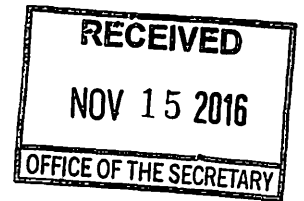


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17253

In the Matter of

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

Respondents.

THE PARTIES' FACTUAL STIPULATIONS

Pursuant to the Court's October 18, 2016 Post-Hearing Order, the Division of Enforcement and Respondents James A. Winkelmann, Sr. and Blue Ocean Portfolios, LLC submit the below factual stipulations. For the purposes of these proceedings, the parties hereby stipulate as follows:

1. Between April 16, 2011 and February 25, 2014, over the course of four private offerings, Blue Ocean Portfolios, LLC ("BOP") raised a total of \$1.4 million from a total of 24 royalty unit investors located in Missouri, Illinois, and Indiana.

2. BOP is an investment advisory firm. It was initially registered with the State of Missouri, but, in April 2011, as a result of an increase in its assets under management, it became registered with the Commission. From June 2012 to April 2013, BOP returned to being registered with Missouri, before again becoming Commission-registered in April 2013.

3. BOP charges its advisory clients an advisory fee, based on a percentage of a client's assets under BOP's management.

4. Exhibit 455 accurately reflects, for each royalty unit investor: (a) the investor's name, (b) the investor's state of residency, (c) whether the investor was a BOP advisory client, (d) the number of royalty units purchased, (e) the offering in which the investor purchased the royalty unit, (f) the amount paid for the royalty unit(s), and (g) the date of the royalty unit purchase(s).

5. Of the 24 royalty unit investors, 18 were BOP advisory clients.

6. For the first round offering, between April 16 and July 13, 2011, BOP issued 26 royalty units, raising a total of \$650,000, to 14 investors, ten of whom were BOP advisory clients.

7. For the first round offering, each royalty unit was offered in \$25,000 increments, and granted the investor a minimum of 0.25% of BOP's monthly cash receipts until the investor had been repaid \$75,000 (three times the original investment). The explicit terms of the offering provided that there was no set timeframe within which the full repayment needed to be made. Each first round royalty unit also entitled investors to a warrant providing an option to purchase 1% of BOP for \$100,000.

8. For the second round offering, between March 29 and May 22, 2012, BOP issued 14 royalty units, raising a total of \$350,000, to ten investors, seven of whom were BOP advisory clients.

9. For the second round offering, each royalty unit was offered in \$25,000 increments, and granted the purchaser a minimum of 0.25% of BOP's monthly cash receipts until the investor had been repaid \$62,500 (2.5 times the original investment). The explicit terms of the offering provided that there was no set timeframe within which the full repayment needed to be made.

10. For the third round offering, between September 20 and October 15, 2012, BOP issued 11 royalty units, raising a total of \$275,000, to four investors, three of whom were BOP advisory clients.

11. For the third round offering, each royalty unit was offered in \$25,000 increments, and granted the purchaser a minimum of 0.10% of BOP's monthly cash receipts until the investor had been repaid \$56,250 (2.25 times the original investment). The explicit terms of the offering provided that there was no set timeframe within which the full repayment needed to be made.

12. For the fourth round offering, between February 15 and 25, 2013, BOP issued 25 royalty units, raising a total of \$125,000, to two investors, each of whom were BOP advisory clients.

13. For the fourth round offering, each royalty unit was offered in \$5,000 increments, and granted the purchaser a minimum of 0.05% of BOP's monthly cash receipts until the investor had been repaid \$12,500 (2.5 times the original investment). The explicit terms of the offering provided that there was no set timeframe within which the full repayment needed to be made. The fourth round offering had a minimum purchase of five royalty units per investor.

14. As of the third quarter 2016, BOP had paid a total of \$525,672.51 to the royalty unit investors in the four rounds of offerings.

15. As of the third quarter 2016, BOP owed the royalty unit investors \$3,320,577.49.

16. Through the date of the hearing, BOP has timely made all minimum payments due to all royalty unit investors in each of the four offerings.

