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SEC Increases Its Focus on Investment Scams Exploiting the Immigrant Investor Program

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On October 1st the Securities and Exchange Commission (SEC) announced that it filed fraud charges against a husband and wife in Texas for stealing funds which foreign investors had invested with them to participate in the EB-5 Immigrant Investor Pilot Program. In that case, *SEC v. Ramirez, et al.*, the SEC charged Marco and Bebe Ramirez and three companies they owned with fraudulently raising \$5 million. According to the complaint, the Defendants began by targeting investors in Mexico and more recently solicited investors in Egypt and Nigeria. A Texas federal court froze the assets and accounts of the defendants.

Earlier this year, the SEC filed fraud charges involving another EB-5 investment program alleging that the defendants in that case had raised more than \$150 million from investors primarily in China. In that case, *SEC v. A. Chicago Convention Center, et al.*, the SEC in coordination with the U.S. Citizenship and Immigration Services (USCIS) acted to halt what was alleged to be a scheme to raise money for a convention center and hotel complex in Chicago, in which the defendants allegedly spent more than 90% of the money raised on “administrative fees.” These two cases are indicative of a new focus which the SEC has placed on the EB-5 program.

The EB-5 program was designed to provide foreign investors with a method of obtaining a green card by investing in the United States. Under the program, approved investors who invest at least \$1 million or at least \$500,000 in a “Targeted Employment Area” (generally a high unemployment area) which creates or preserves at least 10 jobs for U.S. workers, excluding the investor and the investor’s immediate family, subject to complying with the conditions of the program, are eligible for conditional lawful permanent residency.

Although the program was created in the early 1990’s, it has not been widely used to raise funds for investments until recently. As late as 2007, there were fewer than 800 applications filed under the program. By contrast, in recent years, it has become an widely used means of raising funds for investment opportunities in the United States.

Corresponding with the increased use of the program for raising funds from foreign investors, the SEC has increased its focus on the methods used to obtain money from foreign investors. Following the *Chicago Convention Center* case, the SEC presented its views in April at a stakeholders’ meeting held by USCIS. The *Ramirez* case this month was the first lawsuit brought by the SEC since that conference. The SEC is currently conducting a number of other investigations of EB-5 programs.

Concurrently with announcing the filing of the *Ramirez* case this month, the SEC and USCIS issued an important Investor Alert which should provide important guidance to individual investors to help them distinguish between the many legitimate EB-5 investment programs and those where promoters may be simply trying to take advantage of foreign investors hoping for a fast track to a green card. Potential investors would be well advised to consider the cautions offered by the SEC and USCIS.

In the Investor Alert, the SEC and USCIS highlighted, among other things, taking the following recommended steps:

- **Confirm that the regional center has been designated by USCIS.** (If you intend to

invest through a regional center, check the list of current regional centers on USCIS’s

website at www.uscis.gov.) (Regional Centers are economic entities approved by USCIS for participation in the EB-5 Pilot Program.)

• **Obtain copies of documents provided to USCIS.**

• **Request investment information in writing.** (Ask for a copy of the investment offering memorandum or private placement memorandum from the issuer. Examine it carefully and research similar projects in evaluating the proposal. Follow up with any questions you may have.)

• **Ask if promoters are being paid.**

• **Seek independent verification.** (Confirm whether claims made about the investment are true.)

• **Examine structural risk.** (Understand that you may be investing in a new commercial enterprise that has no assets and has been established to loan funds to a company that will use the funds to develop projects. Carefully examine loan documents and offering statements to determine if the loan is secured by any collateral pledged to investors.)

• **Consider the developer's incentives.**

• **Look for warning signs of fraud.** The Alert noted the following as "hallmarks of fraud":

◦ **Promises of a visa or becoming a lawful permanent resident.** (Investing through EB-5 makes you eligible to apply for a conditional visa, but there is no guarantee that USCIS will grant you a conditional visa or subsequently remove the conditions on your lawful permanent residency. USCIS carefully reviews each case and denies cases where eligibility rules are not met. Guarantees of the receipt or timing of a visa or green card are warning signs of fraud.)

◦ **Guaranteed investment returns or no investment risk.**

◦ **Overly consistent high investment returns.**

◦ **Unregistered investments.**

◦ **Unlicensed sellers.**

◦ **Layers of companies run by the same individuals.**

The presence of one or more of the factors which the government characterized as "hallmarks of fraud," does not necessarily mean that the investment is fraudulent or improper. It may, however, suggest that a potential investor should be alert to that possibility. Where the investor needs help obtaining and understanding the information, the investor would be well-advised to seek the help of counsel or an independent investment adviser.

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