

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10370 / June 15, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 80945 / June 15, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4715 / June 15, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32681 / June 15, 2017

Admin. Proc. File No. 3-17253

In the Matter of

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

ORDER GRANTING LEAVE TO ADDUCE ADDITIONAL EVIDENCE

Blue Ocean Portfolios, LLC, a registered investment adviser, and its principal, chief executive officer, and chief compliance officer, James A. Winkelmann, Sr., appeal from an initial decision of an administrative law judge finding that they violated antifraud and other provisions of the federal securities laws in the course of offering royalty units in Blue Ocean Portfolios to their advisory clients.¹ The law judge entered a cease-and-desist order against respondents, barred Winkelmann from the securities industry, and ordered Winkelmann to pay disgorgement of \$415,000, plus prejudgment interest, and a civil money penalty of \$187,500.²

In the initial decision, the law judge determined that respondents failed to prove they relied on the advice of counsel that they could sell royalty units to their advisory clients without violating their fiduciary duties. The law judge found that there was insufficient documentary

¹ *James A. Winkelmann, Sr., and Blue Ocean Portfolios, LLC*, Initial Decision Release No. 1116 (Mar. 20, 2017), 2017 WL 1047106, at *1, 46-63.

² *Id.* at *1, 64-71.

evidence of respondents' counsel's advice on the topic and that it was "not conceivable" that counsel would have "blessed" the offering without it.³

On May 19, 2017, respondents filed a motion for leave to adduce a redlined MS Word document ("Redlined Letter"), dated March 24, 2011, along with an affidavit authenticating the Redlined Letter. Respondents assert that the Redlined Letter is material

because it demonstrates that, contrary to the findings in the Initial Decision, Mr. Winkelmann and Blue Ocean's counsel . . . was, in fact, specifically aware that Blue Ocean advisory clients would be included in the offering and that he [counsel] "blessed" that activity. This information is a definitive defense to the Division's claim—and the Initial Decision's finding—that Mr. Winkelmann acted with scienter.

Respondents further contend that they had reasonable grounds for not adducing the Redlined Letter previously because it "became important only in light of the Initial Decision's erroneous finding that 'there is nothing at all in writing' demonstrating [counsel's] awareness or advice."

Rule 452 of the Commission's Rules of Practice provides that a party may file a motion for leave to adduce additional evidence that shows that the evidence is "material and that there were reasonable grounds for failure to adduce such evidence previously."⁴ The Division of Enforcement takes no position on respondents' motion. Under the circumstances, we have determined to grant the motion.

Accordingly, it is ORDERED that the motion for leave to adduce additional evidence filed by James A. Winkelmann, Sr., and Blue Ocean Portfolios, LLC, is granted.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

³ *Id.* at *61.

⁴ 17 C.F.R. § 201.452.