

## VII. *SEC Regulation of EB-5 Investment*

### A. Introduction

The United States Citizenship and Immigration Services (USCIS) administers the EB-5 investor visa program; however, the Securities and Exchange Commission (SEC) has recently played an increased role in regulating this program.<sup>1</sup> Typically, SEC enforcement actions targeted large “Ponzi-like” schemes perpetrated by individuals seeking investments from alien EB-5 applicants.<sup>2</sup> In 2015, the SEC broadened the scope of its enforcement action by pursuing parties who facilitated EB-5 investments as unregistered broker-dealers.<sup>3</sup> This recent development highlights the extent to which the EB-5 industry is subject to SEC oversight and necessitates that industry professionals familiarize themselves and comply with applicable securities laws.<sup>4</sup>

### B. Background

In 1990, Congress established the EB-5 program to increase foreign investment and thereby spur domestic job growth.<sup>5</sup> The

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<sup>1</sup> Natalie Rodriguez, *SEC's EB-5 Cases Signal Growing Enforcement Trend*, LAW 360 (Jul. 8, 2015, 7:24 PM), <http://www.law360.com/articles/675991/sec-s-eb-5-cases-signal-growing-enforcement-trend> [perma.cc/4M9S-SJQK] (“Many attorneys in the industry point to a 2013 fraud case that the SEC brought against companies alleged to be putting together financing for a Chicago-area hotel and conference center as a turning point for the agency's involvement in the EB-5 industry.”).

<sup>2</sup> Ed Beeson, *SEC Puts Attorneys on Notice with EB-5 Enforcement*, LAW 360 (Dec. 7, 2015, 9:10 AM), <http://www.law360.com/capital-markets/articles/735183/sec-puts-attorneys-on-notice-with-eb-5-enforcement> [perma.cc/6Y82-QZRH] (“These disciplinary actions are markedly different from other recent cases the SEC has brought in the EB-5 space, which have focused on those investment-for-visa opportunities that the agency says are actually multimillion-dollar frauds and Ponzi-like schemes.”).

<sup>3</sup> *Id.* (“[T]he latest crop of cases targets attorneys who arranged for EB-5 investments without registering as a broker-dealer with the SEC. . . .”).

<sup>4</sup> *See id.* (quoting Adam Sisitsky, a member of Mintz Levin Cohn Ferris Glovsky & Popeo PC).

<sup>5</sup> U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEP'T OF HOMELAND SECURITY, PM-602-0083, EB-5 ADJUDICATIONS POLICY (May 30, 2013),

program grants legal permanent resident (LPR) status to aliens who invest \$1,000,000 in a commercial enterprise that benefits the economy and creates full-time employment for at least ten U.S. citizens.<sup>6</sup> Alien investments in a “targeted employment area” receive LPR status with an investment of \$500,000.<sup>7</sup> The statute defines targeted employment areas as rural areas or those areas with unemployment greater than 150% of the national average.<sup>8</sup> The number of EB-5 visas available per year is 7.1% of the total allotment of immigrant visas.<sup>9</sup> This amounts to approximately 10,000 EB-5 visas available annually.<sup>10</sup> Of these 10,000 visas, approximately 1/3 are set aside for investments in targeted employment areas.<sup>11</sup>

Congress created an alternate pathway to obtain LPR status through the EB-5 program by enacting the Regional Center Pilot Program (RCPP) in 1992.<sup>12</sup> Rather than directly invest in a business or enterprise that meets EB-5’s requirements, the RCPP allows alien investors to fulfill their statutory obligations by investing in “regional centers.”<sup>13</sup> Regional centers are defined as “any economic unit, public

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available at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20\(Approved%20as%20final%205-30-13\).pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/May/EB-5%20Adjudications%20PM%20(Approved%20as%20final%205-30-13).pdf) [<https://perma.cc/C68N-CP5J>] [hereinafter EB-5 ADJUDICATIONS POLICY].

