	Tr. 223:17-21 (Laby).	<p>Q Fair enough. Let's leave it at this: If Mr. Collins is wrong, then your first opinion is wrong, right?</p> <p>A Fair enough. If Mr. Collins is wrong, then my first opinion is incorrect.</p>

**No Conflicts.**

162:	Royalty Unit holders are paid before Mr. Winkelmann is paid.	<p>Tr. 749: 13-20 (Winkelmann);</p> <p>Tr. 750: 1-9 (Winkelmann).</p>	<p>Q Well, and you remember back when I asked you yesterday and I said let's get everyone to remember this. When you said your compensation was not tied to the ability to issue Royalty Units, and you said, no, that's completely different. Do you remember that?</p> <p>A Because my compensation tied to the asset-based revenue.</p> <p>Judge Patil: I'm sorry, before we go forward on that, given what you've described, how would it not affect your payroll for that - - that month period before the - -</p> <p>The Witness: Obviously, I would have to step up to the plate and not take a payroll. I'm not going to put the company under because of me. There would have to be sufficient cash there for me to get paid. I would get paid last.</p>
------	--	--	--

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

163:	Mr. Winkelmann did not recommend the Royalty Units to Firm clients.	Tr. 1252:20-1253-14 (Winkelmann).	<p>Q Now, last week when you were being cross-examined by Mr. Hanauer, you quibbled with him from time to time about the verb that he was using versus the verb that you were using. He suggested a couple times that you sold the offering, and you said, you know, it was issued. So I want to ask it this way. Did you recommend these Royalty Units to any investor?</p> <p>A No.</p> <p>Q You were here for Mr. Swardson's testimony last week, right?</p> <p>A Yes.</p> <p>Q And Mr. Swardson testified in response to a question that was posed to him by Ms. VonderHeide that you told him that you could not advise him one way or the other about investing in the offering; do you recall that testimony?</p> <p>A Correct.</p> <p>Q Do you agree with his testimony?</p> <p>A Yes.</p>
		Tr. 549:19-550:17 (Winkelmann).	<p>Q And let's go to the last sentence of this letter -- or I'm sorry, Exhibit 40. And you write to your client, Mr. Funfsion, 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. This letter is not an offer. Nonetheless, I wanted to make you aware of the situation and provide you with the offering materials. Please do not hesitate to call should you have any questions or comments. Do you see that?</p> <p>A Yes.</p> <p>Q So it looks like you recognize that a potential conflict existed between you and an advisory client who you're offering royalty unit investments to?</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>A This was my attempt to tell them like Mr. Swardson told Heidi yesterday that I couldn't recommend they purchase it or not.</p> <p>Q Right. But what you are telling Mr. Funfsion is that a potential conflict exists, right?</p> <p>A I felt we could not quote, recommend or advise people, our clients, to buy it.</p>
		Tr. 1253:15-20 (Winkelmann).	<p>Q Did you say -- or what did you say to other investors about that, about whether or not you had the ability to recommend one way or the other?</p> <p>A All of the prospective investors, I told them I couldn't recommend it.</p>
		Tr. 1255:10-24 (Winkelmann).	<p>Q Do you agree with Professor Laby's conclusion that you either tacitly recommended it, fairly explicitly recommended it, or explicitly recommended it?</p> <p>A No.</p> <p>Q Can you tell us why not?</p> <p>A Because I explicitly told him that I couldn't recommend it.</p> <p>Q When you had conversations with prospective investors about the Royalty Unit, were you acting as an investment advisor?</p> <p>A No.</p> <p>Q In what role were you acting?</p> <p>A Well, I was acting as a founder of a fast-growing business.</p>
164:	When Mr. Winkelmann and Blue Ocean offered Royalty Units to prospective investors, they were not acting as investment advisers.	<i>Id.</i>	<p>Q Do you agree with Professor Laby's conclusion that you either tacitly recommended it, fairly explicitly recommended it, or explicitly recommended it?</p> <p>A No.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Q Can you tell us why not?  A Because I explicitly told him that I couldn't recommend it.  Q When you had conversations with prospective investors about the Royalty Unit, were you acting as an investment advisor?  A No.  Q In what role were you acting?  A Well, I was acting as a founder of a fast-growing business.</p>
165:	When Mr. Winkelmann and Blue Ocean offered Royalty Units to prospective investors, they were not making recommendations or giving investment advice.	<i>Id.</i>	<p>Q Do you agree with Professor Laby's conclusion that you either tacitly recommended it, fairly explicitly recommended it, or explicitly recommended it?  A No.  Q Can you tell us why not?  A Because I explicitly told him that I couldn't recommend it.  Q When you had conversations with prospective investors about the Royalty Unit, were you acting as an investment advisor?  A No.  Q In what role were you acting?  A Well, I was acting as a founder of a fast-growing business.</p>



