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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' SUBMISSION OF NEW EVIDENCE

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Dated: January 26, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

I. INTRODUCTION 1

II. SUBMISSION OF ADDITIONAL EVIDENCE 2

A. Greensfelder's Advice to Mr. Winkelmann and Blue Ocean. 2

1. The Commission admits New Evidence On Review. 2

B. In Light of the Additional Evidence Presented, the Court Should Review its Reading of the Communications Already Submitted. 7

C. Mr. Winkelmann and Blue Ocean did not violate Section 10(b) of the Exchange Act, Section 17(a)(1) of the Securities Act or Section 206(1) of the Advisers Act because they did not act with *scienter*. 16

D. Mr. Winkelmann and Blue Ocean did not violate Section 17(a)(2) or (a)(3) of the Securities Act or Rule 206(2) of the Investment Advisers Act because he did not act Negligently 18

E. No Willfulness. 19

F. The Sanctions Assessed are Improper in the Absence of Scienter, Negligence or Willfulness 20

III. CONSTITUTIONALITY 21

A. The Proceeding was Unconstitutional. 21

B. The November 30 Order entered by the Commission is Ineffective. 22

IV. CONCLUSION 23

TABLE OF AUTHORITIES

Cases

Byron G. Borgardt, 56 S.E.C. 999, 1021 (2003) 18

Estate of Stetson, 463 Pa. 64, 80 (1975) 19

Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., 561 U.S. 477, 493 (2010) 23

In re Digi Int'l, Inc., Sec. Litig., 14 F. App'x 714, 717 (8th Cir. 2001) 18

In re E.F. Hutton Sw. Properties II, Ltd., 953 F.2d 963, 973 (5th Cir. 1992) 19

In the Matter of David J. Montanino, Release No. 773 (Apr. 16, 2015) 18

Lucia v. SEC, No. 17-130 (filed Nov. 29, 2017) 22

Lucia v. SEC, 832 F. 3d 227 (D.C. Cir. 2016) 25

Nguyen v. United States, 539 U.S. 69, 82 (2003) 22

Ryder v. United States, 515 U.S. 188, 199 (1995) 22

S.E.C. v. Huff, 758 F. Supp. 2d 1288, 1348-49 (S.D. Fla. 2010), *aff'd*, 455 F. App'x 882 (11th Cir. 2012) 16

S.E.C. v. Prince, 942 F. Supp. 2d 108, 138, 143-44 (D.D.C. 2013) 16

S.E.C. v. Prince, 942 F. Supp. 2d at 143-44 (quotation in fn. 87, *supra*) 18

SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963) 18

SEC v. Slocum, Gordon & Co., 334 F. Supp. 2d 144, 181-82 (D.R.I. 2004) 19

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 92 (1981) ("Steadman factors") 20

Streber v. C.I.R., 138 F.3d 216, 219–20 (5th Cir. 1998) 19

Pursuant to the Order of the Securities and Exchange Commission dated November 30, 2017, and pursuant to the Order entered by Judge Patil dated December 5, 2017 (as modified by order dated December 19, 2017), Respondents Blue Ocean Portfolios and James Winkelmann hereby submit the following new evidence relevant to Judge Patil's reexamination of the record.

I. INTRODUCTION

On March 20, 2017, Judge Patil issued the Initial Decision in this matter, which included two findings relevant to this submission. *First,* the Initial Decision held that insufficient evidence exists to show that Respondents relied upon the advice and counsel of their attorneys, Greensfelder Hemker & Gale, P.C. ("Greensfelder"), that they could sell Royalty Units to the firm's advisory clients without violating their fiduciary duties. Specifically, the Initial Decision held that there was insufficient evidence of Greensfelder's consideration and advice on this topic. In light of this holding, the Initial Decision went on to conclude that it was "not conceivable" that the Greensfelder attorneys would have "blessed" the offering without such documentation.[1] The Initial Decision rested heavily on the conclusion that no such documentary evidence exists.[2]

Second, the Initial Decision imposed an industry bar against Mr. Winkelmann, finding it to be in the public interest, because barring Mr. Winkelmann (but not Blue Ocean) would allow the business to continue in operation and, most importantly, to repay investors. This finding rested on the Division's argument (but no evidence) that despite a bar of Mr. Winkelmann, Blue Ocean would remain in operation and investors would be repaid.

Pursuant to Order of the Commission, Respondents hereby submit the following evidence for the Judge to consider during re-examination of the record and, specifically, the findings noted above.

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[1] Initial Decision p. 61.

[2] *Id.*

II. SUBMISSION OF ADDITIONAL EVIDENCE

A. Greensfelder's Advice to Mr. Winkelmann and Blue Ocean.

In the Initial Decision, the Court concluded that there was no evidence that Mr. Winkelmann ever asked for or received advice on selling Royalty Units to current advisory clients. Specifically, the Decision held:[3]

> ***There is nothing in the substantial documentary production from Greensfelder that reflects that Winkelmann ever asked them for advice on whether or not he could sell royalty [sic] to units to clients or that Greensfelder advised he could.*** There is no evidence that Winkelmann ever asked Greensfelder attorney whether he could successfully sidestep his fiduciary duties to advisory clients by caveating his presentations of investment opportunities...simply by saying he was not advising or recommending that they invest. ***Had he done so, one would expect evidence that Greensfelder considered it before advising him.***

The new evidence submitted addresses the two findings emphasized above. Even before this submission, Respondents note that the record does contain such evidence, as noted below. For purposes of this submission, however, Respondents submit as evidence for re-examination the email communications and redlined drafts admitted by the Commission during appellate review of the Initial Decision, reflecting Greensfelder's consideration and advice on this issue.[4]

1. The Commission admits New Evidence On Review.

On June 15, 2017, the Commission allowed additional communications between Mr. Winkelmann and Mr. Morgan (his attorney at Greensfelder) into the evidentiary record in this case. To place the evidence in context, a brief recap of the timeline is helpful.

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[3] Initial Decision p. 63.

[4] Pursuant to Rule of Practice 452.

The Round 1 Offering occurred on March 31, 2011.[5] On February 15, 2011 – approximately two weeks prior to the first offering – Mr. Winkelmann sent Mr. Morgan an email titled "**Client notice of Capital Raise.**"[6] Attached to the email was a letter to Mr. Jay Shields. In the body of the email, Mr. Winkelmann wrote:

> Mike – this is my idea for the ***letter to clients that are suspects for participation in Blue Ocean Portfolios royalty units***. Please let me know what you think.

