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.

RESPONDENTS RAYMOND J. LUCIA COMPANIES, INC. AND RAYMOND J. LUCIA, SR.'S PETITION FOR REVIEW OF INITIAL DECISION ON REMAND

December 27, 2013

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Respondents Raymond J. Lucia Companies, Inc. ("RJLC") and Raymond J. Lucia, Sr., through undersigned counsel and pursuant to Rule 410 of the Securities and Exchange Commission's Rules of Practice, respectfully petition the Commission to review the Initial Decision on Remand dated December 6, 2013 (the "Initial Decision") and set aside the relief ordered by the Administrative Law Judge ("ALJ") below as an improper exercise of discretion, based on clearly erroneous conclusions of material fact and erroneous conclusions of law, and tainted by prejudicial errors in the conduct of the proceeding.

I. INTRODUCTION

This Petition seeks Commission review of the Initial Decision on two principal grounds. *First*, the Relief ordered by the ALJ was clearly erroneous and unduly excessive in imposing a lifetime bar on Mr. Lucia, contrary to Commission precedent. In particular, the lifetime bar is disproportionate in relation to the conduct found to violate Sections 206(1) and (2) of the Investment Advisors Act, and those sanctions were imposed despite the fact that (i) Respondents at all times submitted their presentation materials for review and approval by independent third-party broker-dealers, and (ii) audience members were repeatedly warned that illustrations in the presentation materials were not based on historical results. The ALJ clearly erred in ignoring or discounting these critical facts. Lucia therefore seeks an order from this Commission reversing the lifetime bar imposed upon him, and directing the ALJ to consider remedies that will permit Lucia to continue to earn a living as a radio commentator and speaker, so long as those activities do not involve the sale of securities in any respect, or use any sales performance materials.

Second, the ALJ erred in finding that Respondents violated the Advisers Act at all, in light of the many undisputed facts undermining the ALJ's findings on misrepresentations, materiality and scienter.

A. Background

Raymond J. Lucia is a 63-year-old investment professional with, as the ALJ recognized, an unblemished regulatory record dating back 38 years. (Initial Decision at 3-4, 60.) He is the host of a nationally-syndicated radio show and the author of several books on retirement planning. Mr. Lucia does not personally advise investors regarding the purchase or sale of any particular securities. Rather, he promotes a general retirement planning strategy, encouraging investors to diversify their investments among multiple "buckets" of investments of varying risk and liquidity, ranging from low-risk, liquid assets such as cd's and treasury notes, to bonds and structured notes, to a mix of stocks and real estate (including real estate investment trusts (REITs)). While given the colorful name of "Buckets of Money," Mr. Lucia's strategy is itself straightforward and non-controversial: it reflects his own opinions on retirement planning, and specifically his view that investors should spend their income and principal from safer assets first, giving riskier and more illiquid investments a longer time to grow in value. (Initial Decision at 7-8.) In this respect, his work is not unlike the work of dozens of high-profile media personalities who routinely discuss their own investment ideas and strategies with their television or radio audiences or readers of their books, without any threatened or actual enforcement actions or sanctions imposed.

During the relevant period, Mr. Lucia also presented his retirement planning strategy at free seminars—again, much like many other media personalities in this field. The presentations included illustrations of hypothetical investment and asset withdrawal approaches, and showed how, using assumptions repeatedly described as hypothetical, the Buckets of Money strategy could generate higher returns than alternative strategies. The Division's case boils down to an allegation that a handful of PowerPoint slides used by Mr. Lucia at these seminars were misleading. Specifically, the Division contends that the illustrations relied on an assumed 3%

annual inflation rate and an assumed rate of return for REITs of around 7%, rather than the actual yearly rates during the lifetime of the illustration. Similarly, the Division alleged that the slides failed to deduct advisory fees or follow precisely the rebalancing methodology advocated by Mr. Lucia. The Initial Decision found these slides to have been materially misleading notwithstanding the unrebutted fact that Mr. Lucia's presentations repeatedly described the illustrations as hypotheticals using assumed, rather than actual historical, rates.