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 1256:2-16 (Winkelmann).	<p>Q So how then, if at all during these conversations that had you with prospective investors about the opportunity to acquire Royalty Units, how did you make it clear that you were not acting in the role as an investment advisor but rather in some other role?</p> <p>A Well, it was perfectly clear, like in Mr. Swardson's case, we were talking about, you know, business operations, the administrative strategy, the advertising strategy, the people strategy, the whole organizational strategy of implementing Blue Ocean in a particular marketplace. Had nothing really to do with his -- the client engagement of managing and monitoring allocations using low-cost index funds.</p>
166:	When Mr. Winkelmann and Blue Ocean offered Royalty Units to prospective investors, they were acting as the founder of business offering securities as part of a capital raise.	Tr. 1255:10-24 (Winkelmann).	<p>Q Do you agree with Professor Laby's conclusion that you either tacitly recommended it, fairly explicitly recommended it, or explicitly recommended it?</p> <p>A No.</p> <p>Q Can you tell us why not?</p> <p>A Because I explicitly told him that I couldn't recommend it.</p> <p>Q When you had conversations with prospective investors about the Royalty Unit, were you acting as an investment advisor?</p> <p>A No.</p> <p>Q In what role were you acting?</p> <p>A Well, I was acting as a founder of a fast-growing business.</p>
167:	The Subscription Agreement, signed by each investor, represented and warranted that the investor understood that " <i>the Royalty is not required to be paid in full</i>	RX-00,1 p. 98 (paragraph (r)); DX-124 (paragraph (p))	Subscription Agreement for each Round

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	<i>before any scheduled date"</i>	RX-003, p. 132 (paragraph (p)); RX-004, paragraph (p)).	
168:	Each investor completed and signed a subscription agreement in connection with his or her purchase.	Tr. 33:13-34:4 (Swardson).  Tr. 35:13-21 (Swardson).  Tr. 360: 18-23 (Buckowitz).	Q Okay. You also - - in connection with this investment, you signed a subscription agreement; is that correct? A Repeat please. Q Sure. At the time you made this investment in round three, you signed a subscription agreement in order to make that purchase; is that correct? A Subscription agreement. Explain. Q Sure. Let me show it to you and maybe that will help. Can you jump to page 128, Alan? Would you take a look at it? A Okay. Q: Do you recall completing and submitting one of these at the time of your purchase? A: Evidently I must have.  Q Okay. And do you recognize that on the top you see there's a box that says "Read and approved." Do you recognize that to be your signature? A That is my signature. Q Would you like to look through it before I ask you questions or do you recall signing the subscription agreement? A I recall signing it.  Q And do you see it's titled Blue Ocean Portfolios Subscription Agreement in the top center? A Yes. Q And that's your signature under the words, "read and approved?"

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		<p>Tr. 643: 8-25 (Grau).</p>	<p>A Yes, it is.</p> <p>Q And it says, "Blue Ocean Portfolios Subscription Agreement," in the middle of this screen shot?</p> <p>A Yes.</p> <p>Q Alan, can you go to the "Now, therefore"? And this is the middle paragraph on the page. It reads, "Now, therefore for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the company and the Subscriber do hereby agree as follows." Do you see this - - that paragraph?</p> <p>A Yes, ma'am.</p> <p>Q And do you recall submitting this document in connection with your purchase of the Royalty Units?</p> <p>A There were a lot of documents. I can't remember every page but if it was part of it, then, yes.</p>
		<p>Tr. 1265:6-10 (Winkelmann)</p>	<p>Q Did each investor of round one sign the subscription agreement?</p> <p>A Yes.</p> <p>Q What about subsequent rounds?</p> <p>A Yes.</p>
<p>169:</p>	<p>Each investor witness who testified for the Division acknowledged his awareness of this fact.</p>	<p>Tr. 41:20-42:4 (Swardson).</p>	<p>Q Look at P, please. It's on the next page. Subpart P reads: "The subscriber acknowledges that the royalty (as such term is defined in the certificate of Royalty Unit and hereafter) may never be paid in full by the company and the royalty is not required to be paid in full before any scheduled date." Did you read and understand that paragraph when you signed this document?</p> <p>A Yes.</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 365: 1-9 (Buckowitz).	Q P reads, The subscriber acknowledges royalty, paren, as such terms defined in the certificate of royalty units and herein after, end paren, may never be paid in full by the company and the royalty is not required to be paid in full before any scheduled date. Did you read and understand that paragraph when you signed this document? A Yes.
		Tr. 647: 12-23 (Grau).	Q Paragraph R reads, "The Subscriber acknowledges that the royalty (as such term is defined in the Certificate of Royalty Unit and hereafter) may never be paid in full by the company and the royalty is not required to be paid in full before any scheduled date." Do you see that language? A Yes. Q And did you read and understand that provision? A Yes.
170:	Blue Ocean had the right to pay investors amounts in addition to the percentage payments.	Tr. 272:13-16 (Laby).	Q And there was discretion on the part of Mr. Winkelmann and Blue Ocean to pay additional money beyond the stated minimum, right? A That's correct.
		Tr. 558: 21-23 (Winkelmann).	Q And you could also choose to pay them more than the minimum? A Correct.
171:	The Offering Memoranda expressly stated that additional payments would be made at Blue Ocean's "sole and absolute discretion"	RX-1, p. 82.	Round 1 Offering Memorandum
		Tr. 558: 13-18 (Winkelmann).	Q And she's asking you because it's your decision how much to pay them, correct? A Correct. Q And you could choose to pay them the minimum, correct? A It was my discretion.
		Tr. 272: 20-23 (Laby).	Q Sole and absolute discretion as we saw the language that as used in the certificate, right?