This email expressly refers to Mr. Winkelmann's intent to provide "notice" to Blue Ocean's "clients" of the "capital raise." A full copy of this email is attached as RX-128.[7] It also included, as an attachment, a draft of what the notice to clients would say.

Then, on March 28, 2011, three days before the first offering at issue, Mr. Winkelmann again emailed Mr. Morgan, stating "this is the letter I came up with...."[8] Attached to that email was an updated draft letter. It reads:[9]

> Dear Jay,
>
> ***Thanks to clients like you*** we have been steadily growing our Blue Ocean business...
>
> My idea for the new capital is to privately place up to 40 Blue Ocean Royalty Units for $25,000 each. Each one of these Blue Ocean Royalty units would give the unit holder rights to at least 0.25% of the cash receipts of Blue Ocean, LLC until the unit holder would be re-paid $75,000. These payments would be made every quarter. Then the unit holder would have a warrant to purchase 0.25% of Blue Ocean Portfolios for $25,000. We already have several units spoken for from friends and family members.
>
> ***Because of the fiduciary relationship we have with you, I cannot recommend that you or your family participate in this offering***

[5] RX-001 p. 1.

[6] RX-128, attached.

[7] See also RX-106 p. 2.

[8] RX-106 p. 399.

[9] RX-106 p. 401 (emphasis supplied).

> ***due to the potential conflict that such a recommendation will create, and this letter is not an offer. Nonetheless I wanted to make you aware of this situation and can provide you with offering materials should your interest warrant.*** Please do not hesitate to call should you have any questions or comments.
>
> Sincerely yours,
>
> Jim Winkelmann

While the above email alone confirms Mr. Morgan's awareness of the contemplated sales by Blue Ocean to its own clients, the additional exhibit that the Commission admitted removes any remaining doubts, as it shows Mr. Morgan's response to the above email, including an attachment bearing Mr. Morgan's redlines revisions to the draft letter quoted above. Mr. Morgan revised Mr. Winkelmann's draft language (above) as follows:[10]

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

This new evidence is in addition to the evidence already in the record reflecting Mr. Winkelmann and Mr. Morgan's communications on sales to clients.[11]

Mr. Winkelmann's unrebutted testimony[12] was that he asked Mr. Morgan, his counsel at Greensfelder, whether he could offer royalty units to advisory clients and that Mr. Morgan told him he could[13]:

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[10] RX-127 p. 22. Attached hereto for the Court's convenience and marked as RX-127. The non-redlined version of this email is included in RX-106.

[11] Mr. Winkelmann's testimony on the subject appears at Tr. 1251:5-12. Additional evidence appears in RX-106 pp. 399- 401, 1899, 1901, 1906, 1919-1921.

[12] The Court also inferred that Respondents could have called Mr. Walsh to come and testify as to Mr. Morgan's knowledge of the client sales. Mr. Morgan, of course, died before the hearing in this matter and could not testify. Respondents spoke to Mr. Walsh's counsel and were informed that he had no recollection of these events. He did not recall one way or another discussing, researching or conversing with Mr. Morgan on this issue. Any witness testimony that could have supported Mr. Winkelmann died with Mr. Morgan.

> 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.

This testimony is bolstered not only by the emails discussed above, but by the billing records of the law firm. Attached and marked as Exhibit 128 is the April invoice from Greensfelder to Blue Ocean, reflecting the work that went into the First Round securities offering in March. Notable entries include:

[13] Tr. 1251:5-12 (Winkelmann).

03/01/11	M. Morgan	Research and conferences J. Winkelmann regarding role of independent radio program and impact of cash payments for client solicitation rules.
03/03/11	M. Morgan	Work on compliance strategy - four phases of operations going forward, to SEC registration once AUM level is exceeded.
03/03/11	G. Walsh	Research Investment Advisers Act for state or federal filing thresholds; research Lowe case; research cash payments for client solicitations; office conference with M. Morgan re: same.
03/04/11	M. Morgan	Compliance issues - marketing and client solicitations.
03/23/11	M. Morgan	Research and review ADV for 1940 Act compliance.
03/24/11	M. Morgan	Work on Form ADV, including conversations of disclosures regarding RIAR's.

The Court was clearly and genuinely surprised that an experienced attorney, like Mr. Morgan, could render that advice so cavalierly, without hours of legal research to back it up (research that would appear on the invoices). The Initial Decision reasoned:[14]

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

In light of these communications, it is clear that Mr. Morgan was *indisputably* aware that Blue Ocean intended to sell Royalty Units to its clients, yet found no issue with it.

The finding that Mr. Winkelmann did not rely upon the advice of his counsel that the representations in the prospectus were accurate was based on the Court's belief that Greensfelder - a reputable and Firm well experienced in these issues - simply could not have

[14] Initial Decision p. 61. Emphasis suppled.

made such a terrible mistake. The evidence, however, shows that is exactly what happened. They researched, drafted, edited, and allowed Mr. Winkelmann to use offering documents that later gave rise to these proceedings. There are thousands of pages of emails between Greensfelder and Mr. Winkelmann showing their involvement throughout this process.

The Court, in revisiting the evidence presented in this case, must take into account the many instances Respondents have identified showing Greensfelder's involvement and weigh that against the Division's sole argument to the contrary: Greensfelder could not possibly have been so negligent. The evidence shows that the Division has wrongfully credited Greensfelder's reputation – as did Mr. Winkelmann and Blue Ocean.

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

B. In Light of the Additional Evidence Presented, the Court Should Review its Reading of the Communications Already Submitted.

Additional correspondence, subsequent to those above, confirms Greensfelder's awareness of client sales. The Court declined to give proper weight to this correspondence, based on its belief that Greensfelder was unaware of Respondents' intent to sell offerings to clients. This evidence, viewed in connection with the evidence above, changes the analysis, as it shows Greensfelder again, years later, provides identical advice.