<sup>6</sup> 8 U.S.C. § 1153(b)(5)(C)(i) (2012).

<sup>7</sup> *Id.* § 1153(b)(5)(C)(ii) (“Adjustment for targeted employment areas The Attorney General may, in the case of investment made in a targeted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than ½ of) the amount specified in clause (i).”).

<sup>8</sup> *Id.* § 1153(b)(5)(B)(ii).

<sup>9</sup> *Id.* § 1153(b)(5)(A).

<sup>10</sup> Leslie K. L. Thiele & Scott T. Decker, *Residence in the United States Through Investment: Reality or Chimera?*, 3 ALB. GOV’T L. REV. 103, 105 (2010).

<sup>11</sup> *Id.* at 134 (“At least 3,000 of the visa numbers are reserved for investments in rural areas or areas of high unemployment.”).

<sup>12</sup> *What is the EB-5 Program?*, U.S. CITIZENSHIP & IMMIGRATION SERVS. (Nov. 30, 2010), [http://blog.uscis.gov/2010/11/what-is-eb-5-program\\_30.html](http://blog.uscis.gov/2010/11/what-is-eb-5-program_30.html) [[perma.cc/MFF4-VL96](https://perma.cc/MFF4-VL96)] (“There are two distinct EB-5 pathways for an immigrant investor to gain lawful permanent residence for themselves and their immediate family—the Basic Program and the Regional Center Pilot Program.”).

<sup>13</sup> *Id.* (“In 1992 and regularly reauthorized since then, 3,000 EB-5 visas are also set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth.”).

or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.”<sup>14</sup> EB-5 applicants investing in regional centers are still required to show the creation of at least ten jobs.<sup>15</sup> Additionally, investors must prove that the capital that forms the basis of their investment was lawfully obtained.<sup>16</sup>

The RCPP aggregates alien investors’ capital and provides a pre-defined investment opportunity that lowers the applicant’s independent responsibility to find an investment that satisfies the EB-5 program.<sup>17</sup> These investments are commercial enterprises that benefit the economy and are geared towards creating the requisite number of jobs.<sup>18</sup> The RCPP is also advantageous for alien investors because such investments need only create the requisite ten jobs “indirectly.”<sup>19</sup> USCIS defines “indirect” jobs as those created “collaterally” by an applicant’s investment in a regional center.<sup>20</sup> USCIS only requires that applicants show the creation of jobs using “reasonable methodologies” such as an economic analysis indicating job creation in a given enterprise’s supply chain.<sup>21</sup>

As a testament to the RCPP’s popularity, in fiscal year 2014, an overwhelming number of applicants invested in regional centers located in target investment areas.<sup>22</sup> In total, the USCIS received

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<sup>14</sup> 8 C.F.R. § 204.6(e) (2014).

<sup>15</sup> *Id.* § 204.6(j)(4)(iii).

<sup>16</sup> *Id.*

<sup>17</sup> See EB-5 ADJUDICATIONS POLICY, *supra* note 5, at 14 (“The regional center model within the Immigrant Investor Program can offer an immigrant investor already-defined investment opportunities, thereby reducing the immigrant investor’s responsibility to identify acceptable investment vehicles.”).

<sup>18</sup> *Id.* at 13 (“A regional center that wants to participate in the Immigrant Investor Program must submit a proposal using Form I-924, that: (1) Clearly describes how the regional center focuses on a geographical region of the United States, and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment . . .”).

<sup>19</sup> *Id.*

<sup>20</sup> *What is the EB-5 Program?*, *supra* note 12 (“Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor.”).

<sup>21</sup> EB-5 ADJUDICATIONS POLICY, *supra* note 5, at 13, 19.

<sup>22</sup> See 2014 DEP’T OF STATE REP. OF THE VISA OFFICE Table 5, pt. 3.