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			A I saw that language too.
172:	The Division accurately referred to this in its Pre-hearing Brief as a "goal,"	DOE PHB at p.7	"However, the offering materials represented that BOP could pay more than the monthly minimum and that paying more than the minimum was BOP's goal."
173:	The Division's expert, Mr. Laby, agreed that a goal is "aspirational," and not a "duty."	Tr. 262:19-263:6 (Laby)	Q Do you agree with that characterization that's made by the Division that paying more than the minimum was a goal? A I wouldn't phrase it that way, no. I would go back to the language I used earlier that reflects a reasonable expectation of investors. Q Would you agree with me that a goal is aspirational? A I would agree with you that a goal is aspirational. Q Would you agree with me that a goal does not constitute a duty? A I think that's correct, yes.

**Management Fees**

174:	The OIP alleges that the Firm failed to disclose the payment of certain "management fees" to companies owned and controlled by Winkelmann.	OIP p. 15	15. The offering memoranda additionally failed to disclose that Blue Ocean, in addition to paying Winkelmann a salary, was paying material amounts of Royalty Unit investor proceeds to companies owned and controlled by Winkelmann, and that Blue Ocean ultimately paid over \$100,000 from Royalty Unit proceeds as purported "management fees" to certain of Winkelmann's other companies.
175:	Blue Ocean Management was an umbrella company formed to pay common costs incurred by the Blue Ocean entities.	Tr. 1279:2-8. (Winkelmann).	Q All right. Did Blue Ocean Portfolios have any affiliate companies?  A 23 Glen Abbey Partners.  Q Anything else?

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			A Longrow Insurance Agency and Blue Ocean ATM, and Blue Ocean Management Company was there for a short period of time.
176:	In 2011, Blue Ocean made payments to Blue Ocean Management to cover its share of expenses, including employee salary, rent and health insurance.	Tr. 1279:2-16 (Winkermann).	Q All right. Did Blue Ocean Portfolios have any affiliate companies? A 23 Glen Abbey Partners. Q Anything else? A Longrow Insurance Agency and Blue Ocean ATM, and Blue Ocean Management Company was there for a short period of time. Q Did you ever use Blue Ocean Portfolio money to pay affiliate companies? A Only in lieu of my salary and also to pay Longrow Insurance Agency for the use of two commercial-grade computer servers. One was a mail server, one was a file server. I think there was a pretty robust - - one of these scanner/printer/copier/color printer contraptions.
		RX-090	General Ledger for Blue Ocean Management Company
177:	The Division determined not to pursue its charges with regard to the Blue Ocean Management fees.	Tr. 192:2-5 (Collins).	Q And since then the allegations as to the payments to Blue Ocean Management have been withdrawn. Is that your understanding? A That's correct
178:	Longrow Insurance is an insurance agency.	Tr. 411:25-412:2 (Winkermann).	Q And you also continued to own an insurance agency called Longrow Insurance Agency Inc.? A Yes.

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

179:	In 2011, Blue Ocean made payments to Longrow to compensate it for use of (1) its conference rooms and (2) its data and email servers which Blue Ocean utilized.	775:24-776:11 (Winkelmann).	<p>Judge Patil: I'm sorry. As you sit here today is that not correct testimony?</p> <p>A Well, it's not inclusive because the Longrow Insurance Agency provided the mail and file servers and I think another piece of – a couple PCs to Blue Ocean staff to utilize.</p> <p>Judge Patil: What do you mean by the mail and file servers?</p> <p>The Witness: Our computer servers were owned by Longrow, and when we were putting together Blue Ocean Portfolios back in 2009, Longrow just - - I donated that to the cause. These are expensive, high-end you know, high-capacity servers.</p>
		Tr. 1279:9-21 (Winkelmann).	<p>Q Did you ever use Blue Ocean Portfolio money to pay affiliate companies?</p> <p>A Only in lieu of my salary and also to pay Longrow Insurance Agency for the use of two commercial-grade computer servers. One was a mail server, one was a file server. I think there was a pretty robust -- one of these scanner/printer/copier/color printer contraptions. We also used the offices at Longrow Insurance Agency for client meetings as they came up because it may have been more convenient to meet with a client at Longrow Insurance offices rather than the Blue Ocean offices.</p>
180:	Also in 2011, Blue Ocean made salary payments to Mr. Winkelmann through Longrow instead of paying Mr. Winkelmann directly.	Tr. 777: 5-15 (Winkelmann).	<p>Q But it is your testimony that of that \$40,000 from Blue Ocean Portfolios to Longrow Insurance Agency, some of that was just to compensate you, right?</p> <p>A Yes, and we did that for tax purposes.</p> <p>Q And just two weeks ago in your pre-hearing brief you</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>admitted that at least one of the payments to Longrow reflected a salary payment to you, correct?  A In lieu of a salary. In lieu of compensation, I think was how it was termed.</p>
181:	Mr. Winkelmann was paid through Longrow because of tax purposes.	Tr. 777:5-9 (Winkelmann).	<p>Q But it is your testimony that of that \$40,000 from Blue Ocean Portfolios to Longrow Insurance Agency, some of that was just to compensate you, right?  A Yes, and we did that for tax purposes.</p>
182:	Blue Ocean ATM is an ATM company that is an affiliate of Blue Ocean Portfolios.	<p>Tr. 412:3-5 (Winkelmann).</p> <p>Tr. 808: 24-809:13 (Winkelmann).</p>	<p>Q And you continued to own a ATM company called Blue Ocean ATM LLC?  A Yes.</p> <p>Q Let's switch gears. I believe we've already talked about a company called Blue Ocean ATM?  A Sure.  Q And you opened that company in August 2013?  A Glen Abbey Partners opened it 50 percent with Garrett Lott, yes.  Q In 2013?  A Yes.  Q And Blue Ocean ATM and Blue Ocean Portfolios were completely different companies, right?  A Yeah, legally and technically, yes, they're two different companies.</p>
183:	Blue Ocean once secured a three-day loan issued to Blue Ocean ATM so that it could stock its cash machines (with cash) for a weekend festival.	Tr. 809:14-810:6 (Winkelmann).	<p>Q And in August 2013, Blue Ocean ATM had a concession to have its - - one of its ATM machines at a festival in St. Charles, Missouri?  A Blue Ocean ATM had the opportunity to put four Blue Ocean ATM machines at a fair that was going to attract over 200,000 people.  Q That was the Festival of Little Hills?  A I think that's the name of it.</p>