For example, in January 2013, shortly before the Fourth Round Offering, Mr. Winkelmann was revising the Firm's annual Form ADV and determining whether any

disclosures needed to be updated. Specifically, Mr. Winkelmann was considering the import of the fact one of his former colleagues, Bryan Binkholder, was under federal investigation – a fact Mr. Winkelmann had learned just two months prior, in November 2012.[15]

Mr. Winkelmann asked how the Firm should answer Item 6: Other Business Activity.[16] Mr. Winkelmann queried whether the following disclosure should be added[17]:

From: Jim Winkelmann [mailto:Jim@blueoceanportfolios.com]
Sent: Thursday, January 17, 2013 4:04 PM
To: Michael Morgan
Subject: ADV Annual Submission

Part 1B (G)1

How does this sound?

From time to time Blue Ocean Portfolios., LLC issues securities to finance growth and advertising strategies. These securities could be offered to clients of Blue Ocean Portfolios, LLC. Blue Ocean Portfolios clients are under no obligation to participate and Blue Ocean Portfolios does not view these securities as a conflict of interest.

The email specifically referenced the fact the Initial Decision held was absent from the record – Mr. Morgan's knowledge that royalty units "could be offered to clients."[18] Mr. Morgan responded that the disclosure was "better" but expressed his concern about making the

[15] Stip. No. 57; RX-106 pp. 1914—1916.

[16] RX-106 p. 1906.

[17] RX-106 p. 1899.

[18] *Id.*

disclosure, after years of not doing so.[19] He was concerned it could be interpreted as "a sneaky form of gun-jumping."[20] Mr. Morgan advised:

From: Michael Morgan [mailto:mm@greensfelder.com]
Sent: Thursday, January 17, 2013 5:13 PM
To: Jim Winkelmann
Cc: Giles M. Walsh
Subject: RE: ADV Annual Submission

Yeah that's better but now I'm wondering if it could be seen as a sneaky form of gun-jumping. Maybe just drop it and amend the ADV when there is a later offering.

MM

Michael Morgan

Greensfelder, Hemker & Gale, P.C.

314.516.2637

[redacted] (cell)

Despite this advice from Mr. Morgan, that the disclosure was unnecessary, Blue Ocean pushed the issue. The next day, one of Blue Ocean's employees (Ms. Hennessey) followed up with Greensfelder, asking[21]:

[19] RX-106 p. 1901.

[20] RX-106 p. 1901.

[21] RX-106 p. 1904.

From:	Kelly Hennessy <Kelly@blueoceanportfolios.com>
Sent:	1/18/2013 3:00:07 PM +0000
To:	Michael Morgan <mm@greensfelder.com>; Giles M. Walsh <gmw@greensfelder.com>
CC:	Jim Winkelmann <Jim@blueoceanportfolios.com>
Subject:	ADV Updates
Attachments:	Part 1A Item #6(B).PNG

Hi Mike/Giles,

I have a few questions regarding the ADV updates you discussed with Jim yesterday:

1) Where is this description supposed to be entered (it's not required for Part 1B Item G)? Should it be entered on ADV Part 2 Item #19(E)? Should it also be included under Part 2 Item #10 since Item 19 will no longer be included when we switch to SEC? Also, I assume it should read "In 2011 and 2012...."

"In 2011 and 2011 Blue Ocean Portfolios., LLC issued securities on a private placement basis to finance its growth and advertising strategies. Some of these securities were offered and sold to certain clients of Blue Ocean Portfolios. Blue Ocean Portfolios clients were under no obligation to participate. Future offerings are anticipated."

2) Regarding ADV Part 1A #6 Other Business Activities (see attached). Should Item B(1) be answered yes? Or should B(3), which is currently answered yes due to insurance products, also include the description above?

Again, the email specifically references the fact that the securities "were offered and sold to certain clients" although those clients "were under no obligation to participate" and that "future offerings [were] anticipated." This second communication also runs contrary to the Initial Decision's finding that "there is nothing at all in writing" reflecting Mr. Morgan's knowledge.[22]

[22] Initial Decision p. 61.

In response to Ms. Hennessy's email, Mr. Morgan, Mr. Winkelmann and Mr. Walsh traded emails on the topic which read, in order of transmission[23]:

From: Jim Winkelmann [Jim@blueoceanportfolios.com]
Sent: Monday, January 21, 2013 9:57 AM
To: Michael Morgan
Cc: Giles M. Walsh
Subject: ADV Filing

Mike/Giles

I think we should just check the box in Part 1B and not include the narrative in Part 2. I am concerned that if we include the narrative now it could be implied as an admission that we should have included it before. IARD is shut down due to the holiday.

Thoughts?

Thanks

Jim

From: Michael Morgan [mailto:mm@greensfelder.com]
Sent: Monday, January 21, 2013 10:15 AM
To: Jim Winkelmann
Cc: Giles M. Walsh
Subject: RE: ADV Filing

We talked about this on Friday. I can make arguments either way. I guess there is an argument that if you did not schedule this on Part II before, why are you doing so now. The answer is because they are now asking the question in Part I, and we believed it was necessary to amplify it so we can still take the position that we are not in the business of issuing securities - we only do so from time to time.

What if we add to the narrative: Although BOP does not consider itself to be in the business of issuing securities (or whatever the exact wording of the question is), in order to make a clear disclosure it so indicated on question to part I of form adv because it does make securities offerings from time to time. and then carry on with the rest of the narrative. Or something like that.

MM

[23] RX-106 pp. 1914--1916.

From: Jim Winkelmann [mailto:Jim@blueoceanportfolios.com]
Sent: Monday, January 21, 2013 10:43 AM
To: Michael Morgan
Cc: Giles M. Walsh
Subject: RE: ADV Filing

The issue they may be concerned about is whether or not the issuance of the securities presents a conflict of interest. Of course our position has been that no - the OS satisfactorily addresses any potential conflicts and the economic model of the royalty units does more to align interest rather than create a conflict interest. Look at their consent order (enclosed) against Binkholder para 16-18 gives us a hint of what they may be gearing up for. I feel that at this point we are in catch 22.

What is the least of evils; argue that our ADV filings in June 2012 - are accurate and that the royalty units are not material to clients and prospective clients? OR now disclose on Part 2 and argue that we needed to do this because the new question on Part 1 would have triggered additional comments?

