UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15006

In the Matter of **Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr.,** **Respondents.**

RESPONDENT RAYMOND J. LUCIA, SR.
MOTION FOR RELIEF FROM BARS

I. INTRODUCTION

Respondent Raymond J. Lucia, Sr. moves, pursuant to Securities and Exchange Commission ("Commission" or "SEC") Rule of Practice 154, 17 C.F.R. § 201.154, to lift the industry bars imposed on him in the June 16, 2020, Settlement Order, which barred him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and prohibited him from serving in various capacities with a registered investment company. This relief is warranted in the public interest and aligns with principles of fairness, as Mr. Lucia, now 75 years old, has faced significant professional and personal challenges stemming from the 2012 administrative proceedings, highlighted and exacerbated by the Supreme Court's 2018 ruling in his favor in *Lucia v. SEC*, 585 U.S. 237 (2018), which necessitated a new hearing due to constitutional defects in the original process. Having complied with the terms of the settlement, including payment of a $25,000 civil penalty, and given his distinguished career as a financial planner, author, and broadcaster, coupled with the passage of over 15 years since the alleged conduct, Mr. Lucia respectfully seeks to reengage with the financial industry to contribute his expertise in a manner consistent with investor protection. Notably, the terms of Mr. Lucia's 2020 Settlement Order are highly unusual (if not one-of-a-kind), including a *backdated* start date for determining the three year re-entry application period, starting from an effective date of September 3, 2015 – a tacit acknowledgement that Mr. Lucia posed no threat to the public even at that time of the Settlement Order. While Mr. Lucia has no intention of engaging in traditional investment adviser or broker activities, he hopes to engage in mentoring, training, recruiting, and informational public speaking possibly while employed by an adviser or broker. Given the breadth and poorly defined limit of the bars, Mr. Lucia has been unable to secure even limited employment in or adjacent to the securities industry.

II. ARGUMENT

A. Background

1. Procedural Posture

On September 5, 2012, the Commission initiated administrative and cease-and-desist proceedings against Raymond J. Lucia, Sr. and Raymond J. Lucia Companies, Inc. (RJL), alleging violations of the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940. The proceedings centered on allegedly misleading presentations of the "Buckets of Money" retirement income withdrawal strategy at retirement planning seminars from 2006 to 2010, specifically the use of the term "backtest" to describe hypothetical returns based on disclosed assumptions and historical data. At the time, Mr. Lucia was a respected San Diego-based financial adviser, author, and broadcaster with an unblemished 30-year career, known for promoting an academically recognized retirement strategy that advised spending from safer "buckets" (such as bonds) first and riskier "buckets" (such as equities) last to optimize growth and security. The SEC objected to his use of the term "backtest," despite its widespread use throughout the financial and retirement planning industries with identical or bolder assumptions and its repeated written approvals by his FINRA-registered broker dealers, with (prior to the SEC's career-ending press release announcing its action) no complaints from the nearly 50,000 investors who attended his seminars. Upon the SEC's objection in 2010, Mr. Lucia immediately ceased using the term and withdrew all related promotional materials.[1] Nevertheless, the SEC's 2012 charges, accompanied by a press release branding him a fraudster, devastated his reputation, led to the cancellation of his radio and TV contracts, and destroyed his family business, leaving him financially and professionally ruined. *Id*.

[1] *See* Declaration of Respondent Raymond J. Lucia, Sr., In Support of Motion for Relief from Bars ("Lucia Declaration") submitted concurrently herewith.

An Administrative Law Judge (ALJ) issued an initial decision in the administrative proceeding on July 8, 2013, imposing sanctions, including industry bars and civil penalties, despite acknowledging no investors suffered losses. The SEC's process was marred by procedural unfairness, including witness intimidation that prevented Mr. Lucia's clients from testifying on his behalf and the ALJ's admission of bias, acknowledging that he had never ruled against the SEC. To justify his initial decision, the ALJ adopted his own definition of "back-test" and then applied that new definition to Mr. Lucia retroactively. The Commission upheld the ALJ's initial decision on September 3, 2015, by a divided 3-2 vote (with a dissenting opinion from Commissioners Daniel Gallagher and Michael Piwowar), barring Mr. Lucia from association with investment advisers, brokers, or dealers, revoking RJL's and Mr. Lucia's registrations, and imposing civil penalties of $250,000 on RJL and $50,000 on Mr. Lucia.