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Q And back in August 2013, Blue Ocean ATM needed \$70,000 for its ATM machine to cover the festival?</p> <p>A Well, it was a good - - it was a good thing to have Blue Ocean in front of 200,000 people because we're advertising into this market, and I said the bad thing is we're going to need some cash. So Blue Ocean Portfolios pledged the \$70,000 for four nights for Blue Ocean ATM to have the money in the machines for the weekend.</p>
184:	Blue Ocean did not make any money off of the loan.	<p>Tr. 1396:23:1397:5 (Winkelmann);</p> <p>Tr. 1397:11-13 (Winkelmann).</p>	<p>Q Did Blue Ocean Portfolios purchase the CD, and that CD was used to secure a loan that the bank made to Blue Ocean ATM; is that right?</p> <p>A Yes, we later learned that.</p> <p>Q Okay.</p> <p>A Yes. We later learned that the CD was never consummated because of the short period of time that was involved.</p> <p>Q Did Blue Ocean Portfolios receive any revenue as a result of this transaction?</p> <p>A No. Only name recognition.</p>
185:	Blue Ocean Portfolios did gain name recognition as a result of having its ATMs present at the festival.	<p>Tr. 1397:11-13. (Winkelmann)</p> <p>Tr. 815:7-16. (Winkelmann)</p>	<p>Q Did Blue Ocean Portfolios receive any revenue as a result of this transaction?</p> <p>A No. Only name recognition.</p> <p>Q And you didn't make Blue Ocean ATM pay Blue Ocean Portfolios any money for using Blue Ocean Portfolios' funds as collateral, correct?</p> <p>A Again, I thought there was a great advertising benefit. I talked about this in my Wells notice is that clearly there's a good advertising benefit to have Blue Ocean in front of all these people. So there was certainly a benefit for Blue Ocean Portfolios to have Blue Ocean ATM in front of all</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			these people.
186:	Each offering memoranda specifically authorized the use of Royalty Unit proceeds to fund other revenue producing activities that were directly or indirectly related to Blue Ocean's business.	RX-001 pp.8-9.	Blue Ocean Portfolios will use a substantial portion of the proceeds of this offering and future cash flows to fund media buys for both Blue Ocean Portfolios and the Financial Coach Show. The media buys will be ongoing and targeted toward the over-45 college graduate markets place. The initial media buy plan will focus on radio with TV and direct mail.
		RX-002 pp. 6-7.	Blue Ocean Portfolios is planning to use the proceeds of the Royalty Offering to expand its advertising reach, syndicate its sponsorship of <i>The Financial Coach Show</i> radio program to other smaller markets in the 150 mile radius of St. Louis, improve creative aspects of the advertising message, and pay for general and administrative expenses. <b><i>Proceeds could also be used to fund other revenue-producing activities that are directly or indirectly related to Blue Ocean Portfolio's business activities.</i></b>
		RX-003, p. 4-5.	Blue Ocean Portfolios is planning to use the proceeds of the Royalty Offering to expand into the Chicago market, increase its advertising reach, syndicate its sponsorship of <i>The Financial Coach Show</i> radio program to other smaller markets in the 150 mile radius of St. Louis and Chicago, improve the creative aspects of the advertising message, and pay for general and administrative expenses. Proceeds could also be used to fund other revenue-proceeding activities that are directly or indirectly related to Blue Ocean Portfolios' business activities. Any of these activities would need to result in the potential for recurring revenues inuring to Blue Ocean Portfolios and to investor returns.
187:		RX-004, p. 9._	Blue Ocean Portfolios will use a substantial portion of the proceeds of this offering and future cash flows to fund

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			media buy for both the new radio show and Blue Ocean Portfolios advertising. The media buy will be ongoing and targeted toward markets will college graduates over the age of 45. Blue Ocean Portfolios no longer sponsors the <i>Financial Coach Show</i> or Bryan Binkholder.
--	--	--	---