From: Michael Morgan
Sent: Monday, January 21, 2013 11:24 AM
To: Jim Winkelmann
CC: Giles M. Walsh
Subject: RE: ADV Filing

I go with no. 2 but I'm willing to put it to a vote among the three of us. There are no absolute right answers here. MM

Michael Morgan
Greensfelder, Hemker & Gale, P.C.
314.516.2637
[redacted] (cell)

From: Jim Winkelmann <Jim@blueoceanportfolios.com>
Sent: Tuesday, January 22, 2013 9:16 AM
To: Michael Morgan
Cc: Giles M. Walsh
Subject: RE: ADV Filing

OK – Kelly is preparing draft of the revised filing. Under question 19 E. -

"Blue Ocean Portfolios has no relationship or arrangement with any outside issuer of securities. However to finance growth and advertising strategies Blue Ocean Portfolios has issued securities itself to clients and non-clients under Regulation D 506 exemption. It is contemplated that additional securities will be issued to finance additional growth and advertising strategies."

The same day Greensfelder and the Firm made the decision that they would make the disclosure in the Form ADV (despite Mr. Morgan's insistence that there were no "absolutes" on whether or not to do so), Ms. Hennessy sent revised language for Mr. Morgan's review, which read[24]:

> Blue Ocean Portfolios does not have any relationship or arrangement with any outside issuer of securities. However, Blue Ocean Portfolios has issued securities in the past to finance its advertising strategy and may issue additional securities in the future.

Mr. Walsh forwarded Ms. Hennessey's email to Mr. Morgan (not copying Mr. Winkelmann) and asked:[25]

> Mike [Morgan], My only comment is to change its' to its (no apostrophe in the second sentence) for the disclosure below. Jim had sent another disclosure about 3 minutes before this one that mentioned the purchasers of the securities were clients and non-clients. *Do you think we need to mention that some of the purchasers were clients*?

Mr. Morgan and Mr. Walsh discussed this issue over the phone and, shortly thereafter, Mr. Walsh emailed Ms. Hennessey and Mr. Winkelmann, stating[26]:

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[24] RX-106 p. 1919.

[25] *Id.* Emphasis supplied.

[26] RX-106 p. 1921-22.

From: Giles M. Walsh [mailto:gmw@greensfelder.com]
Sent: Tuesday, January 22, 2013 10:20 AM
To: Kelly Hennessy
Cc: Jim Winkelmann; Michael Morgan
Subject: RE: ADV Disclosure

Kelly,

Here is my revised disclosure:

"Blue Ocean Portfolios does not have any relationship or arrangement with any outside issuer of securities. However, Blue Ocean Portfolios has issued securities in the past to clients and non-clients pursuant to private placements to finance its advertising strategy and may issue additional securities in the future."

Please note the deletion of the apostrophe from "its" in the second sentence as it may not be readily apparent.

Jim --

You sent a different disclosure right before this one and I have included some of the additional details from your disclosure in my revised disclosure above. Mike and I did discuss the above changes on the phone and are in agreement.

Please let me know if you have any questions or comments.

Thanks,

Mr. Walsh's email clearly included the disclosure that Blue Ocean Portfolios "***has issued securities in the past to clients and non clients...***"[27]

Four things are apparent from the face of these emails. *First*, Mr. Morgan was well aware that the Firm was selling advisory units to clients, and intended to continue doing so. The emails wholly support Mr. Winkelmann's testimony on that same fact. [28] *Second*, the communications evidence that Mr. Morgan did not, as the Initial Decision believed they should

[27] RX-106 p. 1921.

[28] In addition to these contemporaneous emails, which the Initial Decision ignored, subsequent emails between Mr. Winkelmann and Greensfelder sent after the SEC began its examination of the firm (and after Mr. Morgan passed away) reflect the same. RX-106 pp. 2400-2402.

have, devote a tremendous amount of analysis or research to the issue. They believed no conflicts existed, and therefore the disclosures were proper.

Third, the emails further evidence that Mr. Morgan was unconcerned with the fact that the Firm was selling royalty units to clients. Mr. Morgan passed away in 2015 and could not testify to corroborate Mr. Winkelmann's testimony. Mr. Winkelmann's unrebutted testimony, however, was that Mr. Morgan was not only aware of, but unconcerned with the sales. The above email chain reflects the same.

Fourth, while the text of the emails, alone, corroborates Mr. Winkelmann's testimony (and refutes a finding of scienter), its *timing* leaves no room for error. The above email exchange occurred in late January 2013. In February 2013 – mere weeks later – the Round 4 Offering Memorandum was finalized and circulated to investors. Mr. Morgan, now *indisputably* aware that the Firm had offered royalty units to advisory clients and was intending to continue to do so, made no changes to the conflicts of interest language, to the disclosures in the offering documents or to the subscription agreement (discussed at length immediately below). According to the assumptions made in the Initial Decision, once Mr. Morgan learned of this fact, he should have immediately revised the offering documents to disclose this supposed "conflict." On this point, the Initial Decision was resolute[29]:

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

The above communications show that Mr. Morgan was well aware of and did bless the Offerings, as inconceivable to the Court as that may be. Because these conclusions are

[29] Initial Decision p. 61. Emphasis suppled.

erroneous and against the weight of the evidence, the Initial Decision's finding of "extreme recklessness" and its conclusion that Mr. Winkelmann failed to sustain his burden of establishing reliance on counsel should be reversed, and the sanctions imposed as a result of these findings – including the permanent bar – should be vacated.

C. Mr. Winkelmann and Blue Ocean did not violate Section 10(b) of the Exchange Act, Section 17(a)(1) of the Securities Act or Section 206(1) of the Advisers Act because they did not act with *scienter.*

The reasonable reliance upon advice of counsel is a recognized defense to the *scienter* element that the Division must prove to establish the alleged violations.[30] The advice of counsel defense requires that Mr. Winkelmann and Blue Ocean establish four elements: (1) complete disclosure to counsel; (2) request for counsel's advice as to the legality of a contemplated action; (3) receipt of advice that the contemplated action was legal; and (4) good faith reliance on that advice.[31] Here, the record above and set forth at hearing supports a finding that Respondents reasonably relied on the legal advice that they obtained from their competent and experienced attorneys at Greensfelder. This evidence rebuts any finding that he acted with *scienter* - reckless or intentional deceit.