It is also important to note what the Division did *not* allege, and what the ALJ did *not* find. There is no dispute that Mr. Lucia neither recommended nor sold any securities at his seminars. Rather, seminar attendees had the option of filling out a form indicating his or her interest in speaking with an investment adviser from Lucia's affiliated firm, Raymond J. Lucia Companies, which Mr. Lucia sold in 2010, two years before these proceedings were initiated. (Initial Decision at 7, 9.) Nor does the Division allege that any seminar attendee who ultimately chose to work with an RJLC adviser was provided with anything less than 100% complete and accurate disclosures about any securities he or she decided to purchase, including the approved prospectuses for the particular securities being purchased. There was no showing that, had Mr. Lucia used historical data rather than hypothetical assumptions, and deducted fees, his "Buckets of Money" strategy would not have nonetheless outperformed the other withdrawal strategies illustrated at the presentations. Finally, there is no allegation that any seminar attendee who later became an RJLC client was in any way harmed by the investment advice he or she received from the firm, or that Mr. Lucia misappropriated a penny from investors.

In short, the Division's case boils down to a contention that a few slides in a lengthy presentation used in part to generate leads for an affiliated firm did not adequately convey that the hypothetical illustrations were in fact hypothetical, and that Mr. Lucia's "backtesting" illustrations in the presentation failed to adhere to the ALJ's definition of "backtesting." For this, the Initial Decision forces the 63-year-old Mr. Lucia into immediate retirement and the distinct risk of personal bankruptcy, after an unblemished, nearly 40-year career.

II. THE RELIEF ORDERED BY THE ALJ WAS LEGALLY ERRONEOUS AND AN ABUSE OF DISCRETION IN LIGHT OF THE EVIDENCE PRESENTED AT THE HEARING

A. The Evidence Presented At the Hearing Demonstrates that the Sanctions Imposed Were Unreasonable and Excessive

Mr. Lucia presented evidence at the hearing that countered the Division's contentions that he made any material misrepresentations, much less that he did so with the requisite scienter to establish a violation of Sections 206(1) and (2) of the Investment Advisers Act. But even if the Commission were to accept every factual and legal finding of the ALJ on the liability issues as correct–despite the multiple instances in which the ALJ erroneously disregarded evidence in the record contradicting his findings of fact and conclusions of law–the ALJ's imposition of a lifetime industry bar is so disproportionate to the evidence presented, and so out of line with Commission precedent, that it represents an abuse of discretion and a legal error demanding Commission review.

The Initial Decision acknowledged that Lucia has been working in the industry as an investment adviser, registered representative of a broker-dealer, and, most recently, public speaker, for 38 years; he "has a clean regulatory record and [was] cooperative with examiners and investigators." (Initial Decision at 60.) The Decision did not find that any investors who attended one of Mr. Lucia's seminar and later decided to seek investment advice from his affiliated firm received anything short of complete and accurate disclosures from their adviser when making any investments, or were in any way harmed by the investment advice they ultimately received. And the Decision did not question the evidence that, over the relevant period, some 50,000 individuals attended Mr. Lucia's presentations, and not a single one filed any sort of complaint about the allegedly misleading nature of the presentation generally, or the slides relating to the Buckets of Money strategy in particular. (Initial Decision at 8, 47.) Finally, as discussed more fully in Section II.C.1 below, neither the Division nor the ALJ disputed the evidence that the presentation materials were reviewed and approved by third party broker-dealers Securities America and First Allied, as required by their agreements with the brokerage firms in furtherance of their FINRA obligations.