**Ms. Juris.**

188:	Ms. Jennifer Juris first became employed with Blue Ocean in June of 2011. From June 2011 to August 2011 she was a summer intern. From December 2011 until November 2015 she worked as a portfolio administrator.	Tr. 858:8-17 (Juris).	Q And at one time did you work for Blue Ocean Portfolios? A Yes. I first became employed by Blue Ocean Portfolios in June of 2011, from June to August. It was treated as a summer internship to just gain exposure before my last -- my last semester of college. And then upon graduating in December of 2011, I moved back and began employment in December of 2011 with Blue Ocean Portfolios through November of 2015.
189:	Ms. Juris left Blue Ocean in 2015 voluntarily for personal reasons. She was not fired or asked to leave.	Tr. 858:18-859:7 (Juris).	Q And was there any particular reason that you left Blue Ocean in November of 2015? A Yes. I became pregnant with multiples and there were a lot of uncertainties regarding this with the company and a lot of responsibility. We're a small company. A lot of responsibility, a lot of time went into it. And even in just trying to make decisions for our growing family and the uncertainty that way of our personal life, we just thought it was best for me to try and take another position. Q And you weren't fired by Blue Ocean? A No. I was not. Q No one asked you to leave Blue Ocean? A No.
190:	Ms. Juris was responsible for maintaining client portfolios, looking over the	Tr. 859:8-860:1 (Juris).	Q So starting with the time period where you joined full-time in December, tell us what

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	<p>accounts, balancing, helping with client paperwork, and any client inquiries.</p>		<p>your primary responsibility or duties were at Blue Ocean.</p> <p>A Sure. I was hired on in December in the capacity of a portfolio administrator. The bulk of that work responsibility was maintaining client portfolios, looking over the accounts, your balancing, helping with client paperwork, any client inquiries. That was the main focus. But in being a small company, there's many other duties that you end up doing. So we did a lot of admin work. We did a lot of other analysis or reviewing things, updating presentations, shopping for the company. I -- really, you could just imagine anything with a small company that you end up doing. But the portfolio administrator role was the bulk was the client facing.</p>
<p>191:</p>	<p>Ms. Juris was also responsible for monitoring and tracking the source of client business, by answering phones, asking customers where they learned of Blue Ocean and updating the master advertising spreadsheet.</p>	<p>Tr. 862:15-863:11 (Juris).</p>	<p>Q And when you say "make changes," what do you mean?</p> <p>A Make changes in our advertising spend. So from month to month we could make changes or even from week to week we could make changes on whether we were running ads on the radio on a specific one or not, if we're running them on a specific radio show, you know, live reads, that way -- so we had control over that. And so it was important to determine where we put the dollars based off of, you know, the responses we were hearing from people.</p> <p>Q And this may seem obvious, but why was it important that you were able to see where you were translating into dollars?</p> <p>A It was important because that's how the business grew, that's how we obtained more clients, that's how we gained additional AUM. You know, it was in all of our benefits to have the company grow and become successful, and the advertising and then the generation of clients was a specific</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 871:19-872:1 (Juris).	piece.  Q And was this type of report a document regularly created and maintained by Blue Ocean Portfolios? A Yes. We went through and we would update this each month to include, you know, new formulas to pull the appropriate entries from that master spreadsheet related to the month and then we would generate the reports.
192:	The mater advertising spreadsheet tracked the date that a potential client called, the source from which the individual heard about Blue Ocean, the client's approximate account size, the date the client came in for an appointment, and the approximate revenue the account would generate (if transferred).	RX-006.	Master Advertising Spreadsheet
		Tr. 865:7-866:1 (Juris).	Q Can you just explain what this is? A Sure. This is, when I referred to kind of the master tracking sheet, that's what this document is. You can see it just has the clients' or leads' names. So if someone had called us, we would put their name in there. You know, ultimately once we had multiple offices, we tracked what office they related to. If we assigned them to a rep, the date, where they came from. And then the appointment – appointment date, client, and the client since, those wouldn't have been updated until one, they came in for an appointment. We would go back, find their record in the spreadsheet, search for them, and put in the date that they came in for the appointment. And then whenever they had signed paperwork, we would have a similar process that we

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			would go back here and put in, you know, we would change them from no, they aren't a client to yes, put the date and then the assets.
193:	The Firm used the information on the master advertising spreadsheet to generate reports and monitor the origin of client contacts.	Tr. 870:19-871:4 (Juris).	<p>Q And what did the information that's in this spreadsheet, what did the firm ultimately use that for?</p> <p>A Yes. We used this master file, this running list of leads and clients, we used this to generate reports and look at what was happening and quantify, you know, how many leads we had gotten for the previous month, you know, where they came from, were they clients, how many appointments did we have that month? This was our tracking metric for that.</p>
194:	Ms. Juris and her colleagues were responsible for updating the spreadsheet whenever potential clients contacted them	Tr. 863:12-864:5 (Juris).	<p>Q And in that process you just described, what was your role specifically?</p> <p>A Uh-huh. So we had a tracking sheet, kind of a master sheet that we compiled. And when new leads were obtained, we entered them into the sheet. We put where they came from, we tracked if they had come in for an initial appointment, and then we tracked if they became clients. And my role was to also update that, but then I also generated the monthly reports that then we would sit down in a management meeting and review on a monthly basis to say okay -- you know, if we're sitting down in March, we'll look and say okay, what happened in February? How many</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			leads did we have come in? How many appointments did we have? You know, how many people signed up, you know, and became clients? You know, how many dollars were transferred under our management? So we could do that on a monthly basis.
195:	A large portion of Ms. Juris' time was devoted to updating and monitoring the advertising campaign.	Tr. 864:6-10 (Juris).	Q: And how much of your time, given all your different duties at the firm, how much of your time was devoted to something to relating to the advertising campaign? A: A large portion.
196:	The master advertising chart was updated multiple times per day.	Tr. 870:4-6 (Juris).	Q And this chart, say, on like a weekly basis, how many times would it be updated? A Multiple times every day.