The evidence shows each of the above elements have been met:

- The parties have stipulated that Mr. Winkelmann "consulted with Greensfelder for each of the offerings, and that Greensfelder did review all of the offering memoranda."[32]

[30] *S.E.C. v. Huff*, 758 F. Supp. 2d 1288, 1348-49 (S.D. Fla. 2010), *aff'd*, 455 F. App'x 882 (11th Cir. 2012) .

[31] *S.E.C. v. Prince*, 942 F. Supp. 2d 108, 138, 143-44 (D.D.C. 2013).

[32] Tr. 1352:9-25 (Winkelmann); FOF 51, 53, 54, 55.

- The evidence shows Mr. Winkelmann sought advice on and had discussions with Greensfelder about the disclosures that are contained in the Offering Memoranda;[33]
- Greensfelder provided him advice about the disclosures contained in the Offering Memoranda that are at issue in this case;[34]
- Greensfelder advised him that due to the Royalty Unit structure, he could sell units to Firm customers without conflict of interest.[35]
- Mr. Winkelmann never declined to accept any advice he received from Greensfelder about the disclosures contained in the Offering Memoranda that are at issue in this case;[36]
- The Offering Memoranda in this case include all the disclosures that Greensfelder advised Mr. Winkelmann to make; and[37]
- Mr. Winkelmann followed the advice that he received from Greensfelder in connection with the preparation of the Offering Memorandum and related documents.[38]

In light of the evidence establishing that Respondents solicited and received advice on each of the above topics, and that Respondents reasonably relied upon the advice of their counsel for the duration of the time period at issue, the Division's allegation that Respondents acted with

[33] Tr. 506: 23-507:2; Tr. 508:15-19; Tr. 402:2-5; Tr. 508: 15-19; Tr. 378:5-12; Tr. 1325:6-16; Tr. 1347:4-12; Tr. 1347:13-24 (Winkelmann).

[34] *Id.*

[35] RX-127; RX-128.

[36] Tr. 1251:5-23 (Winkelmann).

[37] Tr. 1347:4-12 (Winkelmann).

[38] Tr. 1335:1-1337:4 (Winkelmann).

scienter is effectively rebutted.[39] As a result, the Divisions' *scienter*-based allegations must be dismissed.

D. Mr. Winkelmann and Blue Ocean did not violate Section 17(a)(2) or (a)(3) of the Securities Act or Rule 206(2) of the Investment Advisers Act because he did not act Negligently.

The required elements of a claim under 206(2) and 17(a)(2) and (3) are the same as those set forth in Section A above, except that 206(2) and 17(a)(2) do not require a finding of *scienter.* Instead, the Division must establish, by a preponderance of the evidence that Mr. Winkelmann and Blue Ocean acted negligently.

Respondents maintain, based on the record presented, that no material misrepresentations were made. Beyond that, the alleged violations under Rule 206(2) and Section 17(a)(2) and (3) of the Securities Act require that the Division establish Respondents acted negligently.[40] Negligence is the failure to uphold a legal duty owed another.[41] In the context of an investment advisory relationship, the applicable duty arises out of the fiduciary relationship. *Id.* Respondents, therefore, held a duty of "utmost good faith, and full and fair disclosure of all material facts," as well as an affirmative obligation "to employ reasonable care to avoid misleading" their clients.[42]

The Division failed to establish Respondents acted negligently for the same reasons set forth above, with regard to *scienter.* That is, Respondents acted reasonably in attempting to

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[39] *S.E.C. v. Prince*, 942 F. Supp. 2d at 143-44 (quotation in fn. 87, *supra*); *In re Digi Int'l, Inc., Sec. Litig.*, 14 F. App'x 714, 717 (8th Cir. 2001). ("We fully agree with the district court that Coopers & Lybrand's changing posture about how to account for the AetherWorks investments, coupled with the opinions of outside legal counsel rendered to Digi during the pertinent time frame, establishes that no reasonable jury could find the necessary element of scienter even if the accounting treatment was improper. As the district court correctly noted, '[t]he undisputable fact that the Defendants were in consultations with their outside accountants and legal counsel during the period in question is in itself evidence which tends to negate a finding of scienter.'").

[40] *See, e.g., In the Matter of David J. Montanino*, Release No. 773 (Apr. 16, 2015).

[41] *Byron G. Borgardt*, 56 S.E.C. 999, 1021 (2003).

[42] *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963).

avoid misleading their advisory clients and investors. Namely, Respondents retained, consulted, and relied upon the advice of their counsel with regard to the representations made in the offering documents and in believing that their conduct was compliant and proper. Hiring a renowned law firm like Greensfelder and asking it to offer advice, engaging its assistance in the research and review of legal issues, engaging its expertise in drafting offering documents, and relying upon that advice is demonstrably *reasonable* conduct.[43] This evidence of *reasonableness* rebuts the Division's allegation that they acted negligently. In fact, it would be *un*reasonable to presume that a person unsophisticated in securities law would take it upon themselves to "independently examine" the applicable laws "after taking the reasonably prudent step of securing advice" from a qualified attorney.

Accordingly, because Respondents did not act negligently, the Division's allegations that Respondents violated Rule 206(2) of the Advisers Act , and Section 17(a)(2) and (3) of the Securities Act fail as a matter of law.

E. No Willfulness.

The Initial Decision found the violations of § 206(4) and § 207 to be willful. The Division carried the burden of proving the element of willfulness and, in the absence of any evidence that Mr. Winkelmann acted with the "requisite mental state", his submission of the forms ADV was not willful:[44]

> Whether [respondent] acted with the requisite mental state for his actions to constitute a violation of the Advisers Act is a question of

[43] *In re E.F. Hutton Sw. Properties II, Ltd.*, 953 F.2d 963, 973 (5th Cir. 1992) ("Reliance on advice of counsel to resolve an open question of law is not negligence."); *Streber v. C.I.R.*, 138 F.3d 216, 219–20 (5th Cir. 1998) (denying Tax Court's imposition of a negligence penalty holding the respondent was not required to "independently examine their tax liabilities after taking the reasonably prudent step of securing advice from a tax attorney."); *Estate of Stetson*, 463 Pa. 64, 80 (1975). ("While reliance on the advice of counsel does not provide a fiduciary with a blanket immunity in all circumstances it persuasively rebuts a claim of breach of duty when the decision concerns a matter so dependent on legal expertise.") (internal citations omitted).

[44] *SEC v. Slocum, Gordon & Co.*, 334 F. Supp. 2d 144, 181-82 (D.R.I. 2004).