10,692 EB-5 applications.<sup>23</sup> Of these applications, 10,376 involved investments in regional centers.<sup>24</sup> In 2014, only 316 applications, or less than 3% of the total, involved EB-5 investments in non-regional centers.<sup>25</sup>

### C. SEC Applies Securities Laws to EB-5 Investments

The SEC has authority to regulate the EB-5 program because the expansive definition of “security” encompasses EB-5 qualified investment offerings.<sup>26</sup> Security is defined as, *inter alia*, any note, stock, bond, or “investment contract.”<sup>27</sup> The Supreme Court defined an investment contract as (1) an investment of money (2) in a common enterprise (3) with an expectation of profits (4) generated from the efforts of others.<sup>28</sup> EB-5 investments fall within this definition; therefore, in order to avoid the registration rules associated with designation as a security, regional centers rely on Regulation D.<sup>29</sup> Regulation D exempts issuers from registration requirements where all investors in a given security are “accredited.”<sup>30</sup> Accredited investors are, *inter alia*, individuals with a net worth greater than \$1,000,000,

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *See id.*

<sup>26</sup> AUSTIN T. FRAGOMEN, JR., CAREEN SHANNON & DANIEL MONTALVO, *IMMIGRATION LAW & BUSINESS* § 18:21, Westlaw (database updated Oct. 2015) (“The SEC has emphasized that the definition of a ‘security’ is broad and that EB-5 investments often include the offering of securities that would require either registration or exemption from the registration requirements under the Securities Act. While there are registration exemptions that may be available to the EB-5 community, all anti-fraud provisions still remain applicable to even those exempt offerings.”).

<sup>27</sup> 15 U.S.C. § 77b (2014).

<sup>28</sup> *SEC v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946).

<sup>29</sup> Jennifer Mercier Moseley, Angelo A. Paparelli, Ladd W. Mark & Carolyn Lee, *The Relevance of U.S. Securities Laws to Immigrant Investors, EB-5 Regional Centers and their Advisors*, 14 BENDER’S IMMIGR. BULL. 3 (Aug. 1, 2009) (“The Securities Act requires that all securities sold must be registered with the SEC, unless exempted by its rules. Rule 506 of Regulation D promulgated under the Securities Act provides the exemptions to the registration rules that regional centers typically use to avoid the burdensome and expensive process of registering the securities to be offered and sold to EB-5 investors.”).

<sup>30</sup> *Id.* (“If all of the investors are ‘accredited investors’ then there are no informational requirements under Regulation D . . .”).

individual annual income greater than \$200,000, or joint annual income greater than \$300,000.<sup>31</sup> However, even those offerings that fall within a registration exemption are still subject to applicable securities antifraud provisions.<sup>32</sup>

#### D. Rise in Fraud and an Investor Alert

The SEC began its enforcement in the EB-5 investment space using these antifraud provisions.<sup>33</sup> Two early SEC enforcement actions illustrate the application of these general antifraud provisions. In the first enforcement action of its kind, Anshoo Sethi and various corporations operating as alter egos, fraudulently sold \$145 million in securities to Chinese nationals as investments under the EB-5 program.<sup>34</sup> The SEC alleged that Sethi used false and misleading information, claiming to have credible investors and municipal permits, to attract EB-5 applicants.<sup>35</sup> Further, the SEC complaint stated that Sethi presented false documents to USCIS in order comply with EB-5 requirements.<sup>36</sup> The SEC brought charges under the general securities antifraud provisions 15 U.S.C. §§ 77q(a) & 77j(b) and 17 C.F.R. § 240.10b-5.<sup>37</sup> In another case brought by the SEC under the

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<sup>31</sup> 17 C.F.R. § 230.501(a).

<sup>32</sup> Fragomen, Shannon & Montalvo, *supra* note 26 (“While there are registration exemptions that may be available to the EB-5 community, all anti-fraud provisions still remain applicable to even those exempt offerings.”).