17. Winkelmann has worked in the securities industry since 1981.

18. Winkelmann has extensive experience in financial services sales, management, administration, compliance, and regulatory relations.

19. Before forming BOP, Winkelmann owned a brokerage firm from 1987 through 2008, and an investment advisory firm from 1988 until 2010.

20. Winkelmann has served as the chairman of the Missouri Securities Industry Association.

21. Winkelmann has served as the treasurer of a publicly traded mutual fund.

22. Winkelmann has served as an expert consultant on securities disputes involving sales practice and disclosures.

23. Winkelmann has passed FINRA exams Series 4, 7, 24, 63, and 66.

24. At the time at issue in these proceedings, Winkelmann understood the importance of regulatory accounting, ethical selling practices, and that ongoing compliance is required in the wealth management industry.

25. From 1986 to 2008, Don Weir and Winkelmann were each 50% shareholders in the financial services firm Winkelmann owned and managed.

26. In September 2008, Winkelmann learned that Weir had apparently misappropriated millions of dollars' worth of gold coins and bullion from Weir's advisory clients.

27. Weir was criminally charged, pled guilty to mail fraud, and was sentenced to 78 months imprisonment. *See U.S. v. Don C. Weir*, Case No. 4:09-cr-149, Docket No. 126 (E.D. Mo. Sept. 30, 2009).

28. Winkelmann was never charged in connection with Weir's scheme.

29. After Weir's crimes came to light, Winkelmann closed the brokerage firm that he and Weir had owned and operated.

30. Winkelmann continued to operate an investment advisory firm, an insurance agency called Longrow Insurance Agency, Inc., and an automatic teller machine company called Blue Ocean ATM, LLC.

31. In June 2010, following a personal health scare involving a cancer diagnosis, and at the advice of his estate planning attorney, Winkelmann formed a family partnership, 23 Glen Abbey Partners, LLC, to own BOP. Winkelmann managed the LLC, which was owned by Winkelmann's wife and children.

32. In April 2009, Winkelmann heard Bryan Binkholder's "Financial Coach" radio show and then reached out to Binkholder. By August 2009, Winkelmann and Binkholder decided to go into business and the two formed BOP, with each owning 50% of BOP.

33. In addition to co-owning BOP, Binkholder was initially a BOP advisory representative.

34. Winkelmann has at all times been BOP's CEO, manager, and Chief Compliance Officer.

35. Winkelmann had ultimate decision-making authority at BOP.

36. As Chief Compliance Officer, Winkelmann was responsible for BOP's compliance program. Winkelmann also developed and approved BOP's compliance manuals. An outside consultant assisted Winkelmann in the preparation of BOP's compliance manuals.

37. Winkelmann reviewed, on at least a monthly basis, BOP's income statements, balance sheets, and statements of cash flow.

38. In the first quarter of 2010, BOP began entering into advisory agreements with its first clients.

39. Prior to forming BOP, both Winkelmann and Binkholder had advisory clients at the separate advisory firms they each owned and operated. When BOP was formed, all of Winkelmann's and some of Binkholder's legacy clients became BOP clients.

40. In January 2010, BOP began sponsoring Binkholder's Financial Coach radio show.

41. Later in 2010, Winkelmann learned that Binkholder was being investigated by Missouri securities regulators. When Winkelmann learned this, he told Binkholder that until the investigation ends, Binkholder needed to rescind his membership in BOP, no longer talk to clients, and no longer "have anything to do with" BOP.

42. In the first quarter of 2011, around the time Winkelmann removed Binkholder as an owner of BOP, Winkelmann conveyed his interest in BOP to 23 Glen Abbey Partners, effective as of January 1, 2010. As a result of that conveyance, 23 Glen Abbey Partners owned 100% of BOP.

43. Once Binkholder stopped being a BOP adviser representative, Winkelmann became the adviser representative of those of Binkholder's legacy clients that had become BOP clients.