**No Required Disclosure re Binkholder.**

197:	Brian Binkholder was not registered as an investment adviser representative.	Tr. 1371:18-20 (Winkelmann).	Q Was Mr. Binkholder registered with Blue Ocean as an advisor? A No.
		Tr. 1381:14-1382:17 (Winkelmann)	Q Do any of those termination provisions there in section 104, did any of them allow Blue Ocean to terminate the agreement if Binkholder was barred from functioning as an investment advisor? A No. Q Did it matter to Blue Ocean Binkholder was barred from functioning as an investment advisor? A No. Q Why not? A Because he wasn't being retained or compensated in that capacity of being an investment adviser representative. Q Okay. Did the Missouri investigation of Mr. Binkholder, did that have any impact on his ability to appear on the

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>radio and do his show?  A No.  Q Did the Missouri investigation have any impact on Mr. Binkholder's ability to provide you consultative advice about advertising and marketing and such?  A No.  Q Did it have any impact on Mr. Binkholder's ability to generate leads with Blue Ocean?  A No.</p>
198:	The bar order entered by the State of Missouri did not prohibit Mr. Binkholder from continuing to do his radio show.	Tr. 1382:2-5 (Winkelmann).	<p>Q Okay. Did the Missouri investigation of Mr. Binkholder, did that have any impact on his ability to appear on the radio and do his show?  A No.</p>
199:	The bar order entered by the State of Missouri did not prohibit Mr. Binkholder from serving as an advertising consultant.	Tr. 1382:6-10 (Winkelmann).	<p>Q Did the Missouri investigation have any impact on Mr. Binkholder's ability to provide you consultative advice about advertising and marketing and such?  A No.</p>
200:	Mr. Binkholder acted as a lead generator for Blue Ocean, principally through his radio show, but through his website, as well	<p>Tr. 1372:20-23 (Winkelmann).</p> <p>Tr. 1378:20-22 (Winkelmann).</p> <p>Tr. 1306:25-1307:4 Winkelmann).</p>	<p>Q Okay. So from that point forward, was his role as a lead generator that you've described and Mr. Palubiak discussed?  A Yes.</p> <p>Q We know that Blue Ocean sponsored Mr. Binkholder's radio show, right?  A Yes.</p> <p>Q So from a -- we already saw earlier that -- under the agreement, that Blue Ocean sponsored the Financial Coach radio show, right?  A Correct. We bought time from 97.1, which is the MS -- I think under our vendor, Blue Ocean Portfolios paid the</p>



**RESPONDENTS' PROPOSED FINDINGS OF FACT**

		Tr. 1307:12-18 (Winkelmann).	radio station, bought the time so that The Financial Coach Show could air.  A During the show, Binkholder would say get to the Financial Coach Show website for the six deadly sins of buying an annuity or some other kind of thing, so he would be driving business to his website during the show, and then on each side of the show in the middle of the show, there would be a direct Blue Ocean Portfolios advertisement.
		Tr. 292:14-20 (Laby).	Q All right. Now, by comparison, Mr. Binkholder's consent order with the State of Missouri had nothing to do with Mr. Binkholder operating as a lead generator, right? A That's my understanding. It did not have to do with his acting as a lead generator, correct.
201:	None of the four Offering Memoranda, list Mr. Binkholder among the list of Blue Ocean's "Key People."	RX-001, pp, 14-15; RX-002, pp. 19-22; RX-003, pp. 17-20; RX-004 pp. 18-20.	List of "Key People" contained in each respective Offering Memorandum.
202:	None of the four Offering Memoranda, list Mr. Binkholder or his dba – The Financial Coach –among the list of Blue Ocean's "Key Vendors & Relationships"	RX-001, p. 10; RX-002, p. 14; RX-003, pp. 11-12; RX-004, pp.11-12.	List of "Key Vendors & Relationships" contained in each respective Offering Memorandum.
203:	Mr. Binkholder's radio show was one piece of a much larger advertising strategy, not its focal point.	RX-001, pp.8-9; RX-002, pp. 10-12; RX-003, pp. 7-8; RX-004, pp. 8-9.	Offering Memorandum Discussion on Mr. Binkholder and overall Advertising Strategy.
204:	The Offering Memoranda essentially give	RX-002 p.10;	Offering Memorandum discussion regarding Charlie

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

	equal attention to Charlie Brennan, the host of another radio show that Blue Ocean sponsored.	RX-003, p.8; RX-004, p. 8	Brennan show.
205:	Mr. Binkholder's show was only on the air for an hour a week.	Tr. 429:4-23. (Winkelmann)	<p>Q -- at least according to this document, total account values by source, if the date is right 2011, Mr. Binkholder's show is bringing in 44 percent of Blue Ocean's total accounts by value?</p> <p>A That's what this document says.</p> <p>Q Okay. And between --</p> <p>A May I clarify that? I'm sorry. I miss --</p> <p>Q By all means.</p> <p>A We were spending -- Blue Ocean, Judge -- was spending a lot of money on 97.1 beyond the scope of the radio show. We were buying hundreds of ads a month all over the different time spectrums of the radio show in the morning, the drive times. This document does not only pertain to The Financial Coach show. 97.1 is the prominent conservative talk radio show in St. Louis. The Financial Coach show only ran an hour per week. We were on there almost every hour, would be ads so this -- the leads came from 97.1, not necessarily The Financial Coach show.</p>
206:	Blue Ocean ads essentially ran around the clock, seven days a week, on the station that aired his show.	Tr. 429:4-23. (Winkelmann)	<p>Q -- at least according to this document, total account values by source, if the date is right 2011, Mr. Binkholder's show is bringing in 44 percent of Blue Ocean's total accounts by value?</p> <p>A That's what this document says.</p> <p>Q Okay. And between --</p> <p>A May I clarify that? I'm sorry. I miss --</p> <p>Q By all means.</p> <p>A We were spending -- Blue Ocean, Judge -- was spending a lot of money on 97.1 beyond the scope of the radio show. We were buying hundreds of ads a month all over the</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			different time spectrums of the radio show in the morning, the drive times. This document does not only pertain to The Financial Coach show. 97.1 is the prominent conservative talk radio show in St. Louis. The Financial Coach show only ran an hour per week. We were on there almost every hour, would be ads so this -- the leads came from 97.1, not necessarily The Financial Coach show.
--	--	--	---

