

Practice Update

SEC Files Complaint Against U.S. Company for Ponzi Scheme - Includes EB-5 Investors

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On Monday July 6, 2015, the Securities and Exchange Commission (the “SEC”) charged Luca International Group, LLC, a San Francisco area oil and gas company, and its affiliated companies (“Luca”) and certain of its executives, with running an elaborate \$68 million Ponzi-like scheme targeting Chinese-Americans and investors in Asia. Included in this amount was approximately \$8 million from Chinese investors seeking U.S. residency through the EB-5 Immigrant Investor Program (the “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 Complaint

According to the complaint filed in the U.S. District Court for the Northern District of California, defendant Bingqing Yang, Luca's Founder, Chief Executive Officer and President, represented to Chinese EB-5 investors that the loan they were making was fully secured, when apparently Ms. Yang knew that one of the Luca entities, Luca International, was in debt and had no realistic possibility of repaying the debt. By making material misstatements and misrepresentations, as well as engaging in a fraudulent Ponzi scheme, Luca executives have been charged with violations of the anti-fraud provisions of the Securities Act of 1933, the Exchange Act, and the Investment Advisors Act of 1940. Certain defendants were also charged with violation of Section 15(a) of the Exchange Act for soliciting funds for Luca without registering with the SEC as a broker-dealer or with persons associated with a broker-dealer.

As part of Ms. Yang's alleged misconduct, she is charged with comingling investor funds and using new investor money to make sham profit payments to early investors, while diverting funds for personal and undisclosed uses, including the purchase of a \$2.5 million home, household services, a family vacation, payment of her personal taxes and expenses, and a golf trip. According to the SEC's complaint, Ms. Yang is alleged to have raised approximately \$8 million from EB-5 investors purportedly to finance, through a loan to another Luca entity, jobs and development costs for eight oil and gas drilling projects. The nine-claim complaint also asks the U.S. District Court in the Northern District of California to: prohibit the defendants from participating in the issuance, offer, or sale of any security; place the companies' finances in escrow to clarify the entities' financial affairs; freeze all other assets; disgorge any ill-gotten gains; pay civil penalties; and grant such other orders and reliefs as necessary.

Next Steps

Unless the remaining defendants settle the charges, the SEC lawsuit will proceed with motions in the U.S. District Court for asset freeze, appointment of a receiver, and discovery. This is the second SEC enforcement action by the SEC involving the EB-5 Program in as many weeks, signaling to the EB-5 community the importance of securities law compliance.

The Akerman EB-5 Team will continue to monitor these and other SEC enforcement actions impacting the EB-5 Program. We 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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