

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 6735 / February 24, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-15006

In the Matter of

RAYMOND J. LUCIA COMPANIES, INC., and :
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, 2012.¹ The hearing is scheduled to commence on May 26, 2020. Under consideration are Respondents’ Motion for More Definite Statement and the Division of Enforcement’s Opposition.

The OIP alleges that Respondents violated antifraud and recordkeeping provisions of the Advisers Act in connection with their investment strategy as discussed on a daily radio program, in seminars, and on websites. The OIP alleges that the strategy called for investors seeking a secure retirement income to divide their funds into three “buckets”: safe, liquid assets; moderately safe assets with a somewhat higher potential for growth; and assets with the greatest risk and the most potential for long-term growth, such as common stocks and REITs; the investors were to use income from the liquid bucket for their current needs until it was exhausted and then reallocate their assets. The OIP further alleges that Respondents’ claim that they had backtested the strategy was at least exaggerated and included a (disclosed) hypothetical 3% inflation rate for historical periods that was rosier than the actual historical inflation rate (which was available), while using actual historical data for returns on stocks and bonds, but using hypothetical rates of return for REITs, which was not disclosed. The OIP also alleges that Respondents failed to reallocate assets or take advisory fees into account in their backtesting,

¹ 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 Raymond J. Lucia Cos.*, 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). 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).

thus leading to better apparent results. The OIP alleges that these alleged misrepresentations were in a slideshow that Respondents used to explain their strategy.

Respondents seek a more definite statement concerning how, when, and to whom they allegedly made actionable statements. With reference to the alleged failure to keep accurate books and records related to advertisements for managed accounts or securities recommendations, Respondents seek a more definite statement as to when, where, how, and to whom those advertisements were issued. In its Opposition, the Division states that because the case involves advertisements of Respondents' services using the slideshow, it is the content of the advertisement that is at issue, and not the identity of every person who might have seen the advertisement, and that the OIP, at ¶¶ B.14-16 and C.19-27, describes the alleged misrepresentations in detail. The Division also believes that Respondents have records of the attendees at their seminars. With reference to the books and records charge, the Division states that the OIP, at ¶¶ B.5, C.19-27, and D.28, specifically identifies the books and records as two spreadsheets (referred to as the 1966 Spreadsheet and the 1973 Spreadsheet) and alleges that the spreadsheets failed to provide support for the advertised results of their investment strategy as described in the slideshow. The Division states that a copy of the slideshow and the 1966 and 1973 Spreadsheets were among the documents made available to Respondents pursuant to 17 C.F.R. § 201.230 on September 18, 2012.

As the parties agree, respondents are entitled to be sufficiently informed of the charges against them so that they may adequately prepare their defense. Respondents argue that allegations that are vague, ambiguous, and generalized do not meet this standard, while the Division argues that a respondent is not entitled to a disclosure of evidence in advance of the hearing.²

² In the past, *Morris J. Reiter*, Exchange Act Release No. 6108, 1959 SEC LEXIS 588 (Nov. 2, 1959); *accord J. Logan & Co.*, Exchange Act Release No. 5867, 1959 SEC LEXIS 412 (Feb. 3, 1959); *Charles M. Weber*, Exchange Act Release No. 4830, 1953 SEC LEXIS 299 (Apr. 16, 1953), was frequently cited in orders denying motions for more definite statement as the leading Commission case on this topic. *Reiter* stands for the proposition that “appropriate notice of proceedings is given [in the OIP] when the respondent is sufficiently informed of the nature of the charges against him so that he may adequately prepare his defense, and that he is not entitled to a disclosure of evidence.” *Id.* at *5. The Division does not cite *Reiter* in its Opposition but cites several rulings by Administrative Law Judges that rely on *Reiter*, and/or *Logan* and *Weber*. The *Reiter* ruling occurred long before the Commission adopted the deadlines in 17 C.F.R. § 201.360. *See* Rules of Practice, 60 Fed. Reg. 32738, 32742-43, 32771 (June 23, 1995), *as amended*, 81 Fed. Reg. 50212, 50213, 50239-40 (Jul. 29, 2016). Thus, the Commission’s statement, “[s]hould it appear at the hearing that additional time is required to enable registrant to prepare his defense with respect to evidence introduced by the Division, he may, of course, apply for a continuance” should no longer be relied on. *Reiter*, 1959 SEC LEXIS 588, at *6; *accord Logan*, 1959 SEC LEXIS 412, at *8; *Weber*, 1953 SEC LEXIS 299, at *5. Further, the Commission – which had recognized that, at times, even when “not legally required,” it was “appropriate” to direct the disclosure of specified information, *Murray Sec. Corp.*, Exchange Act Release No. 5510, 1957 SEC LEXIS 367, at *3-4 (May 2, 1957) – codified, post-*Reiter*, greater openness toward providing more information to respondents as they prepare their defense. *See*

The Division has clarified that the crux of its case is the alleged misrepresentations in the slideshow.³ In view thereof, if the Division has not already done so, it should advise Respondents of the dates within the statute of limitations period⁴ of seminars at which the slideshow was used. The motion for a more definite statement is otherwise denied.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

Miscellaneous Amendments, 37 Fed. Reg. 23827 (Nov. 9, 1972) (granting the ALJ the authority to order prehearing briefs, the exchange of exhibit and witness lists, and conferences “to be used in the exercise of his sound discretion where it appears that under all circumstances the use of some or all of these procedures would make a substantial contribution to the settlement or expeditious settlement of issues.); Rules of Practice, 60 Fed. Reg. 32738, 32741, 32763-65 (adopting 17 C.F.R. § 201.232(a), which authorizes subpoenas *duces tecum*); 81 Fed. Reg. 50212, 50215, 50236-38 (amending 17 C.F.R. § 201.233 to authorize depositions).

³ This answers Respondents’ concern that the OIP alleges that they made false or misleading statements either through the radio shows, websites, seminars, or books without identifying the format, dates, or to whom the statements were made. The slideshow was used at seminars, the dates of which are known to Respondents.

⁴ As provided in 28 U.S.C. § 2462, the applicable statute of limitations is the five-year period preceding the September 5, 2012, date of the OIP.