

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76241 / October 22, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4239 / October 22, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31880 / October 22, 2015

Admin. Proc. File No. 3-15006

In the Matter of

RAYMOND J. LUCIA COMPANIES, INC.
and
RAYMOND J. LUCIA, SR.

PARTIAL STAY ORDER

Respondents Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr. move for a stay of the Commission's Order Imposing Remedial Sanctions¹ pending resolution of their appeal to the U.S. Court of Appeals for the District of Columbia.

The party requesting a stay pending appeal has the burden of establishing that a stay is justified.² The Commission's consideration of such requests is governed by the traditional, four-factor standard—namely, “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.”³ Because the first two factors are the most

¹ *Raymond J. Lucia Cos.*, Exchange Act Release No. 75837, 2015 WL 5172953 (Sept. 3, 2015).

² *See, e.g., Nken v. Holder*, 556 U.S. 418, 433-34 (2009); *Steven Altman*, Exchange Act Release No. 63665, 2011 WL 52087, at *2 (Jan. 6, 2011).

³ *Nken*, 556 U.S. at 434; *Steven Altman*, 2011 WL 52087, at *2.

critical,⁴ an applicant's failure to demonstrate the requisite likelihood of success or irreparable harm ordinarily will be dispositive of the stay inquiry.⁵

For the reasons stated in the Division of Enforcement's October 15, 2015 opposition, we conclude respondents have not carried their burden. They are not likely to prevail in their appeal to the D.C. Circuit; financial detriment does not amount to irreparable harm; and they have given us no persuasive reason to revisit our determination that they pose a continuing, substantial threat to investors and to the public interest. Further, our grant of a stay pending appeal in another administrative proceeding, *Timbervest, LLC*, turned on case-specific considerations that are absent here.⁶

Accordingly, it is ORDERED that respondents' motion is DENIED. On our own motion and in our discretion, it is further ORDERED that the requirement in the Order Imposing Remedial Sanctions that Raymond J. Lucia Companies, Inc. pay a civil money penalty of \$250,000 and that Raymond J. Lucia, Sr. pay a civil money penalty of \$50,000 is STAYED until the D.C. Circuit resolves respondents' appeal and issues its mandate.⁷ The Order Imposing

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⁴ *Nken*, 556 U.S. at 434.

⁵ See, e.g., *Winter v. NRDC*, 555 U.S. 7, 22 (2008); *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011); *Katz v. Georgetown Univ.*, 246 F.3d 685, 688 (D.C. Cir. 2001); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Blankenship v. Boyle*, 447 F.2d 1280, 1280 (D.C. Cir. 1971) (per curiam); *Monica J. Lindeen*, Securities Act Release No. 9808, 2015 WL 3747254, at *3 (June 16, 2015).

⁶ *Timbervest, LLC*, Advisers Act Release No. 4198, 2015 WL 5472521, at *1 & n.3 (Sept. 17, 2015) (citing "representations that Commission counsel made to the federal district court during the hearing for a motion for a preliminary injunction in connection" with the proceeding).

⁷ The Commission has at times stayed monetary sanctions pending appeal without reference to the applicant's likelihood of success on the merits. *But see Johnny Clifton*, Exchange Act Release No. 70639, 2013 WL 5553865, at *4 (Oct. 9, 2013) (denying stay in all respects). But a stay is never a matter of right; it instead is an exercise of individualized discretion dependent upon the circumstances of each particular case. See *Nken*, 556 U.S. at 433; *Winter*, 555 U.S. at 32; *cf. NLRB v. Izzi*, 343 F.2d 753, 755 (1st Cir. 1965) ("Nor, we might observe, will justice for individual litigants having good excuses be furthered generally if the [agency] must anticipate that . . . every grant of grace in a particular case will put it on the defensive whenever some new applicant for grace is disappointed."). Nevertheless, under the circumstances and in our discretion, we elect to stay the monetary component of the Order Imposing Remedial Sanctions.

Remedial Sanctions remains effective in all other respects.

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

Brent J. Fields
Secretary