<sup>33</sup> *The Failures and Future of the EB-5 Regional Center Program: Can it Be Fixed?*, Hearing Before the H. Comm. on the Judiciary, 114th Cong. 2 (2016) (statement of Stephen L. Cohen, Assoc. Dir., Enf’t Div., Sec. & Exch. Comm’n) (“In February 2013, in the first case of this kind, the Commission filed an action to halt an investment scheme that allegedly defrauded over 250 investors who invested through the EB-5 program, in what was purportedly a massive multi-hotel and convention center project.”).

<sup>34</sup> SEC v. A Chicago Convention Center, 961 F. Supp. 2d 905, 907 (N.D. Ill. 2013) (“For ‘over . . . 18 months,’ Anshoo Sethi . . . and the Corporate Defendants . . . ‘have perpetrated a large scale investment scheme.’ Specifically, Defendants ‘fraudulently sold over \$145 million in securities and collected an additional \$11 million in administrative fees from over 250 investors.’”).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* (“[T]he United States Securities and Exchange Commission . . . filed a three-count Complaint against Defendants . . . alleging violations of the Securities Act of 1933, 15 U.S.C § 77q(a)(1)-(a)(3) . . . Section 10(b) of the

same provisions, the SEC alleged that Marco and Bebe Ramirez solicited funds from foreign investors under the guise of operating a regional center in compliance with EB-5 requirements.<sup>38</sup> The SEC alleged that the defendants failed to use the investors' funds as represented; instead of placing the funds in escrow, the defendants diverted the investments for "undisclosed businesses or for personal uses . . . ."<sup>39</sup>

Citing both of the above cases, the SEC issued an investor alert in October 2013.<sup>40</sup> The alert, and subsequent enforcement actions, signified the SEC's intent to maintain an active role in the enforcement of EB-5 investments under applicable securities laws.<sup>41</sup> Prior to 2013, many involved in the EB-5 investment industry did not realize that EB-5 investments were subject to regulation under the securities laws, and therefore, within the purview of the SEC.<sup>42</sup>

#### E. 2015 Antifraud Enforcement Actions

To date, the SEC continues to charge defendants who perpetrate multimillion-dollar frauds that resemble Ponzi-like schemes under applicable antifraud statutes.<sup>43</sup> In 2015, the SEC brought several

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Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5 . . . .").

<sup>38</sup> Complaint at 2, SEC v. Marco A. Ramirez, No. 7:13-cv-00531 (S.D. Tex. 2013) ("But even before USCIS approved USA Now as a Regional Center, the Ramirezes and other employees of USA Now had started soliciting investors and falsely promising them the opportunity to invest in a business that would give them the opportunity to obtain EB-5 visas.").

<sup>39</sup> *Id.*

<sup>40</sup> *Investor Alert: Investment Scams Exploit Immigrant Investor Program*, SEC. & EXCH. COMM'N (Oct. 9, 2013), [http://www.sec.gov/investor/alerts/ia\\_immigrant.htm](http://www.sec.gov/investor/alerts/ia_immigrant.htm) [perma.cc/2BU7-VQPG] ("The SEC and USCIS are aware of attempts to misuse the EB-5 program as a means to carry out fraudulent securities offerings.").

<sup>41</sup> Rodriguez, *supra* note 1 ("[I]t is also a reaffirmation of the agency's intention to actively target EB-5 fraudsters or abusers . . . .").

<sup>42</sup> *Id.* ("Many attorneys in the industry point to a 2013 fraud case that the SEC brought against companies alleged to be putting together financing for a Chicago-area hotel and conference center as a turning point for the agency's involvement in the EB-5 industry. 'Before that time, a lot of people really didn't know that the EB-5 investments were considered securities under U.S. laws,' Holmes noted.").