The dissenting opinion of Commissioners Gallagher and Piwowar ("Gallagher/Piwowar Dissent") underscores the likelihood that Mr. Lucia's case would have had a different outcome had he been able to present his defense to an impartial Article III judge and jury.[2] Commissioners Gallagher and Piwowar argued that the SEC majority's opinion was overly punitive, creating "from whole cloth specific requirements for advertisements that include the word 'backtest,'" despite the absence of any statutory or regulatory definition of the term. Gallagher/Piwowar Dissent at 2. They emphasized that Mr. Lucia's slideshow presentations, which clearly disclosed the use of an assumed 3% inflation rate, were not misleading, stating, "Given the clear disclosure of the inflation rate assumptions in the slideshow presentation, we find that a reasonable investor would not have believed that actual historical rates of inflation

[2] Available at https://www.sec.gov/newsroom/speeches-statements/dissenting-opinion-gallagher-piwowar

were used in the backtests." *Id*. at 3. The Gallagher/Piwowar dissent highlights that a reasonable trier of fact in an Article III court, applying an objective standard of materiality, could easily have found Mr. Lucia's use of the word "backtest" consistent with industry practices and not deceptive, potentially sparing him the severe sanctions imposed.

Further, the dissenting Commissioners criticized the SEC majority for "needlessly engag[ing] in 'rulemaking by opinion,'" which retroactively imposed a novel definition of "backtest" that required the use of actual historical rates, a standard not previously established. *Id*. at 1. The dissenting Commissioners noted that Mr. Lucia's presentations were designed to illustrate the impact of inflation and market volatility on retirement savings, with clear disclaimers that the scenarios were hypothetical, reinforcing his good-faith intent. *Id*. at 2-3. Had Mr. Lucia been able to present this defense to a federal judge and jury, as now required under *Jarkesy* as discussed in greater detail below, he could have demonstrated that his conduct did not constitute fraud, particularly given the lack of investor harm or complaints from his approximately 50,000 seminar attendees. The dissenting Commissioners' support for Mr. Lucia's position, coupled with their recognition of "important issues" regarding the unconstitutional appointment of the ALJ under the Appointments Clause, *id*. at 3, powerfully illustrates that the SEC's administrative process denied Mr. Lucia a fair opportunity to litigate his case, warranting relief from the industry bars to rectify this injustice.

The D.C. Circuit affirmed the Commission's split 3-2 decision in 2016, and an *en banc* rehearing was denied in 2017 by a 5-5 tie.

The case took a significant turn when the Supreme Court, in *Lucia v. SEC*, 585 U.S. 237 (2018), ruled that the SEC's ALJs were not constitutionally appointed (as dissenting Commissioners Gallagher and Piwowar observed might be the case in their dissent to the

Commission's decision), invalidating the prior proceedings and remanding for a new hearing before a properly appointed ALJ or the Commission itself. The Supreme Court's decision highlighted the profound procedural disadvantages Mr. Lucia faced in an administrative proceeding when compared with a proceeding in federal court. These procedural disadvantages resulted in the SEC having a 86% success rate before its in-house ALJs compared to 70% in federal courts[3] and the agency's use of coercive tactics,[4] such as demanding extensive financial records from Mr. Lucia's supportive clients, deterring their testimony.