> fact. Here, the Court does not find that [respondent] intentionally or willfully omitted material facts from his SEC filings. As willfulness is an element of a Section 207 violation... the Court concludes that the Commission failed to meet its burden on this claim, and rules in favor of the Defendants[.]

In light of the new evidence submitted, showing Greensfelder's knowledge of the client sales *from before the first offering through the final offering*, the evidence shows that Mr. Winkelmann acted in *good faith* attempt to comply and without any intent to omit material facts from his filing.

That is, because Greensfelder knew, from before the first offering, that Blue Ocean would be selling Royalty Unit to clients, it should have properly addressed and advised Mr. Winkelmann on disclosure of the same. Mr. Winkelmann's reliance on the custody representation was reasonable for the entire time period at issue.

The SEC already lacked affirmative evidence that the filings were willful. The evidence set forth above only underscores the lack of such a mindset here.

F. The Sanctions Assessed are Improper in the Absence of Scienter, Negligence or Willfulness.

The appropriateness of any sanction is guided by the public interest factors set forth in *Steadman.*[45] The Court should weigh these factors in light of the entire record. No one factor is dispositive:[46] Relevant here, the Court must re-examine the application of two *Steadman* factors: (1) the egregiousness of the respondent's actions; and (2) the degree of scienter involved.

Each of these factors touch on knowledge, intent and, specifically, scienter. In the absence of such a mindset, the sanctions imposed must be reversed. As set forth above, Mr. Winkelmann's conduct was neither "egregious" nor "extremely reckless." The good faith

[45] *Steadman v. SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds,* 450 U.S. 92 (1981) ("Steadman factors").

[46] *Id.*

reliance on the advice of his sophisticated securities counsel at Greensfelder negates any finding of scienter – including scienter based on recklessness. Further, his good faith reliance evidences that neither Mr. Winkelmann nor the Firm acted negligently because they reasonably relied upon their counsel's advice. In the presence of good faith reliance, and in the absence of *scienter* if some sanction is warranted it is a first-tier penalty, at worst.

G. The Entry of a Bar is Improper.

Additionally, given Mr. Winkelmann's reasonable and good faith conduct, a bar is overly punitive. Mr. Winkelmann issued the offerings at issue with the advice of his counsel. The documents were prepared and reviewed by counsel. Counsel advised that Mr. Winkelmann's sales to clients were not an issue. Mr. Winkelmann heeded his counsel's advice. In sum, Mr. Winkelmann went to great lengths to do everything properly.

Here, assuming upon review of the evidence the Court concludes that a conflict-related violation exists, the Steadman factors show that sanctions, including a bar, contrary to the public interest. At all times they strove to comply with the applicable rules and requirements. To do so, they employed extremely experienced and competent legal counsel and relied upon them to advise as to the propriety of the offering documents and their Form ADV filings – actions indicative of persons acting in good faith.

III. CONSTITUTIONALITY

A. The Proceeding was Unconstitutional.

. At the time of the proceeding, the D.C. Circuit had ruled that ALJs were <u>not</u> inferior officers.[47] Since the initial decision was issued, the Commission has acknowledged, in entering

[47] *Lucia v. SEC*, 832 F. 3d 227 (D.C. Cir. 2016).

the November 30, 2017 order and in its filings before the United States Supreme Court,[48] that its ALJs are inferior officers who must be appointed in compliance with Article II of the United States Constitution.[49] The United States Supreme Court has recently granted certiorari on the issue.[50]

Accordingly, this proceeding was administered and Respondents were tried, by an unconditionally-appointed adjudicator; they did not receive a fair hearing before a constitutional forum. The result of that unconstitutional proceeding is that Respondents have been subjected to sanctions that will (and already have) had devastating effects on their careers and business. Accordingly, the Initial Decision should be set aside.

B. The November 30 Order entered by the Commission is Ineffective.

Neither the November 30, 2017 ratification Order, or an Order by this Court affirming its earlier ruling can convert the constitutionality of the proceeding that was held in this case. Respondents were entitled to a hearing before a "properly appointed [ALJ]" but were deprived of that right.[51] The only way to cure the constitutional violation caused by the Commission is to hold an entirely new proceeding before a properly constitutionally appointed ALJ.

Beyond that, the November 30, 2017 Order merely "ratifies the agency's prior appointment" of the five currently-serving ALJs. This Order fails to address or resolve the underlying problem: the judges were never "appointed" – they were hired. Ratification of the prior, incorrect, action does not cure the Constitutional problem.

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[48] Brief for Respondent SEC at 9-10, *Lucia v. SEC*, No. 17-130 (filed Nov. 29, 2017), "In prior stages of this case, the government argued that the Commission's ALJs are mere employees rather than 'Officers' within the meaning of the Appointments Clause. Upon further consideration, and in light of the implications for the exercise of executive power under Article II, the government is now of the view that such ALJs are officers because they exercise 'significant authority pursuant to the laws of the United States.'")

[49] U.S. Const. Art II §2.

[50] *Id.*

[51] *Ryder v. United States,* 515 U.S. 188, 199 (1995); *Nguyen v. United States,* 539 U.S. 69, 82 (2003).

Moreover, the November 30, 2017 Order speaks only to the appointment of the ALJs, and does not address any of the issues regarding their removal. Article II confers on the President the power to remove officers who carry out executive functions:[52]

> It is his responsibility to take care that the laws be faithfully executed. The buck stops with the President, in Harry Truman's famous phrase. As we explained in Myers, the President therefore must have some "power of removing those for whom he can not continue to be responsible.

Congress is forbidden from creating statutory schemes that grant inferior officers two layers of protection from presidential removal authority.[53] ALJs may only be removed by the Commission for good cause (by a board whose members can only be removed for good cause). The error in this procedure is the mirror of the error in the manner the SEC had appointed its judges. The unconstitutionality of the proceeding persists.

Because the underlying proceeding was unconstitutionally administered, its decision is void and ratification of that finding cannot salvage it. Respondents request this proceeding be dismissed.