<sup>43</sup> Rodriguez, *supra* note 1.

actions that fit this general pattern. In July, the SEC announced an action against Bingqing Yang and her three wholly-owned management companies.<sup>44</sup> Yang solicited Chinese investors seeking LPR status to invest in her companies and represented that the investments would finance employment and development costs for oil and gas drilling projects.<sup>45</sup> Yang also stated that the investment was fully secured.<sup>46</sup> However, according to the SEC, the enterprise was insolvent with little likelihood of repaying its creditors.<sup>47</sup> The SEC complaint also notes that Yang's enterprise operated in a "Ponzi-like fashion," using new investor funds to repay older investors.<sup>48</sup> The SEC charged the defendants with violating the antifraud provisions of the Securities Act of 1933 (15 U.S.C. §§ 77q & 78j) and 17 C.F.R. § 240.10b-5.<sup>49</sup> Further, the SEC alleged Yang made material misrepresentations and offered unregistered securities in violation of securities laws.<sup>50</sup>

Similarly, in August 2015, the SEC alleged that Lobsang Dargey and a collection of affiliated entities (collectively referred to as "Path") defrauded applicants in a scheme to purportedly finance two real estate projects in Washington.<sup>51</sup> After raising \$125 million through the sale of securities in support of the real estate projects, Dargey allegedly misappropriated \$17.6 million.<sup>52</sup> The SEC charged the defendants with violating the general securities antifraud statutes, specifically 15 U.S.C. §§ 77q & 78j.<sup>53</sup>

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<sup>44</sup> Complaint at 2, SEC v. Luca Int'l Grp., No. 3:15-cv-03101 (N.D. Cal. 2015).

<sup>45</sup> *Id.* at 2-3.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 3.

<sup>48</sup> *Id.* at 9 ("Yang returned some of the monies raised from newer investors to other investors as profits in Ponzi-like fashion.")

<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Id.*

<sup>51</sup> Complaint at 2, SEC v. Path America, LLC., No. 2:15-cv-01350-JLR (W.D. Wash. 2015) ("Since February 2012, defendants . . . have exploited a federal visa program to defraud investors seeking investment returns and a path to United States residency.")

<sup>52</sup> *Id.* at 1-2 ("[R]ather than use the money solely for the projects for which it was purportedly raised, Defendants have misappropriated approximately \$17.6 million.")

<sup>53</sup> *Id.* at 12-15.

The trend continued with an SEC complaint against Lin Zhong.<sup>54</sup> According to the SEC, Zhong targeted Chinese nationals seeking to gain LPR status through investment in accordance with the EB-5 program.<sup>55</sup> The SEC alleged that Zhong represented to investors that, among other things, their funds would be applied to construction projects, those funds would be held in escrow until their immigration petitions were approved, and that she had extensive personal experience with real-estate development projects.<sup>56</sup> The SEC complaint stated that Zhong instead used the funds to purchase a new home, several luxury automobiles, and to finance her daughter's education.<sup>57</sup> As a result of her conduct, the SEC alleged that she violated the securities antifraud statutes.<sup>58</sup>

#### **F. The SEC Broadens the Scope of its EB-5 Enforcement**

The above cases all involve alleged violations of securities antifraud provisions involving parties who receive investment funds from EB-5 applicants. In June 2015, the SEC expanded the scope of its enforcement of the EB-5 industry by filing charges against Ireco LLC (and its Hong Kong affiliate, Ireco Ltd.) for failing to register as a broker-dealer.<sup>59</sup> This is the first time the SEC has charged a broker-dealer in an EB-5 context, as opposed to the offering party, which receives and uses the investment.<sup>60</sup> Ireco solicited potential EB-5 investors in order to match them with a regional center and, in

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<sup>54</sup> Complaint at 1, SEC v. EB5 Asset Manager LLC., No. 0:15-cv-62323-JAL (S.D. Fla. 2015).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 2 (“To convince investors to invest, Defendants represented, among other things: 100% of their funds would be used in construction projects; . . . Investors’ funds would be held in escrow . . . Zhong had an extensive history of developing real estate projects.”).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 3.

<sup>59</sup> Cara Salvatore, *SEC Brings Civil Charges in \$79M Visa Investment Scheme*, LAW 360 (June 23, 2015, 8:10PM), <http://www.law360.com/articles/671527/sec-brings-civil-charges-in-79m-visa-investment-scheme> [perma.cc/4PPU-62VK] (“The U.S. Securities and Exchange Commission brought civil charges Tuesday against a company that took in \$79 million from allegedly brokering illegal residency visas through the Immigrant Investor Program.”).