B. The Imposition Of A Permanent Bar Is Inconsistent With Commission Precedent

Absent any of the kinds of aggravating factors upon which lifetime bars typically have been based, the bar imposed here is excessive in light of the evidence presented at the hearing. In the past year alone, the Commission has instituted several comparable cases, agreeing to settlements with investment advisers that provided no time out, much less permanent bars. For example, in *In the Matter of New England Investment and Retirement Group, Inc.*, Advisers Act Rel. No. 3516 (Dec. 18, 2012), the firm used advertising materials purporting to show how its investment models would have outperformed indices such as the S&P 500 (including for periods in which the firm's models did not even exist), yet described the hypotheticals to clients as portraying actual historical performance. The firm was censured, while the individual respondent received a cease-and-desist order and no bar or suspension. In *In the Matter of Modern Portfolio Management*, Advisers Act Rel. No. 3702 (Oct. 23, 2013), the adviser's marketing materials included model results that failed to deduct advisory fees. The firm and the individual respondents were censured; again, no bar or suspension was ordered. And in *In the Matter of Equitas Capital Advisors, LLC*, Advisers Act Rel. No. 3704 (Oct. 23, 2013), the adviser's advertisements calculated the firm's historical performance using outdated and unverifiable data. Again, the firm was censured and the individual respondents received no bars or suspensions.[1] *See also, e.g., In the Matter of Independent Financial Group*, 2000 SEC LEXIS 1639 (Aug. 8, 2000) (one-year IA bar where adviser used advertising materials stating past performance was based on actual trading rather than hypotheticals).[2]

Respondents acknowledge that the Commission recently declined to overturn an ALJ's imposition of a permanent bar based on the entry of a stipulated civil injunctive order, noting that appropriate sanctions are necessarily fact-specific. *In the Matter of Peter Siris*, Advisers Act Rel. No. 3736 (Dec. 12, 2013). But the circumstances of that case are in stark contrast to the conduct at issue here, and therefore *Siris* is not supportive of the permanent bar ordered against Mr. Lucia. *Siris* involved multiple instances of insider trading and a complex market manipulation scheme in violation of the registration and antifraud provisions of the 1933 and 1934 Acts – conduct which clearly harmed investors and unlawfully enriched the adviser. And the respondent in that matter had settled the underlying injunctive action on terms that expressly prohibited him from contesting the Division's factual allegations, yet he nonetheless did so in the follow-on administrative proceeding.

In sum, the Initial Decision failed to cite any legal support for such extreme relief under these circumstances, or cite any comparable precedent for imposing permanent and collateral

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1 *Equitas* also involved aggravating factors not present here, including fee overcharges to clients, undisclosed fees and conflicts of interest, and misrepresentations to clients about past SEC exam findings.

2 Notably, *Independent Financial Group* also involved findings that the adviser fraudulently inflated its assets under management and falsified its Form ADV, allegations not made by the Division in the present case.

bars in the absence of any aggravating factors.[3] For this reason alone, the Commission would be justified in reviewing the Decision below.

C. The Initial Decision Bases Sanctions on an Erroneous Application of the *Steadman* Factors

In addition to being wholly inconsistent with precedent, the sanctions ordered below do not serve the public interest under the factors set forth in *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The ALJ's ruling that the *Steadman* factors support a permanent industry bar constitutes an erroneous conclusion of law.

1. Respondents Did Not Act With Scienter

First, under *Steadman,* the Commission must consider the degree of scienter involved in the alleged violation. The ALJ found that Mr. Lucia was "intentionally misleading clients and prospective clients" in conducting his seminars. (Initial Decision at 58.) But in reaching this conclusion, the ALJ disregarded unrebutted evidence showing that Mr. Lucia repeatedly subjected the PowerPoint slides at issue here to third party review by registered broker-dealers Securities America and First Allied, was never told that the slides were in any way misleading, and thus had no red flags that his disclosures were somehow problematic. Not only did the ALJ disregard this evidence, he also based the ruling on factual assertions not in evidence and rejected respondents' request for briefing on such purported facts.

a) Repeated Review of Respondents' Slides by Broker-Dealers Undermine the ALJ's Findings and Conclusions

The evidence admitted at the hearing confirmed that Mr. Lucia repeatedly provided copies of his slide presentations over the years to the two successive supervising broker-dealers

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3 The one case cited by the Initial Decision as support for a collateral bar, *In the Matter of John W. Lawton*, Advisers Act Rel. No. 3513 (Dec. 13, 2012) (Initial Decision at 58), involved a broker who had lost millions of dollars in investor funds, sent investors phony account statements to conceal his losses, and pled guilty to criminal wire fraud.

which executed trades for RJLC clients. (*See, e.g.*, Respondents' Exhibits 25-29; Hearing Transcript at 674-76, 1034, 1077, 1305, 1503.) The Initial Decision acknowledged that both broker-dealers reviewed RJLC's marketing materials, "including the slideshow presentations at issue, from a compliance perspective." (Initial Decision at 5.) Neither broker-dealer ever indicated that the slides were misleading, and the evidence in the record shows that any revisions to slides requested by the brokers were made by RJLC. (*See, e.g.*, Hearing Transcript at 1290-1291.)

