UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67781 / September 5, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3456 / September 5, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30193 / September 5, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15006

In the Matter of

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

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS 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, AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), against Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr. (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Raymond J. Lucia Companies, Inc. ("RJL") is a California corporation located in San Diego, California which did business as "RJL Wealth Management" until it abandoned that business name in May 2010. RJL was registered with the Commission as an investment adviser from September 2002 through December 2011 (CRD No. 115670). RJL had almost 4,700 client accounts with approximately $300 million in client assets under management until May 2010, when it sold its business and transferred its client accounts to RJL Wealth Management, LLC ("RJLWM"), which is registered with the Commission as an investment adviser (CRD No. 152396).

2. Raymond J. Lucia, Sr. ("Lucia") owns Respondent RJL, as well as RJL Enterprises, Inc., an entertainment company through which he produces a daily syndicated radio show, *The Ray Lucia Show*. He currently is a registered investment adviser representative (CRD No. 1073284) associated with RJLWM. He was a registered representative of First Allied Securities, Inc. (CRD No. 32444) and owned Lucia Financial, LLC (CRD No. 37179), both registered broker-dealers. He currently holds a Series 7 license and previously held Series 24, 63 and 66 licenses. Lucia, 61 years old, is a resident of Rancho Santa Fe, California.

B. FACTUAL BACKGROUND

(i) Respondents' Development of the "Buckets of Money" Investment Strategy

1. Since 1991, Lucia has hosted a daily radio show, *The Ray Lucia Show,* which was nationally syndicated in 2000 and is now simultaneously podcast. Lucia also appears frequently as a commentator on a variety of television programs. Lucia is featured on two websites, www.rjlwm.com and www.raylucia.com. In addition, Lucia was the featured speaker at regular seminars hosted by RJL across the country. These seminars were promoted on Lucia's radio show and website. In addition, Lucia has written three books on investing for retirement: *Buckets of Money: How to Retire in Comfort and Safety* (2004), *Ready… Set… Retire!* (2007), and *The Buckets of Money Retirement Solution: The Ultimate Guide to Income for Life* (2010).

2. On his radio show and website, at seminars, and in his books, Lucia discusses his proprietary wealth management strategy, which he calls "Buckets of Money" ("BOM"). Lucia's comments are not limited to discussions of the BOM strategy, but a recurring theme is that the BOM strategy will enhance one's ability to retire in comfort and safety, protect the money one has spent a lifetime accumulating, and generate inflation-adjusted income for life.

3. According to Respondents, the idea for the BOM strategy was a 1998 article in *Financial Planning* by John J. Bowen, Jr., which compared the performance of $100,000 portfolios from which annual deductions of 8% were made over the 25-year period from 1972 to 1997. Respondents also claim to have relied on research conducted by Ibbotson Associates showing that there has never been a 15-year period during which an investment in the stock market lost money, and that over every 20-year period stocks have outperformed the corresponding rate of inflation. The Respondents admittedly did not attempt to recreate or otherwise verify the results of those studies.

4. To support their claims about the BOM strategy, Respondents claimed to have extensively "backtested" it. Backtesting is generally understood as the process of evaluating a strategy, theory, or model by applying it to historical data. Backtesting calculates how a strategy would have performed if it had actually been applied in the past. Thus, a backtest must utilize the actual data from the time in question in order to get an accurate result.

5. Despite the claims they made to the public, the Respondents performed scant, if any, backtesting of the BOM strategy. Respondents have admitted that the only testing they performed involved: (1) some calculations Lucia performed manually in the late 1990s, copies of which no longer exist; (2) a so-called "backtest" for the period from 1966 to 2003, memorialized on a two page Excel spreadsheet, which was performed by an RJL employee in 2003 (the "1966 Spreadsheet"); and (3) a so-called "backtest" for the period from 1973 to 2003, memorialized on a two page Excel spreadsheet, which was performed by the same RJL employee, also in 2003 (the "1973 Spreadsheet"). For the reasons described in Sections II.B(iii) and II.C below, the 1966 and 1973 backtests were deficient.

6. Respondents' various public statements contain many references to their backtesting of the BOM strategy and to the results which Respondents claim validate the BOM strategy.

7. The back cover of Lucia's 2004 book *Buckets of Money: How to Retire in Comfort and Safety*, states: "[T]he Buckets of Money technique is *a proven way* to achieve both income and growth, while guarding against the ravages of inflation." (Emphasis added.)

8. In his 2007 book *Ready ... Set ... Retire!*, Lucia wrote:

> [R]etirees need a strategy that will work in both good times and bad. Buckets of Money is such a strategy. It's not designed to make anyone rich, nor does it come with any guarantees. But *it has stood up to numerous backtests* representing some of the worst eras in past market history.
>
> But I believe – *and have shown empirically* – that this simple yet sophisticated concept reduces risk while taking advantage of growth.