**Classification of Binkholder payments**

207:	Blue Ocean entered into a written agreement with Mr. Binkholder whereby Mr. Binkholder would serve as the exclusive sponsor of his radio program	RX-001, pp. 26-30.	Exclusive Marketing Agreement.
208:	Mr. Binkholder also provided advertising and marketing consulting to Blue Ocean.	RX-101.	Email communications between Mr. Winkelmann and Mr. Binkholder evidencing Mr. Binkholder's involvement with the Firm's advertising strategy.
		Tr. 1371:21-24 (Winkelmann).	Q What was his role relative to Blue Ocean at the time A He was a lead generator and provided marketing consulting and advertising consulting.
209:	Mr. Collins, testified that he was not aware of anything in GAAP that supported characterizing the payments to Mr. Binkholder under his agreement with Blue Ocean as advertising expenses.	Tr. 168:11-18 (Collins).	Q What about accounting authority? Is there anything in GAAP that would support this determination that Binkholder belongs on this chart? A Offhand I can't -- I don't have a specific GAAP reference. I think it's common sense in the nature of it's a marketing, exclusive marketing agreement.
210:	Blue Ocean's CPA advised Mr. Winkelmann that the payments to Mr. Binkholder were correctly treated as consulting fees, not advertising expenses.	Tr. 1308:17-1309:2 (Winkelmann).	Q Do you have an accountant? A Yes. Q Who's that? A David Smith of Smith Patrick CPAs. Q Did you have any conversations with him about proper characterization of the payments to Mr. Binkholder under the

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>marketing agreement?  A Yes.  Q What did he tell you?  A He said there was nothing inappropriate about how we treated Mr. Binkholder's payments.</p>
211:	Payments that Blue Ocean made to the radio station on which Mr. Binkholder's show aired <i>were</i> treated as advertising expenses	Tr. 1308:2-5 (Winkelmann).	<p>Q So the amount of money that you used to buy time from the radio station, how was that characterized?  A As advertising.</p>
212:	Under the terms of the Marketing Agreement between Mr. Binkholder and Mr. Winkelmann, the payments to Mr. Binkholder were explicitly deemed by the parties to be "over and beyond the direct expenses of advertising."	RX-001, p. 27, Section 1.02	<p>Section 1.02. Blue Ocean agrees to pay TFC a monthly sum that is at least equal to the monthly compensation that the CEO of Blue Ocean receives. This sum would be over and beyond the direct expenses of advertising, production, rents, and other preapproved direct business expenses. Payments to TFC are never tied to any specific client or prospective client.</p>

**Custody**

213:	Prior to May 2012, the Firm made monthly payments to investors reflecting their respective percentage of revenues.	Tr. 1385:2-5 (Winkelmann).	<p>Q All right. And did it change at some point in time? Were you moved from monthly to something else?  A In May of 2012.  Q Why?  A As I discussed before, because the amounts were so small, it just created a needless administrative burden.</p>
214:	After May 2012, the Firm made quarterly payments to investors.	RX-104	<p>Email to investors announcing switch to quarterly payments:    "As you will see, your royalty payment for the month of February is extraordinarily low. This is because the actual cash receipts for Blue Ocean during February were less than \$500...Going forward I would suggest that we forgo the monthly payments and instead accrue the payments monthly</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			and send quarterly payments to you.”
215:	The Firm made the change because the monthly payments created an administrative burden for a relatively low amount of money.	Tr. 1385:2-5 (Winkelmann).	Q All right. And did it change at some point in time? Were you moved from monthly to something else? A In May of 2012. Q Why? A As I discussed before, because the amounts were so small, it just created a needless administrative burden.
216:	Mr. Winkelmann discussed the monthly-to-quarterly switch prior to putting it into effect. Mr. Morgan told him the move was “no big deal.”	Tr. 1387:7-21. (Winkelmann).	Q In these months where the money was being accrued but not paid yet, how much money are we talking about at any one time? A On an aggregate level, I would think less than \$5,000. Frequently was no dollars or very minimum -- minimal dollars. And this – when I talked to Mike Morgan about this, he said it's no big deal. Just notice the investors that you're going to change it. He didn't seem too concerned about it because he could see the amounts were so low and the practicality of the administrative burden to put together these sheets like we saw from Mr. Dixon, there's a lot of administrative burden to go into that.
217:	At that same time, Greensfelder had been retained to provide advice and review of the Firm's Forms ADV.	Tr. 1388:3-1389:5 (Winkelmann).	Q Who at Blue Ocean were responsible for the content of the forms ADV? A I was. Q Did you seek advice from anybody regarding the correct answer to the custody question on form ADV? A Yes. Q From whom? A Mike Morgan and his team of securities specialists at Greensfelder.