<sup>60</sup> *Id.*



so doing, received \$35,000 in commission from the regional center.<sup>61</sup> The SEC alleged that these transactions violated Section 15(a)(1) of the Securities Exchange Act of 1934 because Ireeco engaged in the business of “inducing or attempting to induce the purchase or sale of, securities for the accounts of others without registering as a broker-dealer.”<sup>62</sup> The SEC did not allege any violations of the securities antifraud provisions.

Five months later, the SEC brought similar charges against Hui Feng, proving that enforcement of this type was not an isolated event.<sup>63</sup> Feng, and his law firm, the Law Offices of Feng and Associates (Feng & Associates), allegedly failed to register as broker-dealers despite their role facilitating EB-5 investment transactions.<sup>64</sup> Further, the SEC alleged that the defendants defrauded their clients because they failed to disclose the receipt of commissions in violation of a fiduciary duty to their clients.<sup>65</sup> The defendant’s clients signed retainer agreements stating that Feng & Associates would objectively recommend EB-5 investments based on the quality and reliability of the investment.<sup>66</sup> However, unbeknownst to their clients, Feng & Associates received commissions from various EB-5 promoters.<sup>67</sup> Finally, the SEC claimed that Feng defrauded EB-5 investment promoters by establishing a scheme to receive commissions through

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<sup>61</sup> *Id.* (“Ireeco ‘used their website to solicit EB-5 investors, some of whom were already in the U.S. on a temporary visa. While Ireeco LLC and Ireeco Limited promised to help investors choose the right regional center to invest with, they allegedly directed most EB-5 investors to the same handful of regional centers, ones that paid them commissions of about \$35,000 per investor’ after USCIS approved green cards, the agency said.”).

<sup>62</sup> Ireeco, LLC., Exchange Act Release No. 75268, 2015 WL 3862865 (June 23, 2015).

<sup>63</sup> Complaint at 1, SEC v. Hui Feng, No. 2:15-cv-09420 (C.D. Cal. 2015).

<sup>64</sup> *Id.* at 2.

<sup>65</sup> *Id.* at 3 (“[T]he Defendants had fiduciary, legal and ethical duties towards their clients to disclose their receipt of the commissions and the conflicts of interest such compensation created, but knowingly, recklessly and/or negligently failed to make the required disclosures in breach of those duties.”).

<sup>66</sup> *Id.* at 6 (“The retainer agreements touted Feng’s purported objectivity in conscientiously studying, investigating and recommending only the most reliable EB-5 investment projects.”).

<sup>67</sup> *Id.*

Chinese surrogates in order to circumvent the promoters' regulatory controls.<sup>68</sup>

Further demonstrating the SEC's increased focus on the EB-5 program, on the same day that the SEC filed its complaint against Feng & Associates, it also censured six attorneys.<sup>69</sup> The SEC stated that the attorneys received commissions after facilitating their clients' securities transactions without first registering as a broker-dealer.<sup>70</sup> This was the first time the SEC sanctioned attorneys for acting as unregistered broker-dealers in the facilitation of EB-5 investments.<sup>71</sup> Andrew Ceresney, the SEC's enforcement director, said that the agency would continue to closely monitor the EB-5 program.<sup>72</sup>

### G. The Impact

Industry commentators view the recent SEC enforcement actions as part of a larger enforcement trend within the EB-5 investment space.<sup>73</sup> The key takeaway is that any professionals working on behalf of regional centers or potential EB-5 applicants

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<sup>68</sup> *Id.* at 11-12 (“In or about May 2013, some of the Promoters informed Feng that they would not wire commissions to United States-based bank accounts as part of an apparent effort to avoid running afoul of the broker-dealer registration requirements contained in the federal securities laws. As a result, Feng had relatives or friends act as ‘nominees’ or ‘surrogates’ to execute the referral fee agreements with the Promoters and to receive the commissions on his behalf or on behalf of Feng & Assocs. through overseas bank accounts.”).