Having prevailed in the Supreme Court after many years of confronting an unconstitutional administrative proceeding, on November 29, 2018, Mr. Lucia moved to dismiss the renewed administrative proceeding, arguing that the SEC violated mandatory statutory and regulatory deadlines, including the requirement to hold a hearing within 60 days of the Order Instituting Proceedings (OIP), and arguing that the proceedings violated Due Process requirements and Article II of the Constitution. The motion also sought a stay pending constitutional review in federal court. On August 21, 2019, the U.S. District Court for the Southern District of California issued a final judgment against Mr. Lucia, who promptly appealed to the Ninth Circuit.

With his appeal pending before the Ninth Circuit (in the middle of the COVID pandemic), on June 16, 2020, Mr. Lucia, who by that time had exhausted his financial and

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[3] *See*, Jean Eaglesham, *SEC Wins with In-House Judges*, Wall St. J. (May 6, 2015), https://www.wsj.com/articles/sec-wins-with-in-house-judges-1430965803.

[4] Sarah N. Lynch, *SEC to file some insider-trading cases in its in-house court*, REUTERS (June 11, 2014) (detailing procedural shortcomings in administrative proceedings and quoting then Director of the SEC's Enforcement Division, "There have been a number of cases in recent months where we had threatened administrative proceeding . . . and they settled"), https://www.reuters.com/article/us-sec-insidertrading/sec-tofile-some-insider-trading-cases-in-its-in-house-courtidUSKBN0EM2DI20140611.

emotional ability to continue to fight, accepted the Hobson's Choice presented to him by the SEC and reached a settlement, with Mr. Lucia neither admitting nor denying the SEC's allegations and agreeing to dismiss his Ninth Circuit appeal. The settlement imposed a cease-and-desist order, barred Mr. Lucia from association with various securities-related entities, and allowed him to apply for reentry after three years from September 3, 2015. (Notably, because of the unique backdated start date for the three-year period, Mr. Lucia was immediately eligible to apply for reentry on the day the Settlement Order was issued). Mr. Lucia was ordered to pay a $25,000 civil penalty, with $10,000 due within ten days and the remainder within twelve months. The SEC's initial press release and the prolonged proceedings left Mr. Lucia, then over 70 years old, with his health impaired, his savings depleted, and his reputation irreparably damaged, transforming a time-limited bar into a *de facto* permanent exclusion from his profession—indeed any occupation given the prevalence of background checks for nearly any line of work. *See* Lucia Declaration submitted concurrently herewith. Since the settlement, Mr. Lucia has complied with its terms, including full payment of the penalty. *Id*. The three-year bar period, starting from September 3, 2015, expired on September 3, 2018 (nearly 7 years ago), allowing Mr. Lucia to seek relief from the industry bars to resume his professional activities in the financial industry.

2. Deprivation of Opportunity to Present Merits Defense Before Article III Court

The Supreme Court's ruling in *Lucia* invalidated the original administrative proceedings against Mr. Lucia due to the unconstitutional appointment of the ALJ, underscoring the significant procedural disadvantages he faced. By proceeding as it did, the Commission unconstitutionally prevented Mr. Lucia from presenting a robust defense on the merits of the allegations—particularly concerning his use of the term "backtest" in his seminar presentations—to an impartial Article III judge or jury, a right later affirmed by the United States

Supreme Court in *SEC v. Jarkesy*, 603 U.S. 109 (2024), which guaranteed a jury trial in securities fraud cases seeking civil penalties. Mr. Lucia had also challenged his ALJ's unconstitutional multiple removal protections but was denied jurisdiction by the district court. His right to bring that challenge in district court was later vindicated by a *unanimous* opinion by the United States Supreme Court in *Axon v. FTC/Cochran v. SEC*, 598 U.S. 175 (2023). Had the SEC not denied Mr. Lucia these constitutionally guaranteed rights, he could have demonstrated to an impartial judge and/or jury that his conduct did not constitute fraud and that his use of "backtest" was neither misleading nor inconsistent with industry standards.

