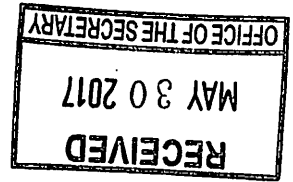


HARD COPY



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

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

In the Matter of

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

Respondents.

**THE DIVISION OF ENFORCEMENT'S
RESPONSE TO RESPONDENTS' MOTION
FOR LEAVE TO ADD ADDITIONAL
EVIDENCE**

The Division of Enforcement takes no position on whether the Commission should consider the additional emails proffered by Respondents. Even if the Commission permits the additional emails, neither those emails nor the black-and-white versions already in evidence allow Respondents to establish the necessary elements for a reliance on counsel defense. *See, e.g., William Scholander*, Exchange Act Rel. No. 77492, 2016 SEC LEXIS 1209, *25-26 and nn. 37-38 (Mar. 31, 2016). As the Division's response to Respondents' opening brief will detail, even considering the newly-proffered emails, Respondents failed to disclose, and in fact concealed, key relevant information from their attorneys. Equally fatal to any reliance defense, Respondents disregarded their attorneys' advice to not offer securities to their advisory clients.

Regarding the standards Respondents' motion must satisfy, Rule of Practice 452 requires Respondents to demonstrate "with particularity...that there were reasonable grounds for failure to adduce such evidence previously." Respondents' motion claims that they "did not have" the emails they now seek to introduce (Mot. at 5), even though Respondents were the senders or recipients of those emails. Respondents offer no explanation why they did not previously have

emails they sent and received. Rather, belying Respondents' contention that they "did not have" the emails, the authentication affidavit attached to Respondents' motion suggests that Respondents obtained the proffered emails from their own email system. (Exhibit C to Mot., ¶ 3). To the extent the emails Respondents now move to introduce came from their own email system, the Division notes that Respondents failed to produce those emails in response to a Division subpoena issued during its investigation. (See Division Hearing Ex. 309, p. 8 of PDF, ¶ C.1).¹

Dated: May 24, 2017

Respectfully submitted:



Benjamin J. Hanauer
David F. Benson
Division of Enforcement
U.S. Securities and Exchange
Commission
175 West Jackson Blvd, Suite 1450
Chicago, IL 60604
Phone: 312-353-8642
Fax: 312-353-7398

¹ The Division's investigative subpoena to Respondents requested: "All documents Concerning the offer of Royalty Units in Blue Ocean [Portfolios]..." (Division Hearing Ex. 309, p. 8 of PDF, ¶ C.1).