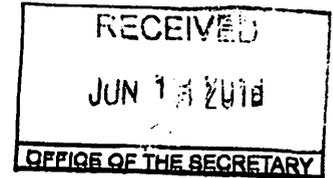


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



**In the Matter of:**

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

**Respondents.**

ADMINISTRATIVE PROCEEDING  
File No. 3-17253

**RESPONDENTS' MOTION FOR  
MORE DEFINITE STATEMENT**

**Introduction**

Pursuant to Rule 220(d) of the SEC Rules of Practice, and concurrent with the filing of their Answer, Respondents James A. Winkelmann, Sr. and Blue Ocean Portfolios, LLC request that the Administrative Law Judge issue an order requiring the Securities and Exchange Commission to disclose the factual bases regarding all alleged and unidentified "other false and misleading statements" that Winkelmann supposedly made to his advisory clients, as alleged in Paragraph 16 of the Order Instituting Administrative Cease-and-Desist Proceedings ("OIP"). The Commission's failure to disclose the factual bases for all of its significant fraud charges has prejudiced Respondents' ability to defend themselves against the charges.

**Facts**

On or about May 19, 2016, the Commission instituted this proceeding against Respondents, wherein the Commission alleged that Respondents violated Sections 17(a)(1), (a)(2), (a)(3) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Investment Advisors Act of 1940. On page 9 of the OIP, the Commission ordered, among other things, Respondents to "file an Answer to the allegations contained in [the OIP.]"

Paragraph 16 of the OIP contains the following allegations:

In addition to the misrepresentations contained in the offering memoranda, Winkelmann made *other false and misleading statements* to his advisory clients. *For instance*, Winkelmann misrepresented the success of the Royalty Units offerings to prospective investors, including by sending an email to an advisory client in which Winkelmann materially overstated, by over 85%, the amounts earlier Royalty Unit investors had been repaid. (Emphasis added.)

The OIP, however, fails to identify: (1) the “other false and misleading statements” that Winkelmann supposedly made; (2) when he supposedly made the unidentified statements; (3) how he supposedly made the unidentified statements (*i.e.*, orally or in a specific document); and (4) to whom he supposedly made the unidentified statements. While the OIP identifies one “instance” when Winkelmann allegedly made false statements, it fails to identify if there are any other instances. Further, the OIP fails to identify any of the specifics concerning Winkelmann’s supposed misrepresentations in the specific instance identified in Paragraph 16, such as how he supposedly misrepresented the success of the offerings, when he supposedly did that, and to whom he supposedly made the unidentified misrepresentations.

### **Law & Analysis**

In proceedings, like this one, where the OIP directs that an answer be filed, Rule 200(b)(3) of the SEC Rules of Practice provides that the OIP “shall set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto.” 17 C.F.R. §201.200(b)(3). It is well settled that respondents in administrative proceedings must be sufficiently informed of the charges against them so that they may adequately defend themselves against the charges. *In the Matter of W. Pac. Capital Mgmt., LLC & Kevin James Orourke*, Release No. 691 (S.E.C. Release No. Feb. 7, 2012); *Charles M. Weber*, 24 S.E.C. 79 (1953). While respondents are not entitled to disclosure of the Commission’s evidence prior to the

hearing, they are, however, entitled to disclosure of the claims made against them, so that they may prepare and defend themselves against the claims. *In the Matter of W. Pac. Capital Mgmt., LLC & Kevin James Orourke*, Release No. 691 (S.E.C. Release No. Feb. 7, 2012); *In the Matter of David F. Bandimere & John O. Young*, Release No. 749 (S.E.C. Release No. Feb. 11, 2013).

The allegations in paragraph 16 fail to sufficiently set forth the charges against Respondents in order to allow Respondents to adequately respond to the charges or prepare its defense. Paragraph 16 references one particular “misrepresentation” while insinuating the existence of other, unidentified and unascertainable “misrepresentations” that the Commission intends to pursue. The Commission is required to disclose the unidentified “misrepresentations” with particularity to enable Respondents to defend themselves against the claims of misrepresentations.

Respondents do not seek revelation of the Commission’s evidence, but simply request a clear statement of the factual grounds for its significant “misrepresentation” claims. Without such a statement, Respondents will be unable to sufficiently identify the claims asserted against them, and prepare a defense to the claims.

### **Conclusion**

WHEREFORE, Respondents respectfully request entry of an order requiring the Commission to disclose the factual bases regarding all alleged and unidentified “other false and misleading statements” that Winkelman supposedly made to his advisory clients, as alleged in Paragraph 16 of the OIP, including all supposed misrepresentations, when the supposed misrepresentations were made, how they were supposedly made, and to whom they were supposedly made.

Dated: June 10, 2016

ULMER & BERNE LLP

A large, stylized handwritten signature in black ink, appearing to read 'Michael A. Gross', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2016, I served a copy of the **RESPONDENTS' MOTION FOR MORE DEFINITE STATEMENT**, addressed as follows:

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

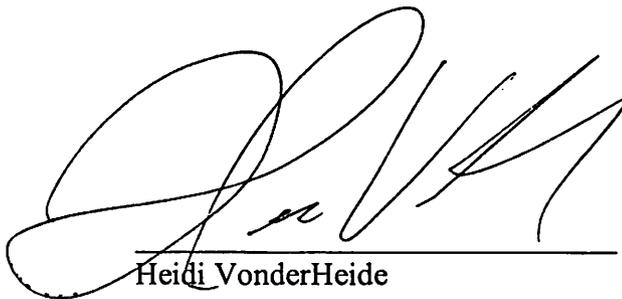
Brent J. Fields, Secretary  
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