

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 6736 / February 26, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-15006

In the Matter of	:	
	:	
RAYMOND J. LUCIA COMPANIES, INC., and	:	ORDER
RAYMOND J. LUCIA, SR.	:	

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, on September 5, 2012. On July 8, 2013, an Initial Decision imposed various sanctions on Respondents, who appealed a series of adverse decisions, eventually reaching the Supreme Court. *See Lucia v. SEC*, 138 S. Ct. 2044 (2018) (reversing and remanding); 736 F. App'x 2 (D.C. Cir. 2018) (setting aside Commission decision and remanding to Commission for a new hearing).¹ The hearing is scheduled to commence on May 26, 2020. Under consideration are: (1) Respondents' Motion for Stay Pending Appeal and, in the Alternative, for Certification for Interlocutory Appeal; and (2) the Division of Enforcement's Opposition.

Respondents' Motion renews their previous requests to stay this proceeding pending adjudication of constitutional objections in United States District Court and, alternatively, to certify an unfavorable ruling to the Commission for interlocutory review. *See Raymond J. Lucia Cos.*, Admin. Proc. Rulings Release Nos. 6628, 2019 SEC LEXIS 1744 (July 15, 2019); 6652, 2019 SEC LEXIS 2003 (Aug. 8, 2019) (ruling on previous requests).

In urging that the proceeding be stayed pending the outcome of *Raymond J. Lucia Cos. v. SEC*, No. 18-cv-02692 (S.D. Cal.), *appeal pending*, No. 19-56101 (9th Cir.), Respondents renew their argument that the undersigned is presiding over the proceeding in violation of Article II of the United States Constitution because she is unconstitutionally insulated from removal, an issue left open by the Supreme Court. *See Lucia*, 138 S. Ct. at 2050 n.1. This argument is unavailing for

¹ Accordingly, the Commission ordered that Respondents "be provided with the opportunity for a new hearing before an ALJ who did not previously participate in the matter"; the proceeding was reassigned to the undersigned. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058, at *2 (Aug. 22, 2018); Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264 (C.A.L.J. Sept. 12, 2018).

the reasons stated previously. *Lucia*, 2019 SEC LEXIS 1744, at *11-12; 2019 SEC LEXIS 2003, at *4-5. Likewise, the reasons for rejecting the stay request and for declining to certify the ruling to the Commission for interlocutory review remain valid. *Lucia*, 2019 SEC LEXIS 1744, at *12-13; 2019 SEC LEXIS 2003, at *3-6. Respondents point to a ruling by the U.S. Court of Appeals for the Fifth Circuit in a case similarly situated to *Raymond J. Lucia Cos. v. SEC* in urging that this proceeding be stayed. *Cochran v. SEC*, No. 19-10396 (5th Cir. Sept. 24, 2019) (enjoining administrative proceeding pending appeal of District Court's declining to enjoin proceeding). However, any support that ruling offers to Respondents' arguments has been negated: the U.S. Court of Appeals for the Ninth Circuit denied Respondents' motion for an injunction of the *instant* proceeding pending appeal. *Raymond J. Lucia Cos. v. SEC*, No. 19-56101 (9th Cir. Jan. 23, 2020). For the foregoing reasons, Respondents' Motion will be denied.

IT IS SO ORDERED.

/s/ Carol Fox Foelak

Carol Fox Foelak

Administrative Law Judge