<sup>69</sup> Ed Beeson, *SEC Sanctions Attys for Flouting Rules in EB-5 Offerings*, LAW 360 (Dec. 7, 2015, 4:38 PM), <http://www.law360.com/articles/734915/sec-sanctions-attys-for-flouting-rules-in-eb-5-offerings> [perma.cc/PJ3X-LV GK].

<sup>70</sup> *Id.*

<sup>71</sup> Beeson, *supra* note 2 (“These disciplinary actions are markedly different from other recent cases the SEC has brought in the EB-5 space, which have focused on those investment-for-visa opportunities that the agency says are actually multimillion-dollar frauds and Ponzi-like schemes. Instead, the latest crop of cases targets attorneys who arranged for EB-5 investments without registering as a broker-dealer with the SEC, sending a message to a professional class that services this cash-flush sector: Don't let the promise of finder's fees make you lose sight of the rules of the road.”).

<sup>72</sup> Richard Hill, *Attorneys Acted as Brokers for Foreign Investors, SEC Says*, SEC. L. DAILY (BNA) (Dec. 8, 2015), <http://www.bna.com/attorneys-acted-brokers-n57982064693/> [perma.cc/K7TU-WAMJ].

<sup>73</sup> Rodriguez, *supra* note 1.

must stay within the bounds of all applicable securities law.<sup>74</sup> The SEC did not preclude attorneys from receiving commissions from regional centers for connecting them with alien investors.<sup>75</sup> The lawful receipt of such commissions, however, requires the attorney to register as a broker-dealer.<sup>76</sup> To date, the SEC has demonstrated that it will settle similar unregistered broker-dealer enforcement actions by requiring disgorgement of the commissions and, in many cases, imposing a \$25,000 penalty.<sup>77</sup> All six of the sanctioned attorneys settled without admitting or denying any wrongdoing.<sup>78</sup> Likewise, Ireco settled without admitting wrongdoing and agreed to further administrative proceedings to determine any disgorgement or the amount of an imposed penalty.<sup>79</sup>

## H. Conclusion

The Securities Act of 1933's broad definition of security allows the SEC to regulate not just the EB-5 investment offeror but also other actors within the EB-5 industry, including attorneys.<sup>80</sup> Guidance for EB-5 offerors, broker-dealers, and attorneys is likely to come in the form of further SEC enforcement action.<sup>81</sup> Industry participants may not have to wait long. Angelo Paparelli, partner at Seyfarth Shaw LLP, commented that "[t]his is just the beginning of an intensified enforcement effort by the federal government."<sup>82</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> Beeson, *supra* note 2.

<sup>76</sup> *Id.* ("But the burdens of registering as a broker-dealer likely will steer many away from the business of finding investors.").

<sup>77</sup> Press Release, Sec. & Exch. Comm'n, Lawyers Offered EB-5 Investments as Unregistered Brokers, (Dec. 7, 2015), *available at* <https://www.sec.gov/news/pressrelease/2015-274.html> [<https://perma.cc/72Y3-EG53>].

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Beeson, *supra* note 2 ("The U.S. Securities and Exchange Commission's crackdown on scofflaws in a federal program for immigrant investors entered a new phase Monday when the agency took action against several attorneys who decided to moonlight as deal makers without following the rules on how to do that.").

<sup>81</sup> Rodriguez, *supra* note 1 ("I think the SEC has a hard time coming out with proscriptive guidelines," Holmes said, noting the delays that the agency has had with forming and adopting certain JOBS Act-required rules. "It's easier to take these enforcement methods and use them as a message.").

<sup>82</sup> Beeson, *supra* note 2.

Nicholas Quinby<sup>83</sup>

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<sup>83</sup> Student, Boston University School of Law (J.D. 2017).