44. In 2010, BOP generated \$120,451.74 in advisory fees. That year, it incurred expenses of more than \$198,000 and ended 2010 with a net yearly loss of more than \$36,000.

45. As of December 31, 2010, BOP had \$163.50 in its bank account and \$3,263.50 in total assets. BOP's total liabilities at that time were \$43,654.

46. BOP had \$17,103.63 in its bank account as of January 31, 2011; \$8,806.54 in its account as of February 28, 2011; and \$239.16 in its account as of March 31, 2011.

47. In March 2011 BOP entered into an Exclusive Marketing Agreement with Binkholder as a vehicle for paying Binkholder and driving prospective advisory clients to BOP.

48. BOP did not take into consideration the payments it made to Binkholder under the terms of the Exclusive Marketing Agreement in the computation of the advertising ratio. Payments made to the radio station on which Binkholder's program aired, however, for sponsorship of that program were included as an advertising expense in the computation of the advertising ratio.

49. Winkelmann made the decision not to include payments to Binkholder under the Exclusive Marketing Agreement in the computation of the advertising ratio.

50. As of April 2, 2012, at least seven of the royalty unit holders were not accredited.

51. In anticipation of the royalty unit offerings, Winkelmann engaged the St. Louis, Missouri law firm of Greensfelder Hemker & Gale, P.C. ("Greensfelder"), specifically, Michael Morgan, to assist with those offerings. Mr. Morgan was an experienced attorney who specialized in securities law and regulatory compliance.

52. In addition, Winkelmann also engaged Greensfelder to provide compliance advice to BOP in connection with certain of its day-to-day operations. That included advice regarding the content of certain of BOP's Forms ADV.

53. Winkelmann authored the initial drafts of the royalty unit offering memoranda, which he sent to Greensfelder for it to review and edit. Greensfelder, in fact, reviewed and edited certain drafts of the offering memoranda before they were finalized and distributed to investors.

54. In addition, Greensfelder drafted the subscription agreement that each investor had to execute in order to invest; the cover letter that was used to transmit the offering memoranda and subscription agreement to investors; and the warrant (from the first round offering).

55. After Greensfelder finished its work on the offering memoranda, Winkelmann personally reviewed and approved the final versions of the offering memoranda that BOP circulated to investors, and had ultimate control over the memoranda's content.

56. In late December 2011, Winkelmann learned that the Missouri Division of Securities barred Binkholder from acting as an investment adviser. Winkelmann first saw the bar order on December 27 or 28, 2011.

57. On November 16, 2012, Winkelmann first learned of the federal criminal investigation into Binkholder. Winkelmann learned this when one of his clients emailed Winkelmann a copy of a grand jury subpoena the client had received.

58. When Winkelmann learned of the investigation, he immediately stopped the third offering, suspended payments to Binkholder from BOP under the Exclusive Marketing Agreement, and severed BOP's joint dealings with Binkholder. In 2015, Binkholder pled guilty to four counts of wire fraud, and was sentenced to 108 months imprisonment. *See U.S. v. Binkholder*, Case No. 4:14-cr-247, Docket No. 146 (E.D. Mo. May 15, 2015).

59. Winkelmann provided the fourth offering memorandum to three prospective investors, each of whom had previously purchased royalty units in prior offerings: Bryan Swift, Mike Ursch, and Carrie Gamache.

60. Winkelmann decided when and in what amount BOP should pay him in compensation.

61. The minimum monthly payments to the royalty unit investors under the terms of the offerings were based on a percentage of the cash receipts that BOP received monthly. Those cash receipts were computed prior to any expenses being deducted, including any compensation that BOP paid to Winkelmann.

62. Winkelmann decided whether to pay the royalty units the minimum monthly percentage of cash receipts that were due under the terms of the offerings or to use his sole discretion to increase the percentage.

63. Part of the way that Winkelmann received compensation from BOP was through payments made from BOP to 23 Glen Abbey Partners.