The ALJ nonetheless dismissed this evidence by asserting that broker Securities America had suggested at some point that the basis for the assumed REIT rate of return should be included in the slides, and the slides were not subsequently changed. (Initial Decision at 48.) But the ALJ based this conclusion on an unattributed line on an attachment to an exhibit about which there was no testimony by any witness; there was no other evidence presented by the parties as to the context of the sentence, or concerning subsequent revisions to the slides. There was simply no evidence that Mr. Lucia had deliberately disregarded a request by his broker to revise the slides in regards to the REIT disclosures, and neither the Division nor the ALJ asked him questions about this at the hearing. Importantly, when Respondents sought leave to brief the issue–since the Division referenced this document for the very first time in its post-hearing reply brief–the ALJ denied Respondents' request. The Initial Decision's reliance on an unexplained line in a document never authenticated or addressed by any witness, coupled with the ALJ's prejudicial error in refusing Respondents leave to brief the matter, constitute legal error and an abuse of discretion by the ALJ.

The ALJ further downplayed the third-party brokers' repeated review and approval of the slide presentations with the conclusory assertion that, because the brokers earned commissions from RJLC clients, they had an inherent conflict and their review of the materials was thus irrelevant. (Initial Decision at 47-48.) This conclusion, reached without any evidence in the record establishing any actual conflict of interest, represents a novel legal position with no basis in precedent. Indeed, both SEC and FINRA regulations impose a duty of supervision on broker-dealers, and FINRA specifically imposes a legal obligation to review advertising materials, even when broker-dealers derive revenues from the sales of securities by their affiliates. (*See, e.g.,* FINRA Rule 2210). In holding that the two broker-dealers here derived revenue from securities sales by affiliated advisers and registered representatives, and therefore had an irrefutable conflict, the Initial Decision is contrary to law, and renders the regulatory regime governing advertising oversight a legal nullity. This radical and unprecedented legal conclusion by the ALJ also warrants review by the Commission.

b) The Examination Staff's Review of Slides During Its 2003 SEC Examination Undermines the ALJ's Findings and Conclusions

In ordering a lifetime bar against Mr. Lucia, the ALJ failed to give any weight to the unrebutted fact that the SEC examination staff had reviewed Respondents' slide materials during their 2003 exam without expressing any concerns about the presentation. The Initial Decision concluded that the Examination report did not make an express determination that the slides did not violate the federal securities laws. (Initial Decision at 48.) But there is no dispute that the Examination staff was set up in a room at the RJLC offices to review the slideshow, requested copies of certain slides, and ultimately included no reference to the slides in its written report to RJLC.[4] Indeed, the Examination staff found that the slideshow materials *did not constitute sales*

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4 The ALJ also failed to give weight to the staff review because some of the slides were added only after the 2003 examination. But there is no dispute that the representations and omissions alleged by the Division, and found by the ALJ, to have been misleading were all contained in the version of the slides provided to the staff in 2003. Specifically,

performance materials. The absence of any red flags or adverse findings by the Examination staff renders the Initial Decision's finding of scienter unfounded, and the lifetime bar clearly excessive.

Respondents emphasize that they are not taking the position that the SEC's 2003 review of the materials exonerates them from any arguably misleading representations *per se*. Mr. Lucia consistently testified that he is ultimately responsible for the content of the slides. (Hearing Transcript at 1066-1067.) But the record is also clear that immediately upon learning of the SEC Examination staff's concerns about the slides in 2010–long before the initiation of the present enforcement proceedings–he ceased using the slides in question (and withdrew his books from circulation). For the ALJ to have concluded that Lucia intentionally defrauded investors, despite the fact that Lucia repeatedly subjected his seminar materials to review by his brokers and by his regulators, was an abuse of discretion. And to find this conduct sufficiently serious under *Steadman* to demand that Mr. Lucia be forever prohibited from being associated with an investment adviser or other regulated entity is a clear error of law.