Mr. Lucia's defense, which he was unable to litigate in a federal court, centered on the argument that his use of "backtest" in seminar presentations was not deceptive. The term, undefined in securities laws, described hypothetical illustrations of the "Buckets of Money" strategy, accompanied by clear and repeated disclaimers. His slideshows explicitly stated that "rates of return are hypothetical in nature" and "this is a hypothetical illustration and is not representative of an actual investment." Mr. Lucia verbally reinforced these disclaimers, explaining to audiences that the illustrations used assumed rates, such as a 3% or 4% inflation rate, not historical data. Industry practices supported this approach, as similar hypothetical illustrations were used by reputable firms, such as by American Funds, which used hypothetical (rather than historical) inflation data in a promotional brochure clearly stating it was comparing backtests of their mutual funds to the performance of the S&P 500. Mr. Lucia submitted the brochure in evidence. but it was ignored by the ALJ. Similarly, the OIP incorrectly asserted that backtesting must in all instances rely on actual (rather than hypothetical or assumed) data. Moreover, the slides were reviewed by Mr. Lucia's supervising broker-dealers and the SEC's examination staff prior to 2010 without any suggestion that they were misleading, reinforcing

Mr. Lucia's good-faith belief in their propriety. Notably, Mr. Lucia's supervising broker-dealers, who reviewed and approved his public seminars, were never charged with failure to supervise, further underscoring the disproportionality of the action against Mr. Lucia. Critically, no evidence showed investor harm, and none of the approximately 50,000 seminar attendees lodged complaints about the presentations, undermining the SEC's claim of material misrepresentation.

Moreover, in 2008 the SEC itself (in conjunction with FINRA and others) sponsored and promoted a public retirement seminar, 'SEC's Third Senior Annual Summit: Managing Your Income in Retirement,' which is still available on the SEC's website today.[5] This third-party presentation utilizes hypothetical backtesting models illustrating retirement income withdrawal strategies from the years 2000 to 2007, advising attendees to "adjust withdrawals annually for 3% inflation" (rather than using actual inflation rates) and including no disclaimers. The SEC's own dissemination of a presentation nearly identical to the very type of analytical approach used by Mr. Lucia (but without broker compliance approvals and disclaimers) that resulted in a permanent bar is, to be blunt, shockingly unjust. The SEC's administrative process that resulted in the bar prevented Mr. Lucia from presenting this (or any other) defense before a federal court trier of fact.

Mr. Lucia's defense, which could have been compellingly presented to an Article III judge or jury, was stifled by the SEC's unconstitutional administrative process, which coercively pressured Mr. Lucia into the 2020 settlement. The absence of a federal court trial on the merits denied Mr. Lucia the chance to challenge the SEC's interpretation of "backtest" and to demonstrate his compliance with industry norms and the federal securities laws. Granting relief

[5] To this day, the presentation remains available at https://www.sec.gov/investor/seniors/managingyourincome.pdf

from the industry bars now would partially redress this fundamental injustice, allowing Mr. Lucia to resume contributing his expertise to the financial industry under appropriate safeguards, consistent with the public interest.

B. The Commission Should Proceed Under Commission Rule of Practice 154

Mr. Lucia submits this motion pursuant to Commission Rule of Practice 154, which governs motions in administrative proceedings (APs).[6] It is appropriate for the Commission to proceed under Rule 154, rather than Rule 193, for several compelling reasons specific to Mr. Lucia's circumstances.

First, the June 16, 2020, Settlement Order imposing the industry bars on Mr. Lucia does not reference Rule 193, despite the rule being in effect at the time the order was entered.[7] Instead, the order states that any "reapplication for association by Respondent Lucia will be subject to the applicable laws and regulations governing the reentry process," without explicitly cross-referencing Rule 193. This lack of specificity failed to provide clear notice to Mr. Lucia that securing a sponsor, such as an investment adviser or broker-dealer, was a prerequisite for reentry into the industry. Had such a requirement been clearly articulated, Mr. Lucia could have negotiated a settlement more aligned with his understanding that he would be able to resume his professional activities after the three-year bar period, which expired on September 3, 2018. The absence of a Rule 193 reference in the Settlement Order supports proceeding under Rule 154 to address Mr. Lucia's unique request for relief.