64. In 2012, BOP paid 23 Glen Abbey Partners \$125,000 as compensation for Winkelmann's services to BOP. In 2013, BOP paid 23 Glen Abbey Partners \$182,000 as compensation for Winkelmann's services to BOP, and BOP paid Winkelmann an additional \$7,200 in salary. In 2014, BOP paid Winkelmann \$227,557 in compensation.

65. While BOP had written policies and procedures relating to the disclosure of conflicts of interest, BOP never implemented any written policies or procedures specifically relating to disclosure of conflicts of interest arising out of the royalty unit offerings.

66. Winkelmann has been aware of the custody rule since long before 2011.

67. Under the terms of the royalty unit offerings, investors were entitled to a minimum percentage of BOP's monthly cash receipts. From May 2011 through May 2012, BOP's practice was to accrue in BOP's bank account the percentage of cash receipts due the investors and then pay the accrued amounts on a monthly basis.

68. In May 2012, BOP altered this practice by accruing the amounts due to the investors on a monthly basis but paying those amounts on quarterly basis.

69. Winkelmann signed, controlled the contents of, and caused to be filed with the Commission BOP's Forms ADV.

70. Prior to February 2015, BOP did not (a) maintain royalty unit investors' funds in a separate account for each investor under that client's name, or in accounts that contain only the investors' funds under BOP's name as agent or trustee for the investors; (b) notify each royalty unit investor in writing of the qualified custodian's name, address, and the manner in which the investor's funds were held; (c) have a reasonable basis, after due inquiry, for believing that the qualified custodian sent account statements directly to each royalty unit investor at least quarterly; or (d) have an independent public accountant perform a surprise examination of the royalty unit investors' funds which BOP held in its operating account.

71. Winkelmann was ultimately responsible for BOP's compliance program. Winkelmann was also responsible for implementing and monitoring BOP's policies and procedures related to custody.

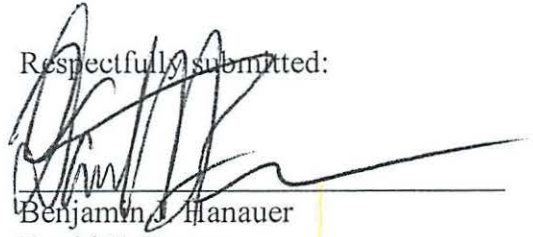
72. In 2011, BOP's gross profits, excluding proceeds of the royalty unit offering, were \$330,206.63. BOP's total expenses for 2011 were \$773,687.69. Notwithstanding that net loss, BOP made all minimum payments to the royalty unit holders.

73. In 2012, BOP's gross profits, excluding proceeds of the royalty unit offerings, were \$578,382.37. BOP's total expenses for 2012 were \$1,241,933.35. Notwithstanding that net loss, BOP made all minimum payments to the royalty unit holders.

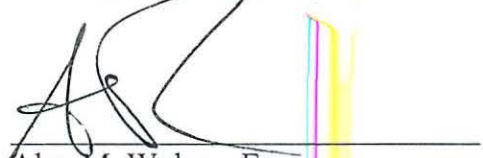
74. In 2013, BOP's gross profits, excluding proceeds of the royalty unit offerings, were \$736,235.79. BOP's total expenses for 2013 were \$658,787.48. BOP made all minimum payments to the royalty unit holders in 2013.

Dated: November 14, 2016

Respectfully submitted:



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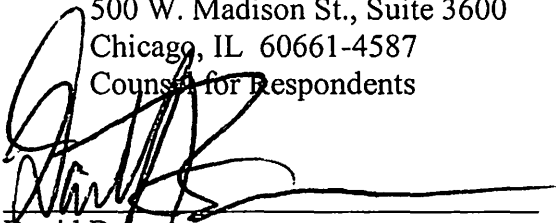
CERTIFICATE OF SERVICE

David Benson, an attorney, certifies that on November 14, 2016, he caused a true and correct copy of the foregoing The Parties' Factual Stipulations to be served on the following by overnight delivery and email:

Honorable Jason S. Patil
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