2. The Purported Misrepresentations Were Far From Egregious

The *Steadman* test additionally requires consideration of the level of egregiousness of the purported misconduct. Here, too, the ALJ erred. The Initial Decision essentially comes down to the conclusion that, in a presentation consisting of over a hundred slides, Respondents' use of two slides with the word "backtest" on them must be deemed to have misled investors into believing that the illustrations Respondents used were based on historical information. Yet the bulk of the evidence at the hearing, and in the Initial Decision, turned on a battle between experts

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the Initial Decision recognized that the "1973 Illustration" (or what the ALJ called the "1973 Backtest") was reviewed by the Examination staff in 2003 (Initial Decision at 48), and the Decision relied on the 1973 Illustration for each component of its liability determination.

over the meaning of the word "backtest" in the advisory industry, a point on which there was clearly conflicting testimony and evidence. The fact that the word "backtest" is not a clearly defined term that would automatically render the slide presentation materially misleading—much less egregiously so—is a further reason why the lifetime bar imposed on Mr. Lucia was an abuse of discretion.

The ALJ's conclusion that the slides misleadingly suggested that "backtesting" was understood by audience members to have been based on historically accurate performance results also is contradicted by the extensive evidence presented by Respondents at the hearing that audience members were expressly warned that the illustrations were *not* based on historical performance. Any seminar attendee viewing Mr. Lucia's slideshow presentation was repeatedly told, slide after slide, that "**rates of return are hypothetical in nature and are for illustrative purposes only**" and that "**this is a hypothetical illustration and is not representative of an actual investment.**" (*See* Division's Exhibit 1 at SEC LA3937-00154-157, 159-165, 167-169, 176-178, 181-198, 200-201.) Attendees similarly were told that the inflation rate and REIT rate of return were assumed, not actual. Indeed, in the slide titled "Notes & Assumptions," the presentation expressly distinguishes the use of "actual market returns" used for stocks and bonds from the assumed rates used for REITS and inflation. (*Id.* at 204.)

In addition to the warnings set forth in the presentation materials themselves, Mr. Lucia orally advised audience members that the illustrations were hypothetical. For example, the script of one such webinar, introduced into evidence at the hearing, shows how Mr. Lucia underscored the point: "Let's pretend that from that point forward, inflation was 3 percent. We knew it was more. But we wouldn't have known that at the time." (Initial Decision at 34.) The Initial Decision conceded as much: "True enough, seminar attendees would understand that a flat 3%

rate did not reflect year-by-year historical rates, especially because attendees were mostly retirees and near-retirees who lived through the tumultuous high-inflation years of the late 1970s and early 1980s, and would understand that inflation varies year to year." (*Id.*) These were the ALJ's words, not Mr. Lucia's. It was thus a clear error of law for the ALJ to conclude that the slides' representations were misleading, much less so egregiously fraudulent that a lifetime bar is warranted.

The remaining omissions cited in the Initial Decision in support of the ALJ's finding that the slides were misleading are likewise questionable at best, and far from the sort of egregious conduct one would expect to see in an order barring someone for life. For example, the Initial Decision found the failure of the illustrations used in Mr. Lucia's slides to deduct fees was materially misleading. Yet the Initial Decision failed to adequately address the unrebutted fact that Mr. Lucia was comparing multiple strategies, all of which would involve the payment of fees by investors. The ALJ noted that because the strategies were different, the magnitude of fees would have varied; but the Division introduced no evidence, and the ALJ therefore had no evidentiary basis to conclude, that the impact of fees incurred by the "Buckets of Money" strategy would have been materially higher than for any of the alternative strategies pictured in the slides. (Initial Decision at 37.)