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[6] 17 C.F.R. § 201.154.

[7] *Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr.*, Exchange Act Release No. 89078, Advisers Act Release No. 5523, Investment Company Act Release No. 33895, 2020 WL 3272099 (June 16, 2020).

Second, Rule 154 governs motions "except where another rule expressly governs," and Rule 193 does not expressly apply to the circumstances Mr. Lucia currently faces.[8] Mr. Lucia seeks relief beyond the scope of Rule 193, as he is unable to secure a specific U.S.-based sponsor willing to detail the "nature of the supervision" required under Rule 193 due to the public accessibility of his legal history and the stigma associated with the Commission's prior proceedings.[9] The Supreme Court's ruling in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), which invalidated the original proceedings due to constitutional defects in the appointment of the ALJ, further complicates his ability to attract a sponsor, as firms may perceive heightened risk in associating with him despite his compliance with the Settlement Order and his distinguished career. A preliminary determination by the Commission that Mr. Lucia's reentry is consistent with the public interest is necessary to facilitate his ability to secure such sponsorship, making Rule 154 the appropriate framework for this motion.

Third, applying Rule 193 would be fundamentally unfair, as Mr. Lucia was not adequately informed before agreeing to the terms of the settlement that the Rule 193 process is delegated to the Division of Enforcement.[10] At the time of settlement, Mr. Lucia reasonably believed that his right to reapply after three years would allow him to resume his career without the burdensome requirement of obtaining a sponsor under a process controlled by the same Division that prosecuted him. The Commission's rules delegate authority to the Director of the Division of Enforcement to grant or deny Rule 193 applications, but this delegation was not transparently disclosed to Mr. Lucia during settlement negotiations and would be contrary to

[8] Amendments to the Commission's Rules of Practice, Exchange Act Release No. 78319, 2016 WL 3853756, at *32 (July 13, 2016), 81 Fed. Reg. 50,212, 50,229.
[9] 17 C.F.R. § 201.193
[10] 17 C.F.R. § 200.30-4(a)(5)

more recent statements by the Commission to maintain the separation of adjudicatory and enforcement functions.[11] Allowing the Division of Enforcement, which initially sought the bars against Mr. Lucia, to evaluate his request for relief raises concerns about impartiality and conflicts with the principle of separating adjudicatory and enforcement functions, as recently acknowledged by the Commission.[12] Proceeding under Rule 154 ensures a fairer adjudicatory process by allowing the Commission itself to evaluate Mr. Lucia's motion.

Fourth, the Rule 193 process is outdated and ill-suited to modern circumstances, particularly in Mr. Lucia's case. Enacted in 1984 without public comment, Rule 193 was designed for a pre-Internet era when publicity surrounding a settlement was less pervasive. Today, Mr. Lucia's legal history, including the high-profile Supreme Court decision bearing his name, is readily accessible online, creating a chilling effect that deters firms from sponsoring him under Rule 193. The rule's requirement that a sponsoring firm risk potential enforcement action if the individual's job functions evolve further discourages sponsorship, rendering the process impractical. For Mr. Lucia, who has been unable to secure a sponsor despite his compliance with the Settlement Order and his extensive experience as a financial planner, author, and broadcaster, Rule 193 effectively transforms the time-limited bar into a *de facto* permanent exclusion, contrary to the intent of the Settlement Order. The Commission should reconsider the applicability of Rule 193 in light of these changed circumstances and proceed under Rule 154 to provide a more equitable pathway for Mr. Lucia's reentry.

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[11] *Applications by Barred Individuals for Consent to Associate with a Registered Broker, Dealer, Mun. Sec. Dealer, Inv. Adviser or Inv. Co.*, Exchange Act Release No. 20783, 1984 WL 547096, at *1 (Mar. 16, 1984).