IV. CONCLUSION

For the reasons set forth herein, Respondents request that Judge Patil modify his initial decision and find that (1) Mr. Winkelmann and Blue Ocean relied upon the advice of their counsel with regard to the existence of conflicts of interest and the propriety of sales to clients; (2) Mr. Winkelmann and Blue Ocean's reliance was in good faith; (3) Mr. Winkelmann and Blue Ocean's good faith reliance rebuts any inference of scienter, negligence or willful conduct; (4) without the element of scienter, negligence or willful conduct, the Division's claims under Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, Rules 204, 206(1), 206(2) and 207

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[52] *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 493 (2010).

[53] *Id.*

of the Investment Advisers Act, and Section 10(b) of the Exchange Act fail as a matter of law; (5) reversing the sanctions assessed including the permanent bar as to James Winkelmann; and (6) the Initial Decision is set aside as unconstitutionally derived; (7) any other relief that the Court deems proper under the facts and circumstances.

Dated: January 26, 2018

ULMER & BERNE LLP

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

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2018, I served a copy of the foregoing **RESPONDENTS' SUBMISSION OF NEW EVIDENCE**, 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. 1450 Chicago, IL 60604 bensond@sec.gov 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

Heidi VonderHeide

From: Jim
To: mm
Subject: what about our accreditted investors
Date: Monday, March 28, 2011 7:05:25 PM
Attachments: Jay Shield BOP Royalty Cover.docx

---

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

would like to send this out to a handful of accreditted investors - Schnucks, Shields, Holland, etc.

--

James A. Winkelmann, Principal

Blue Ocean Portfolios, LLC

Registered Investment Advisors

16020 Swingley Ridge, Suite 360

Chesterfield, MO 63017

Office: 636-530-9393

Cell: [redacted]

www.BlueOceanPortfolios.com

March 24, 2011

DRAFT

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

RE: Blue Ocean Portfolios

Dear Jay,

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

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

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

Sincerely yours,

Jim Winkelmann
President

Kelly Hennessy

From: Michael Morgan <mm@greensfelder.com>
Sent: Tuesday, March 29, 2011 12:06 PM
To: Jim
Subject: Re: what about our accreditted investors
Attachments: ~$CS-#1267320-v1-cover_letter_for_accrediteds_. .doc

Follow Up Flag: Follow up
Flag Status: Flagged

my comments

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

314-516-2637
[redacted] (cell)
314-241-9090 (main)

>>> Jim <jim@blueoceanportfolios.com> 3/28/2011 7:05 PM >>>
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Cell: [redacted]

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Kelly Hennessy

From: Jim <jim@blueoceanportfolios.com>
Sent: Tuesday, March 29, 2011 1:29 PM
To: Michael Morgan
Subject: Re: what about our accreditted investors

Follow Up Flag: Follow up
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Mike - the file you sent is corrupted and/or won't open. Please resend.

----- Original Message -----
From: "Michael Morgan" <mm@greensfelder.com>
To: "Jim" <jim@blueoceanportfolios.com>
Sent: Tuesday, March 29, 2011 12:06:12 PM
Subject: Re: what about our accreditted investors

my comments

Michael Morgan
Greensfelder, Hemker & Gale, P.C.
10 S. Broadway, Suite 2000
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Cell: [redacted]

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Kelly Hennessy

From: Michael Morgan <mm@greensfelder.com>
Sent: Tuesday, March 29, 2011 1:47 PM
To: jim@blueoceanportfolios.com
Subject: Re: what about our accreditted investors

Follow Up Flag: Follow up
Flag Status: Flagged

#
-----Original Message-----
From: Jim <jim@blueoceanportfolios.com>
To: Morgan, Michael <mm@greensfelder.com>

Sent: 3/29/2011 1:28:39 PM
Subject: Re: what about our accreditted investors

Mike - the file you sent is corrupted and/or won't open. Please resend.

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From: "Michael Morgan" <mm@greensfelder.com>
To: "Jim" <jim@blueoceanportfolios.com>
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Kelly Hennessy

From: Jim <jim@blueoceanportfolios.com>
Sent: Tuesday, March 29, 2011 1:51 PM
To: Michael Morgan
Subject: Re: what about our accreditted investors

Follow Up Flag: Follow up
Flag Status: Flagged

nothing attatched

----- Original Message -----
From: "Michael Morgan" <mm@greensfelder.com>
To: jim@blueoceanportfolios.com
Sent: Tuesday, March 29, 2011 1:47:01 PM
Subject: Re: what about our accreditted investors

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From: Jim <jim@blueoceanportfolios.com>
Sent: Tuesday, March 29, 2011 2:23 PM
To: Michael Morgan
Subject: Re: what about our accreditted investors

Follow Up Flag: Follow up
Flag Status: Flagged

still nothing

----- Original Message -----
From: "Michael Morgan" <mm@greensfelder.com>
To: jim@blueoceanportfolios.com
Sent: Tuesday, March 29, 2011 1:51:28 PM
Subject: Re: what about our accreditted investors

-----Original Message-----
From: Jim <jim@blueoceanportfolios.com>
To: Morgan, Michael <mm@greensfelder.com>

Sent: 3/29/2011 1:28:39 PM
Subject: Re: what about our accreditted investors

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Kelly Hennessy

From: Michael Morgan <mm@greensfelder.com>
Sent: Tuesday, March 29, 2011 2:32 PM
To: Jim
Subject: Re: what about our accreditted investors

Follow Up Flag: Follow up
Flag Status: Flagged

It's lost. I am doing it. MM

Michael Morgan
Greensfelder, Hemker & Gale, P.C.
10 S. Broadway, Suite 2000
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Blue Ocean Portfolios, LLC

Registered Investment Advisors

16020 Swingley Ridge, Suite 360

Chesterfield, MO 63017

Office: 636-530-9393

Cell: [redacted]

www.BlueOceanPortfolios.com

Kelly Hennessy

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

Follow Up Flag: Follow up
Flag Status: Flagged

second try

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

314-516-2637
[redacted](cell)
314-241-9090 (main)

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

would like to send this out to a handful of accreditted investors - Schnucks, Shields, Holland, etc.

--

James A. Winkelmann, Principal

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Cell: [redacted]

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March 24, 2011

DRAFT

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

RE: Blue Ocean Portfolios

Dear Jay,

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

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

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

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

Sincerely yours,

Jim Winkelmann
President

Kelly Hennessy

From: Jim <jim@blueoceanportfolios.com>
Sent: Tuesday, March 29, 2011 3:34 PM
To: Michael Morgan
Subject: Re: what about our accreditted investors

Follow Up Flag: Follow up
Flag Status: Flagged

great - picking up the proof today.