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>Q Did you, in fact, obtain advice from Mr. Morgan at Greensfelder on that question?  A Yes.  Q And what specifically was the advice you were seeking on that subject?  A The advice was, no, that we weren't in custody.  Q Did you rely on that advice?  A Yes.  Q How come?  A Because they're lawyers specializing in securities laws.  Q At the time did you believe the advice was, in fact, correct?  A Yes.  Q Did you have any reason to believe the advice was not correct?  A No.</p>
218:	Because the State of Missouri was focused on the custody issue, Mr. Winkelmann and his attorneys discussed its several times.	RX-106, pp. 2400; 2404-2405; 2407-2408; 2415.	<p>Email communications between Mr. Winkelmann and his counsel regarding the determination that the Firm did <i>not</i> have custody.</p> <p>Most relevant excerpts:</p> <p>[Jim to Greensfelder]: Our annual ADV filing is due on Monday. I am concerned about this custody issues that the examiners bring up. Are we clear that we are taking the position that we are not in custody with respect to both our response to the SEC and the ADV?</p> <p>[Greensfelder to Jim]: 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</p>

**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			<p>we should be taking the same position in the ADV filing. Giles' email from yesterday (attached) was focused on making sure we are consistently saying we do not have custody.</p> <p>[Letter to SEC, drafted by Greensfelder]:</p> <p>Blue Ocean Portfolios does not share the staff's conclusion that it is in custody of client assets as defined by Rule 206(4)-2 of the Advisors Act. The investors of the Royalty Units knowingly and willfully exchanged cash for royalty rights. Any and all royalties due to these investors have been paid out.</p> <p>Blue Ocean Portfolios' royalty units do not meet the definition of custody or any of the examples set forth in Rule 206(4)-2. Blue Ocean Portfolios does not hold, directly or indirectly, client monies or the certificates or have any authority to obtain possession of them. Investors hold their own certificates, not Blue Ocean Portfolios. Blue Ocean does not have any authority to obtain possession of the certificates. Royalty unit investors purchased the royalty units pursuant to a subscription agreement and Blue Ocean Portfolios does not have the ability to transfer or redeem the royalty units without their consent. Lastly, Blue Ocean Portfolios does not hold or have access to the certificates or the Royalty unit investor's monies as part of the royalty units offering. Royalty unit investors exchanged their funds for royalty units at which point those funds belong to Blue Ocean Portfolios, not the Royalty unit investors.</p>
--	--	--	--

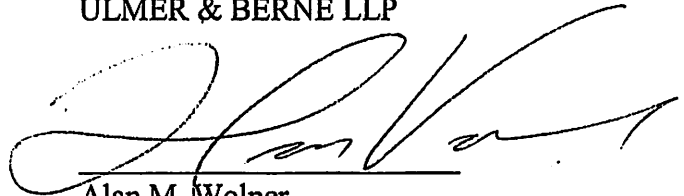
**RESPONDENTS' PROPOSED FINDINGS OF FACT**

			Blue Ocean clearly does not have custody under the plain language or any logical interpretation of Rule 206(4)-2.
219:	Mr. Winkelmann relied upon Greensfelder's determination that the Firm did not have custody.	<i>Id.</i>	<i>Id.</i>



Dated: November 22, 2016

ULMER & BERNE LLP

A handwritten signature in black ink, appearing to read 'Alan M. Wolper', written over a horizontal line.

Alan M. Wolper  
Heidi E. VonderHeide  
500 W. Madison Street  
Suite 3600  
Chicago, IL 60610  
(312) 658-6500  
Fax: (312) 658-6501  
[awolper@ulmer.com](mailto:awolper@ulmer.com)  
[hvonderheide@ulmer.com](mailto:hvonderheide@ulmer.com)

**CERTIFICATE OF SERVICE**

I hereby certify that November 22, 2016 I served a copy of the foregoing  
**RESPONDENTS' PROPOSED FINDINGS OF FACT**, as follows:

Original and three copies to:  
Via facsimile transmission and overnight mail  
delivery

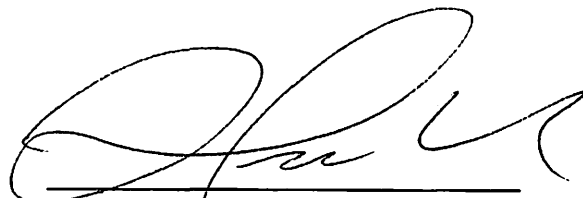
Brent J. Fields, Secretary  
Office of the Secretary  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549  
Fax: (202) 772-9324

One copy to:  
Via e-mail and overnight mail delivery

David F. Benson  
Benjamin J. Hanauer  
Division of Enforcement  
U.S. Securities and Exchange Commission  
175 W. Jackson Blvd., St. 900  
Chicago, IL 60604  
Fax: (312) 353-7398  
[bensond@sec.gov](mailto:bensond@sec.gov)  
[hanauerb@sec.gov](mailto:hanauerb@sec.gov)

One copy:  
Via e-mail and overnight mail delivery

Hon. Jason S. Patil  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-2557  
[ALJ@sec.gov](mailto:ALJ@sec.gov)



Heidi VonderHeide