> But you don't have to believe me. Others, perhaps far smarter than I, have come to the same conclusion. One such guy is economist and market guru Ben Stein, who concurred, *after I back-tested the strategy over several decades*, that it works in good times and bad. In fact, *I backtested it over several bear markets, including the dismal period beginning in 1966* [and found that it] would produce this result after 38 years. (Emphasis added.)

9. RJL's website homepage stated: "We individually custom tailor clients' portfolios using *our time-tested investment strategy*, Buckets of Money, a retirement planning strategy that seeks to provide inflation-adjusted income for life and sustained portfolio growth." (Emphasis added.)

10. A recurring theme of RJL's public statements is that Respondents' methods follow "science, not art" and that their recommendations are based on research. For example, broadcast copy for Lucia's radio show reads:

> My strategy follows the science of investing finance professors and economists from around the world have written about . . . .You need a plan that follows academic science and research, not the art of speculation . . . .
>
> I've spent twenty years refining the strategy now used by more than 8,000 people nationwide. Now, I'm inviting you to my free Denver workshop, where I'll show you the science and academic research that supports the strategy.

(ii) <u>The BOM Investment Strategy</u>

11. Respondents have expounded on the BOM strategy since 2003. Respondents claim the BOM strategy will provide inflation-adjusted income to retirees while protecting, and even increasing, their retirement savings.

12. As explained by Respondents, the BOM strategy would typically have retirees divide their retirement savings into three "buckets." The first bucket holds the safest assets, *i.e.*, liquid assets on which both the risk of capital depreciation and the expected yield are relatively low, such as money market funds and certificates of deposit. The second bucket holds moderately safe assets on which the potential for both risk and gain is somewhat higher than those held in the first bucket – *e.g.*, municipal bonds, balanced funds and fixed annuities. The third bucket holds those assets which hold the most potential for long-term growth, as well as the highest level of risk – *e.g.*, common stocks, mutual funds, ETFs, and REITs.

13. According to the BOM strategy as articulated by Respondents, a retiree following the BOM strategy would draw on the assets in the first bucket, and any income generated by those assets could be used for immediate income needs until that bucket is

depleted – ideally, for a period of seven to eight years. At that point, the assets are reallocated to continue to provide inflation-adjusted income and asset growth.

(iii) Respondents' Misleading Slideshow Promoting the BOM Investment Strategy and Its Backtesting

14. Respondents held numerous seminars promoting their BOM strategy in an effort to obtain advisory clients who would be charged fees in return for Respondents' advisory services. Respondents promoted the BOM strategy by using a lengthy sideshow at the seminar presentations, after promoting those seminar presentations on Lucia's radio show and the websites www.rjlwm.com and www.raylucia.com.

15. In this slideshow, three different retirement portfolio allocation strategies are contrasted with the BOM strategy. In each instance, it is assumed that (1) the beginning portfolio has $1 million in assets, (2) the portfolio must provide inflation-adjusted income of $60,000 per year, (3) inflation will average 3% per year, and (4) its owners intend to leave the $1 million to their children. The slideshow provides the following outcomes, all of which purport to demonstrate what would have happened had the portfolio been exposed to the bear market for equities that commenced on January 1, 1973:

- The "Conservative Campbells" invest only in cash or other exceedingly safe instruments earning a hypothetical 6% return, so they are not exposed to the decline in the equities market. If they die after 30 years, they will leave their children a $1 million portfolio whose purchasing power will be less than $412,000 after factoring for inflation. And if they index their $60,000 annual income every six years to keep pace with inflation, their assets will be exhausted in 27 years and their children will inherit nothing.

- The "High Rolling Hendersons" invest all of their assets in the stock market. If the market earns their anticipated return of 10% per year, they can take $60,000 per year in income, adjust that amount for inflation, and leave more than $4.2 million to their heirs after 30 years. But if they had retired in 1973, rather than earning 10% every year on their all-equities portfolio, they would have absorbed a 41% decline in the value of their assets in the first two years of retirement and would have gone bankrupt after only 17 years of taking $60,000 of inflation-adjusted income per year.

- The "Balanced Buttafuccos" put 40% of their portfolio into bonds earning 6% per year and 60% of their portfolio into stocks, drawing their income from these two asset classes on a pro rata basis, and adjusting their income needs every six years to account for inflation. If the Buttafuoccos had retired in 1973, they too would have experienced a precipitous decline in the value of their assets in their first two years of retirement, and would have depleted their stock portfolio after 15 years and their bond portfolio after 21 years of taking $60,000 of inflation-adjusted income per year.