----- Original Message -----
From: "Michael Morgan" <mm@greensfelder.com>
To: "Jim" <jim@blueoceanportfolios.com>
Sent: Tuesday, March 29, 2011 2:39:04 PM
Subject: Re: what about our accreditted investors

second try

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

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

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GREENSFELDER
ATTORNEYS AT LAW

Greensfelder, Hemker & Gale, PC
10 South Broadway
Suite 2000
St. Louis, MO 63102

T: 314-241-9090
F: 314-241-8624

FEIN: 43-1313567

April 8, 2011
15264-020
Invoice No. 383198

Blue Ocean Portfolios, LLC
James A. Winkelmann, Principal
16020 Swingley Ridge, Suite 360
Chesterfield, MO 63017

For legal services rendered through March 31, 2011

Securities Compliance

03/01/11	M. Morgan	Research and conferences J. Winkelmann regarding role of independent radio program and impact of cash payments for client solicitation rules.	.8	
03/01/11	G. Walsh	Review Investment Advisers Act; office conference with M. Morgan re: same.	.7	
03/03/11	M. Morgan	Work on compliance strategy - four phases of operations going forward, to SEC registration once AUM level is exceeded.	.6	
03/03/11	G. Walsh	Research Investment Advisers Act for state or federal filing thresholds; research Lowe case; research cash payments for client solicitations; office conference with M. Morgan re: same.	2.9	
03/04/11	M. Morgan	Compliance issues - marketing and client solicitations.	.3	
03/16/11	M. Morgan	Review ADV and filings.	.2	
03/23/11	M. Morgan	Research and review ADV for 1940 Act compliance.	1.5	
03/24/11	M. Morgan	Work on Form ADV, including conversations of disclosures regarding RIAR's.	.8	
	Fees This Matter		7.8	2,346.00

Attorney Rate Summary

M. Morgan	4.2	400.00 /hr	1,680.00
G. Walsh	3.6	185.00 /hr	666.00

Fee charges and expenses which have not been posted to date against your account will appear on a later statement.

	7.8	2,346.00

Financing

03/03/11	M. Morgan	Work on structuring financing offer for royalty units.	.6
03/04/11	M. Morgan	Work on structure of financing.	.2
03/04/11	G. Walsh	Research Rule 504 and Rule 505 and MO blue sky laws.	1.3
03/07/11	M. Morgan	Work on offering; conferences J. Winkelmann; internal conference regarding documentation; research and review BOP docs	1.5
03/07/11	G. Walsh	Office conference with M. Morgan re: subscription agreement and warrant.	.5
03/08/11	M. Morgan	Research and work on Certificate of Royalty Unit.	.5
03/09/11	M. Morgan	Further work on and drafting Certificate of Royalty Unit, more or less from scratch.	1.8
03/09/11	G. Walsh	Review offering certificate; draft subscription agreement.	.5
03/10/11	M. Morgan	Conferences, revisions to documents, express concerns about tax consequences	.5
03/10/11	G. Walsh	Draft and revise subscription agreement and warrant; office conference with M. Morgan re: same.	4.6
03/11/11	M. Morgan	Review physician's letter and email re same.	.1
03/11/11	G. Walsh	Draft and revise Warrant.	1.8
03/15/11	M. Morgan	Review and comment on warrant; review documents for offering; prepare cover letter and revise business plan.	2.4
03/15/11	G. Walsh	Revise Subscription Agreement.	1.3
03/16/11	M. Morgan	Expense Credit	.2
03/16/11	G. Walsh	Revise Warrant.	.5
03/18/11	M. Morgan	Prepare for and meet with client to review offering documents, revisions and further research in connection with offering by RIA.	3.3
03/18/11	G. Walsh	Office conference with M. Morgan and J. Winkelmann; revise Warrant, Certificate of	3.2

		Royalty Unit, and Subscription Agreement.		
03/21/11	G. Walsh	Revise Certificate of Royalty Unit, Subscription Agreement, and Warrant.	1.6	
03/22/11	G. Walsh	Revise Certificate of Royalty Unit, Subscription Agreement, and Warrant.	1.3	
03/23/11	M. Morgan	Research and work on offering documents.	.5	
03/24/11	M. Morgan	Further work and emails regarding offering documents.	.3	
03/30/11	M. Morgan	Reseach to permit inclusion of non-accredited investors under Rules 504, 505, and 506; extensive review and revisions to documents to permit same.	2.0	
03/31/11	M. Morgan	Further reseach and revisions to documents to permit inclusion of non-accredited investors under Rule 504 and Missouri less-than-25 exemptions.	2.0	
	Fees This Matter		32.5	9,431.00

Attorney Rate Summary

M. Morgan	15.9	400.00 /hr	6,360.00
G. Walsh	16.6	185.00 /hr	3,071.00
	32.5		9,431.00

TOTAL LEGAL SERVICES	$	11,777.00
TOTAL EXPENSES	$	0.00
TOTAL THIS STATEMENT	$	11,777.00
PRIOR OUTSTANDING BALANCE	$	560.00
BALANCE DUE	$	12,337.00

Fee charges and expenses which have not been posted to date against your account will appear on a later statement.

GREENSFELDER
ATTORNEYS AT LAW

Greensfelder, Hemker & Gale, PC
2000 Equitable Building
10 South Broadway
St. Louis, MO 63102

T: 314-241-9090
F: 314-241-8624

FEIN: 43-1313567

April 8, 2011

Blue Ocean Portfolios, LLC
James A. Winkelmann, Principal
16020 Swingley Ridge, Suite 360
Chesterfield, MO 63017

Please detach and enclose bottom portion with your payment to insure proper credit.

Payment due on May 8, 2011

Blue Ocean Portfolios, LLC
James A. Winkelmann, Principal
16020 Swingley Ridge, Suite 360
Chesterfield, MO 63017

April 8, 2011

15264
Invoice Number 383198
Total Due $ 11,777.00

Amount Paid $ _____

RETURN THIS PORTION WITH YOUR REMITTANCE.

Remit To: Greensfelder, Hemker & Gale, PC
Attn: Accounting Department
2000 Equitable Building
10 South Broadway
St. Louis, MO 63102-1747