[12] Second Commission Statement Relating to Certain Administrative Adjudications (June 2, 2023), www.sec.gov/newsroom/speeches-statements/second-commission-statement-relating-certain-administrative-adjudications.

Finally, Mr. Lucia's circumstances are unique due to the constitutional issues raised in his case, which led to the Supreme Court's landmark decision in *Lucia v. SEC*. The invalidation of the original proceedings and the subsequent settlement reflect a resolution driven by procedural and practical considerations, not an admission of wrongdoing. In fact, while the settlement documents provide that he is neither admitting nor denying wrongdoing, the mandatory gag operates as a permanent prior restraint on exculpatory speech. Settlement Offer, Section VI. The unconstitutionality of these requirements was admirably laid out by Commissioner Hester Peirce in her dissent from the Commission's denial of Mr. Lucia's renewed Petition to Amend the SEC Gag Rule filed on Dec. 20, 2023. Hester Peirce, *Unsettling Silence: Dissent from Denial of Request for Rulemaking to Amend*, 17 C.F.R. §202.5(e), Jan. 30, 2024.[13]

Requiring Mr. Lucia to navigate the Rule 193 process, which was not clearly specified in the Settlement Order and is misaligned with his current employability challenges, would undermine the fairness of the settlement. Rule 154 provides the appropriate mechanism for the Commission to evaluate Mr. Lucia's request for relief in a manner consistent with the public interest and the principles of due process.

C. Recent Developments Demonstrate a Shift in Commission Policy Toward Granting Relief from Bars

Recent legal and administrative developments, including the landmark Supreme Court decision in Mr. Lucia's own case, reflect a significant shift in the Commission's approach to granting relief from industry bars. These changes, driven by enhanced constitutional protections

[13] See also, *SEC v. Novinger*, 40 F.4th 297, 308 (5th Cir. 2022) ("[a] more effective prior restraint is hard to imagine.") (Jones, Duncan, JJ., concurring). *SEC v. Moraes*, No. 22-cv-8343, 2022 WL 15774011 at *3−5 (S.D.N.Y. Oct. 28, 2022).

for respondents and the SEC's evolving policy favoring rehabilitation, strongly support granting Mr. Lucia's motion for relief under Rule 154, as his reentry aligns with the public interest and the Commission's rehabilitative framework.

Over the past several years, a series of Supreme Court decisions has reshaped the constitutional landscape of SEC administrative proceedings, recognizing the significant disadvantages faced by respondents like Mr. Lucia and expanding their procedural protections. These developments, particularly the ruling in Mr. Lucia's own case, provide compelling context for his request for relief.

In *Lucia v. SEC*, 585 U.S. 237 (2018), the Supreme Court directly addressed the administrative proceedings against Mr. Lucia, holding that SEC ALJs were not constitutionally appointed under the Appointments Clause. The Court noted that ALJs exercise "significant discretion" in issuing decisions, including industry bars, which carry profound consequences for respondents. *Id*. at 248-49. This ruling invalidated the initial proceedings against Mr. Lucia, necessitating a new hearing before a properly appointed ALJ or the Commission. The decision not only highlighted the procedural unfairness Mr. Lucia endured but also established a broader precedent for challenging the legitimacy of SEC administrative actions. Very unusually, the Supreme Court also insisted that his retrial not be before the same ALJ:

> And we add today one thing more. That official cannot be Judge Elliot, even if he has by now received (or receives sometime in the future) a constitutional appointment. Judge Elliot has already both heard Lucia's case and issued an initial decision on the merits. He cannot be expected to consider the matter as though he had not adjudicated it before.

ALJ Elliot's due process depredations by that time had been thoroughly documented in the financial press. For Mr. Lucia, the *Lucia* ruling underscores the constitutional defects in the

process that led to his original sanctions, making it imperative for the Commission to grant equitable relief now.