Similarly, the Initial Decision had no material factual support for the ALJ's conclusion that the omission of fees inured to the benefit of Mr. Lucia's "Buckets of Money" strategy, because it would have been impossible to quantify the fees that an investor following any of the strategies portrayed at the seminars might have had to pay. Mr. Lucia's presentations simply illustrated broad, hypothetical withdrawal strategies; they did not identify any specific investment products, and thus any attempt to deduct fees for managing unspecified investments would itself have been entirely hypothetical – and could very well have been found misleading by the ALJ for the same reason he questioned the hypothetical return rates and inflation rates used in the slides.[5] (Transcript at 572-73, 1072, 1286, 1559.)

Finally, Respondents submitted unrebutted evidence at the hearing that, after Respondents ceased using the slides in question once questions were raised by the SEC's Examination staff, the response rate of seminar attendees who filled out contact cards requesting to meet with an RJLC adviser did not materially decline. (Transcript at 1633-34.) Hence, far from being "egregious," the particular representations found to have been misleading by the Initial Decision do not even appear to have been relevant to investors.

3. The ALJ Had No Basis To Conclude That Respondents Failed to Acknowledged Any Wrongdoing, and Therefore That The Alleged Misconduct Would Recur

Finally, in barring Mr. Lucia from pursuing his livelihood for the rest of his life, the ALJ improperly applied the *Steadman* factors relating to the sincerity of Respondents' assurances against future violations and Mr. Lucia's recognition of the wrongful nature of his conduct. There is no dispute that, immediately upon being put on notice of the Examination staff's concerns and receiving their 2010 deficiency letter–long before the Division provided him with a Wells notice and ultimately filed the immediate action–Respondents ceased using the slides in question (and withdrew Mr. Lucia's books from publication). The ALJ conceded that, "to his credit, Lucia has made efforts to end the violative conduct," but the ALJ dismissed Mr. Lucia's voluntary and unilateral determination to modify or abandon certain aspects of his presentations

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[5] There is no dispute that all audience members who sought investment advice from Mr. Lucia's affiliated firm following any of his presentations were given complete and accurate fee disclosures, and the Initial Decision conceded this point. "The Division does not allege that RJLC advisers failed to provide full disclosure concerning fees to potential investors, and I have no reason to doubt that they did." (Initial Decision at 37.)

because Respondents previously failed to correct certain minor deficiencies noted during the 2003 examination. (Initial Decision at 58.) Yet those deficiencies were voluntarily corrected in 2010, and were not even charged as violations by the Division.

Given the undisputed facts summarized above, the ALJ's conclusion that "respondents have utterly failed to recognize the wrongful nature of their conduct" goes without any support in the Initial Decision. Respondents immediately eliminated the slides in question, and there is no contention that Respondents made a single questionable disclosure since the time of the 2010 examination. Yet the ALJ found that Mr. Lucia "now tries to shift partial blame to the Commission for failing to detect problems" with his slideshow. (*Id.*) But Mr. Lucia did not and does not seek to blame the Commission for anything. Rather, in rebutting the charge that he acted with scienter, Respondents merely took the position that the Examination staff reviewed the slideshow during its 2003 examination and expressed no concerns about the slides in question. The ALJ appears to have based his conclusion on the mere fact that Lucia opted to defend himself against charges of intentional fraud. By this reasoning, any registered person choosing to litigate a claim asserted by the Division, should he or she lose at trial, must suffer a lifetime bar. Such reasoning renders the *Steadman* factors mere surplusage, and constitutes a plain error of law and abuse of discretion.

As noted above, Mr. Lucia divested his business in 2010. He no longer holds his license as a registered representative, and voluntarily withdrew his registration with the SEC as an investment adviser. He has no interest in being associate with a broker or adviser going forward. However, the permanent bar imposed by the ALJ potentially prevents him from earning a living as a public speaker and sets him on a path towards bankruptcy, even in the absence of being compensated through commissions or advisory fees. There is simply no support in the record for the proposition that Mr. Lucia poses a threat to the investing public requiring the draconian relief ordered here.

