

Practice Update

SEC Announces Broker-Dealer Enforcement Action - Believed to be First in EB-5 Program

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By Scot Patrick O'Brien

On Tuesday, June 23, 2015, the Securities and Exchange Commission (the "SEC") charged two affiliated U.S.-based firms with failing to register as a broker-dealer with the SEC in connection with the firms' solicitation of \$79 million of investments by foreign nationals seeking U.S. residency through the EB-5 Immigrant Investor Program (the "EB-5 Program"). The charges are believed to be the first publicly released SEC order for broker-dealer violations in connection with the popular EB-5 Program.

EB-5 Program

The EB-5 Program allows foreign nationals who invest in either a new commercial enterprise or a troubled business in the U.S. to obtain a green card, provided the investment creates 10 full-time jobs in the U.S. The amount of the investment is either \$500,000 for investments in targeted employment areas ("TEAs") or \$1 million for investments outside TEAs. Most foreign investors invest in projects sponsored by EB-5 Regional Centers, which have been designated by the United States Citizenship and Immigration Services (the "USCIS") to facilitate investments in certain geographical areas.

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SEC Order

In the Matter of Ireeco, LLC and Ireeco Limited, according to the SEC's Order, Ireeco LLC, based in Boca Raton, Florida and Ireeco Limited, a company registered in Hong Kong, were charged with willfully violating Section 15(a)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") by using the U.S. mail and other instrumentalities of interstate commerce to solicit more than 158 investors for the EB-5 Program without registering as a broker-dealer with the SEC or without associating with a broker-dealer registered with the SEC.

Unregistered Broker Activity

Commencing January 2010, using a website and a staff of up to four (including the two principals), Ireeco, LLC and later Ireeco Limited (together "Ireeco") solicited foreign investors who wished to invest in the EB-5 Program through Regional Centers. In particular, Ireeco:

- Offered to "assist foreign investors in choosing the right EB-5 projects"
- Contacted "investors to ascertain the applicants' interest in the program and level of knowledge"
- Contacted investors with follow-up calls/emails and provided further information on the EB-5 Program
- Provided investors with one or more Regional Center projects as possible choices, including background information on the Regional Center after obtaining an understanding of the investor's preferences and suitability
- Performed "due diligence" on each selected Regional Center
- "Registered" investors with the selected Regional Center, providing names, contact information and visa status
- Received a commission based on a fixed portion of the administrative fee the investor paid to the

Regional Center (averaging \$35,000), pursuant to “referral partner agreements” with the Regional Centers, once the USCIS approved an investor’s petition for conditional residence (i.e., the green card)

Ireeco allegedly directed most foreign investors to the same Regional Centers and also solicited some investors who were already in the U.S. on a temporary visa. By using their website and communicating with potential foreign investors from the U.S., Ireeco allegedly violated the Exchange Act by not either registering with the SEC as a broker-dealer or associating with a broker-dealer registered with the Commission.

SEC Enforcement and Damages

Pursuant to the SEC’s Order, the immediate sanctions on Ireeco LLC and Ireeco Limited include a cease and desist order and public censure. A future administrative hearing will be held in order to determine any additional penalties, including a return of any illegally obtained profits, fines, or both.

Lessons Learned

Under the facts of this matter, it was a violation of the Exchange Act to use the instrumentalities of U.S. interstate commerce, such as mail, telephone calls, emails, and websites, to solicit investment from U.S.-based or foreign-based investors in the EB-5 Program without registering as a broker-dealer with the SEC or without associating with a broker-dealer registered with the SEC.

Next Steps

We would expect more enforcement actions.

Akerman LLP has been advising clients that using instrumentalities of U.S. interstate commerce to solicit U.S. and foreign investors as was done in this matter, will likely create Exchange Act compliance

issues. The Akerman EB-5 Team can provide counsel and advice to interested parties regarding appropriate methods to solicit capital in full compliance of the Exchange Act and other applicable laws, rules, and regulations.

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