- The “Bold Bucketeers” use a BOM approach wherein $238,000 is put into a safe bucket earning 4%, $200,000 is put into a moderate bucket earning 5.5%, $200,000 is put into a REIT investment earning 7.75%, and $362,000 is put into a stock portfolio earning 10%. This allows for six years of $60,000 income and an additional six years of inflation-adjusted income of $71,500, at which point the monies are reallocated for another 12 years. At the end of the initial 12-year period, the core $1 million has grown to $1.4 million. But this outcome, while used for purposes of comparison, is not tied to the same January 1, 1973 starting date used for the “High Rolling Hendersons” and the “Balanced Buttafuoccos”, and thus, does not reflect the significant losses experienced by equity portfolios (including those of the Hendersons and the Buttafuoccos) during that era. The slideshow continues to make the point that, even if the Bucketeers had retired in 1973, they would have been able to take $60,000 of inflation-adjusted income each year for 21 years and still had a portfolio worth $1,544,789 in 1994, the year the Buttafuoccos would have exhausted their assets.

16. The Respondents’ slideshow then presents information from their alleged backtesting of portfolio strategies for the period from 1966 to 2003. In this backtest, each portfolio begins with $1 million and has to produce $50,000 of annual inflation-adjusted income. The historical returns for U.S. Treasury Bonds and the S&P 500 are used as proxies for the annual returns on the bond and stock portions of the portfolios. The 1966 Spreadsheet uses as a 7% annual return on REITs, and a 3% annual inflation rate. The results, as presented in the slideshow, are as follows:

- The “60-40 Portfolio -- Income from Stocks & Bonds (Pro Rata)” -- a portfolio divided 60/40 between stocks and bonds, wherein income is taken from each on a pro rata basis -- would have dwindled to about $30,000 by 2003.

- The “60-40 Portfolio -- Buckets of Money Portfolio (Without REIT)” -- a second portfolio using the same 60/40 split, but from which income is taken from the bond portion first -- would have provided income of $150,000 per year and would have increased in value to $1.2 million by 2003.

- The “Buckets of Money Portfolio (40-20-40) (With Real Estate Investment Trusts)” -- a third portfolio placing 40% in stocks, 20% in REITs and 40% in bonds, from which income is taken from the bonds and REITs first –also would have provided income of $150,000 per year and would have increased in value to $4.7 million by 2003.

- Respondents summarize the results of the contrasted strategies “after 38 years” of purported backtesting:

60-40 Portfolio:	$30,000
60-40 (bonds first):	$1.2 million

"Buckets" Portfolio: $4.7 million

17. The 1966 and 1973 Spreadsheets purportedly validate the slideshow's central premise – that the BOM investment strategy would have provided superior outcomes across historical time periods than other investment strategies, and thus, is a superior investment strategy going forward.

18. For several reasons, it was materially misleading for Respondents to claim that their alleged backtesting validated the BOM strategy. Among other reasons, Respondents do not appear to have engaged in the "numerous" backtests and do not appear to have "proven" that the BOM investment strategy works.

C. RESPONDENTS' TOUTING OF THE RESULTS OF THEIR BACKTESTING IN THEIR SEMINARS WAS MATERIALLY MISLEADING

(i) Respondents Failed to Disclose that Using Hypothetical Inflation Rate and REIT Returns Materially Impacted their Results

19. In presenting the results of the purported 1966 and 1973 backtests, Respondents disclosed that they used a hypothetical 3% inflation rate, although they used actual historical data for returns on stocks and bonds. Lucia admittedly knew that using a lower inflation rate for the backtests would make the results look more favorable for the BOM strategy. Moreover, actual figures for the inflation rate during the time period 1966 through 2003 were readily available from the Department of Labor when Respondents performed the calculations in 2003.

20. When historically accurate inflation rates are used in the alleged 1966 and 1973 backtests, an investor using the BOM strategy would have exhausted his or her assets by 1986 (if retiring in 1966) or by 1989 (if retiring in 1973), which are far worse outcomes than are presented by Respondents' slideshow, which bases those outcomes on backtesting purportedly evidenced by the 1966 and 1973 Spreadsheets.

21. Respondents also used hypothetical rates of return for REITs. In explaining the results of the backtest from 1966, Respondents included a slide titled "Notes & Assumptions," which states that Respondents based their examples "on actual market returns for the period(s) listed," and that "bond returns are based on US Treasury returns, stock returns are based on S&P 500 returns, REIT returns are based on a 7% annual return," and "inflation is based at 3% annual." A slide shown earlier in the presentation, titled "Notes and Disclaimers (REITs)," disclosed the risks of investing in REITs, including that they are long-term investments, not publicly traded, and involve significant risks including limited liquidity and fluctuating real estate values. However, in presenting the results of the 1966 backtest, Respondents failed to disclose that the REIT rates of return were entirely hypothetical, and failed to disclose that using an assumed REIT return materially inflated the results of the purported backtesting.