In *SEC v. Cochran* and *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), the Supreme Court further expanded respondents' rights by holding that federal district courts have jurisdiction to hear constitutional challenges to SEC administrative proceedings *before* their conclusion. This eliminated the requirement that respondents endure protracted administrative processes before seeking judicial review, a burden Mr. Lucia himself faced during his multi-year proceedings. Justice Gorsuch's concurrence in *Axon* described such processes as "regulatory extortion," noting that "more than 90 percent" of SEC cases settle due to respondents' inability to outlast the agency's resources. *Id*. at 216.

Most recently, in *SEC v. Jarkesy*, 603 U.S. 109 (2024), the Supreme Court held that the Seventh Amendment guarantees respondents a right to a jury trial when the SEC seeks civil penalties for securities fraud, rejecting the agency's reliance on the "public rights" exception. Justice Gorsuch's concurrence emphasized the importance of "an independent judge and a jury of peers" to ensure fairness. *Id*. at 167. As with the Supreme Court's decision in *Cochran*, Mr. Lucia's settlement came too early to benefit from the Court's protection. Together, these decisions highlight the coercive nature of SEC administrative proceedings, which pressured Mr. Lucia into a 2020 settlement absent the constitutional defenses now available. Had *Cochran* and *Jarkesy* preceded his settlement, Mr. Lucia could have pursued robust constitutional challenges to the proceedings, making it critical for the Commission to consider this evolved legal environment in evaluating his reentry.

In response to these constitutional developments, the SEC has significantly adjusted its enforcement and reentry policies, particularly following *Jarkesy*. In September 2024, the

Commission sought dismissal of all active misconduct proceedings against accountants before its in-house judges, including cases where victory was likely.[14] For instance, in the case of Edward Hackert, the SEC moved to dismiss his administrative proceeding shortly after he updated his federal court constitutional challenge to cite *Jarkesy*, reflecting the agency's caution in pursuing enforcement actions vulnerable to judicial scrutiny.[15] This retreat signals the SEC's recognition that its prior administrative practices may not withstand constitutional review, a concern directly relevant to Mr. Lucia's experience.

More significantly, the SEC has adopted a more permissive approach to reentry applications, as evidenced by recent orders granting relief from bars. In April 2025, the Commission issued two orders granting reentry applications, explicitly abandoning the stringent "extraordinary circumstances" test historically applied to unqualified bars. *See In re Amended Application Filed Under Rule 193 of the Commission's Rules of Practice on Behalf of Roger T. Denha*, Release No. 40-6872; *In re Application on Behalf of Manish Singh*, Release No. 33-11372. In the *Denha* order, the Commission articulated a new policy, stating that "it is in the public interest to allow barred individuals to reenter the industry if their individual circumstances demonstrate rehabilitation and increased risk-controls to prevent recidivism, which will increase investor protection." *Denha* Order at 5.[16] This policy encourages rehabilitation and compliance,

[14] *See* Gillison, Douglas, Reuters, "US SEC abandons in-house malpractice suits after Supreme Court ruling" (Sep. 5, 2024), available here https://www.reuters.com/legal/us-sec-abandons-in-house-malpractice-suits-after-supreme-court-ruling-2024-09-05/.
[15] https://www.sec.gov/files/litigation/opinions/2024/33-11310.pdf
[16] Under the re-entry process preceding the current process, the Commission would "generally" allow re-entry in situations where the designated "time-out" period has expired. *See*, *Applications by Barred Individuals for Consent to Associate With a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company*, Exchange Act Release No. 20783, Investment Company Act Release No. 13839, Investment Advisers Act Release No. 903, 49 Fed. Reg. 12,205, n.23 (Mar. 29, 1984). Available at: https://archives.federalregister.gov/issue_slice/1984/3/29/12202-12207.pdf

recognizing that reentry under robust supervision benefits the public interest. These developments strongly support Mr. Lucia's motion for relief.

D. Granting Mr. Lucia Relief from the Bars Is in the Public Interest

Granting Mr. Lucia relief from the industry bars imposed by the June 16, 2020, Settlement Order is in the public interest, as it aligns with the Commission's evolving policy favoring reentry for individuals who have fulfilled their obligations and pose no ongoing risk to investors. The three-year bar period, effective from September 3, 2015, expired on September 3, 2018—nearly 7 years ago. Throughout this period and since the initial proceedings in 2012, no regulator has suggested any violations of any law by Mr. Lucia, demonstrating his consistent compliance with securities laws and the terms of the Settlement Order, including payment of the $25,000 civil penalty. Allowing Mr. Lucia to reenter the financial industry (to simply associate rather than to engage in the offer or sale of sale of securities) would enable him to contribute his extensive expertise as a financial planner, author, and broadcaster.

The continued imposition of the bars has caused unanticipated and severe damage to Mr. Lucia's professional reputation, rendering him effectively unemployable. Despite settling without admitting or denying the allegations and fulfilling all settlement terms, his BrokerCheck report still reflects language suggesting a lifetime bar (misstating the effective date of the bar and failing to include mitigating information such as the neither-admit-nor-deny nature of the settlement order), deterring broker-dealers and others from hiring him due to perceived regulatory and or reputational risks. *See* Attachment 1 to Lucia Declaration submitted concurrently herewith.

Concretely demonstrating these challenges, a recent attempt by Mr. Lucia to secure a non-regulated, educational role with Chalice, a member-driven benefits platform, was declined. Chalice's CEO, Keith Gregg, a former CEO of First Allied Securities who previously recruited

Mr. Lucia, expressed deep regret that despite Mr. Lucia's valuable expertise and the non-regulated nature of the proposed role, the "reputational cloud created by the outstanding SEC bar order" and the "stigmatizing" effect of the SEC's prior public actions prevented an engagement. Mr. Gregg's letter underscores that the decision was not due to any legal prohibition, but rather the perception of external stakeholders, demonstrating how the bar order continues to impose "non-legal but very real consequences" well beyond the financial services industry, effectively transforming a time-limited bar into a *de facto* permanent exclusion from the financial services industry and beyond, which Mr. Lucia could not have foreseen at the time of settlement. *See* Attachment 2 to Lucia Declaration submitted concurrently herewith.

Finally, Mr. Lucia has faced significant economic hardship, depleting his savings and relying on others for support, further justifying relief to allow him to pursue a legitimate livelihood. This financial strain has been exacerbated by unforeseen family health challenges, including the serious illness of his wife, requiring the employment of full-time help and compelling Mr. Lucia to seek re-entry into the workforce to provide necessary support. His exemplary conduct, including active volunteering, mentoring others, and participation in his church, reflects his commitment to ethical behavior and community service. Granting relief would align with the public interest by allowing Mr. Lucia to resume productive contributions to the securities industry, consistent with the Commission's recent policy shift, as evidenced in *In re Amended Application Filed Under Rule 193 of the Commission's Rules of Practice on Behalf of Roger T. Denha*, Release No. 40-6872 (April 2025), which supports reentry for individuals demonstrating compliance and good character.

The bars' continuation serves no remedial purpose and is punitive rather than protective.

III. CONCLUSION

For the foregoing reasons, Respondent Raymond J. Lucia, Sr. respectfully requests that the Commission grant his motion for relief from the industry bars. This relief is not only warranted by the unique constitutional and procedural injustices Mr. Lucia has endured, but is also consistent with the public interest, the Commission's evolving policies favoring rehabilitation, and principles of fundamental fairness. Mr. Lucia seeks only to reengage with the financial industry in a limited capacity, leveraging his vast experience to contribute positively while fully complying with all regulatory requirements. To deny this motion would be to perpetuate a *de facto* permanent exclusion based on a flawed process, undermining the very rehabilitative goals the Commission now espouses and serving no legitimate remedial purpose.

Dated: July __, 2025

[redacted]

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on the following on July 28, 2025, via the method indicated below:

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Dated: July 28, 2025

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