D. The Initial Decision Similarly Errs In Ordering Third-Tier Penalties

For similar reasons, the Initial Decision erred in ordering that respondents pay third-tier penalties. The standards applied by the Initial Decision are comparable to the *Steadman* factors, including the level of intent, resulting harm to investors, unjust enrichment, and respondents' prior regulatory record. (Initial Decision at 60.) As explained more fully above, the hearing record does not support a finding that these factors weigh in favor of a third-tier penalty. Indeed, as the ALJ himself explained in rejecting the Division's request for even higher penalties, "in this case the evidence of actual losses to individual investors is virtually nonexistent... [T]here is no evidence of the amount of any unjust enrichment as to any particular investor. Additionally, Respondents have a clean regulatory record and were cooperative with examiners and investigators." (*Id.*) Stripped of these criteria, the ALJ's determination to nonetheless award third-tier penalties rests almost entirely on his assessment of the level of scienter – a determination that is erroneous for the reasons already discussed.

III. THE ALJ ERRED IN HOLDING THAT RESPONDENTS VIOLATED THE ADVISERS ACT

As should be evident from the foregoing, Mr. Lucia's primary concern is with the permanent bar ordered by the Initial Decision. For a 63-year-old, 38-year veteran of the securities industry with a heretofore clean record, this sanction is a professional death sentence. But this does not mean that Respondents concede that the ALJ did not err on the underlying merits of the case. To the contrary, for many of the same reasons that the ALJ lacked a basis for imposing the remarkable sanctions ordered here, the Initial Decision erred in finding Respondents liable for violations of the Investment Advisers Act. Without reiterating at length the ALJ's many errors, Respondents respectfully submit that the Initial Decision made erroneous findings of material fact and conclusions of law in finding that Respondents made material misrepresentations and omissions; that such misrepresentations and omission were material; and that Respondents acted with scienter.

A. The Alleged Misrepresentations and Omissions

The Initial Decision erred in concluding that the slides challenged by the Division were misleading. Specifically, the Initial Decision erred in holding that the assumed rate of return for REITs, the hypothetical inflation rate, the failure to deduct fees, and the failure to reallocate assets among "buckets" in the illustrations were misleading. As discussed above, the ALJ's conclusion that a reasonable investor would view the illustrations as historically accurate is contradicted by the plain language of the slides and the representations made during Mr. Lucia's seminars. Moreover, Respondents presented evidence at the hearing demonstrating that the assumptions behind the illustrations had a basis in industry practice and market data, that audience members were warned that the illustrations were hypothetical, and that these materials were subjected to independent review by third-party broker-dealers. The determination that the slides were misleading also is undermined by the absence of any contention by the Division, or any finding by the ALJ, that the "Buckets of Money" strategy was not in fact more beneficial to investors than the other strategies presented at Mr. Lucia's seminars. Finally, the conclusion that the slide materials contained material misrepresentations and omissions is insupportable in light of the fact that, throughout the years in question, not one of thousands of audience members who later sought advisory services from RJLC had pursued a claim against Respondents for any alleged misrepresentations in connection with the slides in question.

B. Materiality

The Initial Decision also erred in concluding that the purported misrepresentations and omissions were material. There is no dispute that Respondents neither recommended nor sold any investments at the seminars, nor any question that seminar attendees who subsequently decided to seek advisory services from RJLC received anything short of complete and accurate disclosures about any investments they decided to make. The Initial Decision also failed to account for the unrebutted evidence showing that the rate of seminar attendees seeking advisory services remained essentially unchanged after the slides challenged by the Division were removed, further calling into question the ALJ's conclusion that investors viewed these particular representations as material to their investment decisions.

C. Scienter

Finally, the Initial Decision erred in concluding that Respondents acted with scienter. As discussed more fully above, and in Respondents' post-hearing briefs, the Initial Decision erroneously ignored or discounted the undisputed evidence showing the absence of any red flags despite repeated reviews of the slides for compliance purposes by Mr. Lucia's broker-dealers during the relevant period, as well as by the SEC's Examination staff in 2003. The Initial Decision similarly erred in failing to recognize that Respondents had a reasonable basis for concluding that the slides and the assumptions made therein were not misleading, based on the plain text of the slides and the industry standards and practices presented at the hearing.

IV. CONCLUSION

For the forgoing reasons, respondents Raymond J. Lucia, Sr. and RJLC respectfully request that the Commission grant review of the Initial Decision in this matter.

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Respectfully submitted,

Dated: December 27, 2013

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