22. Respondents' claim that the 1966 and 1973 Spreadsheets validate the BOM strategy and show that it would prevent retirees from exhausting their assets is therefore materially misleading because Respondents were only able to reach such a result by using hypothetical data – rather than the historical data normally used in backtesting. Moreover, Respondents knew, or were reckless in not knowing, that their use of a lower-than-actual hypothetical inflation rate and assumed REIT rates of return skewed the results of the 1966 and 1973 Spreadsheets in favor of the BOM strategy.

(ii) Respondents' Failure to Deduct Advisory Fees, or to Disclose Their Impact, Was Materially Misleading

23. Respondents did not make any provision in the 1966 and 1973 Spreadsheets for advisory fees. While acknowledging the importance of fees, Respondents did not disclose to investors that their backtesting, which is purportedly validated by the 1966 and 1973 Spreadsheets, did not include advisory fees.

24. Over long periods of time such as those covered by the 1966 and 1973 Spreadsheets, advisory fees can have a substantial impact on returns. Respondents' failure to disclose that advisory fees can materially lower the returns that investors would receive, and their failure to deduct or otherwise provide for fees in the 1966 and 1973 Spreadsheets, artificially inflated the returns produced by the BOM strategy.

25. Respondents' claim that the 1966 and 1973 Spreadsheets validate the BOM strategy and show that it would prevent retirees from exhausting their assets is therefore materially misleading because the 1966 and 1973 Spreadsheets failed to take into account advisory fees. Moreover, Respondents knew, or were reckless in not knowing, that their failure to deduct advisory fees in their alleged backtests, or to even disclose the potential impact that advisory fees and other costs could have, was materially misleading.

(iii) Respondents' Failure to Reallocate Produced Materially Misleading Results

26. In the calculations for the 1966 and 1973 Spreadsheets, Respondents failed to reallocate assets after the bond and REIT buckets were exhausted. As a result, a substantial portion of the hypothetical portfolio was fully invested in the stock market from 1981 to 2003 (in the 1966 Spreadsheet) and from 1986 to 2003 (in the 1973 Spreadsheet). This resulted in overstating the performance of the BOM strategy, and materially misrepresented the results that could be expected from the BOM strategy.

27. Respondents' claim that the 1966 and 1973 Spreadsheets validate the BOM strategy and show that it would prevent retirees from exhausting their assets is therefore materially misleading because the 1966 and 1973 Spreadsheets did not reallocate assets across the BOM strategy buckets. Moreover, Respondents knew, or were reckless in not knowing, that their failure to reallocate assets across these buckets in a manner consistent with the BOM strategy they promoted was materially misleading.

D. <u>RESPONDENTS FAILED TO KEEP ADEQUATE RECORDS OF THEIR ALLEGED BACKTESTING OF THE BOM STRATEGY</u>

28. At its seminars, RJL presented performance calculations for several different allocation strategies which purport to demonstrate the superior performance of the BOM strategy over certain time periods. The only documentation of those calculations which RJL retained, however, consists of two two-page Excel spreadsheets which fail to duplicate the advertised investment strategy. The calculations fail to provide for the reallocation of assets that is one of the hallmarks of the BOM strategy.

E. <u>VIOLATIONS</u>

29. As a result of the conduct described in Sections II.B(iii) and II.C above, RJL willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-1(a)(5) promulgated thereunder, which makes it "a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) of the Act for any investment adviser registered [with the Commission] to publish, circulate, or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading."

30. As a result of the conduct described in Sections II.B(iii) and II.C above, Lucia willfully aided and abetted and caused RJL's violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-1(a)(5) promulgated thereunder, which makes it "a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) of the Act for any investment adviser registered [with the Commission] to publish, circulate, or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading."

31. As a result of the conduct described in Sections II.B(iii) and II.C above, RJL willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(16) promulgated thereunder, which requires that investment advisers registered with the Commission "shall make and keep true, accurate and current . . . [a]ll accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons."

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against RJL pursuant to Section 203(e) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Lucia pursuant to Section 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Lucia pursuant to Section 15(b) of the Exchange Act;

E. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act;

F. Whether, pursuant to Section 203(k) of the Advisers Act, RJL should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 204, 206(1), 206(2) and 206(4) of the Advisers Act and Rules 204-2(a)(16) and 206(4)-1(a)(5) thereunder, and whether RJL should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act; and

G. Whether, pursuant to Section 203(k) of the Advisers Act, Lucia should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder, and whether Lucia should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed Answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be

deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary