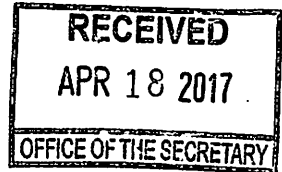


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**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

**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 CROSS-  
PETITION FOR REVIEW**

Pursuant to Commission Rule of Practice 410(b), the Division of Enforcement ("Division") hereby files a cross-petition for review of the Initial Decision in this matter. Should the Commission grant the petition for review filed by Respondents James A. Winkelmann, Sr. ("Winkelmann") and Blue Ocean Portfolios, LLC ("BOP"), the Division respectfully requests that the Commission also review the following aspects of the Initial Decision:

1. The erroneous conclusion that Respondents did not violate the antifraud provisions of the Securities Act of 1933 ("Securities Act"), Securities Exchange Act of 1934 ("Exchange Act"), and Investment Advisers Act of 1940 ("Advisers Act")<sup>1</sup> by failing to disclose the Missouri investment adviser bar imposed against Bryan Binkholder – who co-founded BOP with Winkelmann, who played a central role in BOP's advertising and marketing efforts, and who Respondents prominently featured in the

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<sup>1</sup> Those provisions, collectively referred to herein as the "Antifraud Provisions," are Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Sections 206(1) and 206(2).

offering materials at issue in these proceedings – to BOP royalty unit investors and potential investors.

2. The erroneous conclusion that Respondents did not violate the Antifraud Provisions by misrepresenting the “alignment” and lack of conflicts between Winkelmann’s and the royalty unit investors’ interests, even though the Initial Decision determined that those representations were false and/or misleading. Regarding such misstatements, the Initial Decision erroneously concluded that Respondents sustained the defense of good faith reliance on counsel for representations to the royalty unit investors who were not BOP advisory clients.
3. The erroneous failure to conclude that Winkelmann’s correspondence with advisory clients and BOP royalty unit investors – in which Winkelmann materially misrepresented the amount of money BOP had repaid royalty unit investors and the amount of money BOP had raised in the royalty unit offerings – violated the Antifraud Provisions.
4. The erroneous conclusion that Respondents did not violate the Antifraud Provisions by making misrepresentations and omissions regarding BOP’s “advertising ratio,”<sup>2</sup> a business performance metric the royalty unit offering materials represented was the “key driver” of BOP’s business and would impact the pace of investor returns. Specifically, the Initial Decision erred by concluding that the following did not violate the antifraud provisions:

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<sup>2</sup> Respondents also referred to the advertising ratio as the “advertising conversion rate” or “advertising factor.”

- a. Respondents' representations regarding BOP's 2011 advertising ratio contained in the second, third, and fourth offering memoranda, and in email from Winkelmann to royalty unit investors.
- b. Respondents' failure to disclose that BOP changed the methodology purportedly used to calculate the advertising ratio disclosed to investors in the offering memoranda.
- c. Respondents' failure to disclose that Winkelmann "cherry picked" from multiple ratios BOP calculated and chose to disclose to investors ratios that made BOP look better while not disclosing ratios that made BOP look worse.

The above-described aspects of the Initial Decision embody findings or conclusions of material fact that are clearly erroneous, conclusions of law that are erroneous, and/or an exercise of discretion or decision of law or policy that is important and that the Commission should review.

WHEREFORE, should the Commission grant Respondents' Petition for Review, the Division of Enforcement respectfully requests that the Commission grant its cross-petition for review of the issues described herein.

Dated: April 17, 2017

Respectfully submitted:



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