

Panel 2A

The Enhanced Role of the U.S. Securities and Exchange Commission:

An analysis of investigations in 2015, asset freezes, coordination with USCIS, notices to terminate Regional Centers, and other related issues

John Tishler, Sheppard Mullin Richter & Hampton, LLP

Michael Homeier, Homeier & Law, P.C.

Robert Cornish, Jr, Phillips Lytle LLP

Moderator: Christian Triantaphyllis, Foster LLP

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SEC Involvement

- **SEC's Attitude towards the EB-5 Program**

- Do not try to “outsmart” the SEC.
- SEC's concerns that agents are running wild.

Enforcement Action on Individuals Acting as Unregistered Broker Dealers

- Immigration Lawyers

- Why some individuals get hit with penalties and other do not.
- Timing of penalties.

SEC and EB-5 Projects

- SEC Investigations and Litigation

- Investors receiving subpoenas from the SEC.
- EB-5 Project Activities: Complaints and Asset Freezes.

SEC Involvement Cont'd

Interagency Cooperation:

SEC, USCIS, and Foreign Securities Agencies

- SEC links on USCIS IPO website.
- SEC and USCIS issued a joint Investor Alert to warn individual investors about fraudulent investment scams that exploit the Immigrant Investor Program.
- Subpoenas issued in foreign countries because of cooperation treaties.
 - The SEC uses multilateral and bilateral information sharing arrangements to facilitate consultation and cooperation with its foreign counterparts.
 - MOUs for enforcement cooperation facilitate the ability of securities regulators to assist one another in investigations and prosecutions of cross-border securities fraud.
 - Enforcement Cooperation, Supervisory Cooperation, Technical Cooperation; Hong Kong, Brazil, Mexico, U.K, etc.

SEC and FBI

- Awareness of Foreign Corrupt Practices Act.
- Attorneys under investigation made referral payments to migration agents.

Conclusion of civil litigation can eventually lead to criminal indictment

- Not just monetary fines, the SEC is cooperating with the Department of Justice.

Termination of Regional Centers

- USCIS has terminated 38 regional centers with over half of all the regional center terminations occurring in 2015.

Inactivity vs. Illegal Activity:

– *Inactivity:* USCIS may terminate a regional center's participation in the Immigrant Investor Program when the regional center fails to:

- *Submit Form I-924A on an annual basis; or*
- *Promote economic growth as required, such as job creation, or increased domestic capital investment.*

– *Illegal Activity:* fraud, false statements, misappropriations of funds, etc.

Termination of Regional Centers Cont'd

Chicago Convention Center Case

- Fraud, false statements, falsifying documents, misappropriations of funds, etc.
- Resulted in repayment of over \$11.5 million, injunction from offering/selling securities, civil penalties.

USA Now Case

- Withdrew funds from escrow without disclosure, diverted funds and funds spent on personal use.
- Resulted in I-526 denials, FBI search warrant, injunctions, asset freeze, preserve books.

Ireeco Case

- Acted as unregistered broker dealer.
- Resulted in cease and desist, penalties TBD.

Luca Case

- Registration issues, comingled funds, diverted funds, unregistered received broker commissions, general solicitation in violation of Reg. D and including non-accredited investors.
- Resulted in injunctions, receiver appointed, disgorgement, penalties TBD.

Path America Case

- Material misstatements and omissions, diverted funds to other business and personal use (home purchase, casinos, real estate)
- Resulted in injunctions, asset freeze, return funds to USA, disgorgement, penalties TBD.

Mitigating Risks

Importance of investor verification – why/why not do this?

Use of Broker Dealer

Accredited Investor

- Definition*
- Good faith verification methods*

Agency Relationship Exists

- KYC (e.g. the migration agent)*

Referral Process to Justice – Yates Memo

Integrity Measures

- S.2415 – “EB-5 Integrity Act of 2015” – PROPOSED

Introduced by Sens. Flake, Cornyn, and Shumer 12/17/2015

Excerpted from prior proposed legislation that also included immigration- and non-EB-5 Program-focused provisions.

Integrity Act provisions retained and some also modified from prior bill:

- A. Requires RC file application with DHS before each offering – Sec. 2(b)(F).*
- B. Requires annual statement to USCIS by each RC – Sec. 2(b)(G).*
- C. “Bad boy” provisions – prohibiting participation by debarred persons – Sec. 2(b)(H).*
- D. Securities compliance provisions (federal & state) – Sec. 2(b)(I).*

Integrity Measures Cont'd

E. Promoters – Sec. 2(b)(K).

- Direct and 3d party promoters of RC, NCE, affiliated JCE, or issuer under common control with RC must:
- Register with USCIS (may be limited to ID and contact info).
- Certify no bad boys.
- Disclose permissible fee arrangements.

F. Source of funds – Sec. 2(b)(L).

- Info required: including business and tax records, “if applicable”.
- Gift restrictions.

G. Treatment of investors if RC terminated – Sec. 2(b)(M).

H. Definitions – Sec. 2(h)(D).

- “Affiliated Job Creating Entity” = JCE controlled, managed, or owned by any person involved with RC/NCE.
- “Certifier” = person with substantive authority for management of RC, NCE, affiliated JCE, or issuer under common control.
- “JCE”.
- “NCE”.

I. Transparency – Sec. 3.

- No preferential treatment; improper activities defined; communications to be reported; handling of channels of communication.

Disclaimer

This presentation outline and the presentation itself are for general educational purposes only and are not intended to provide specific guidance or legal advice about what to do or not to do in any particular case. You should not rely on this general information to make decisions about specific immigration matters. If you are not yourself a lawyer, you should seek the assistance of an immigration lawyer to help you resolve these issues.

- Thank you.

For More Questions, Contact:

- **Christian Triantaphyllis**
 - ctriantaphyllis@FosterGlobal.com
 - <http://www.fosterglobal.com/>
- **Robert Cornish, Jr.**
 - rcornishjr@phillipslytle.com
 - <http://www.phillipslytle.com/>
- **Michael Homeier**
 - michael@homeierlaw.com
 - <http://www.homeierlaw.com/>
- **John Tishler**
 - jtishler@sheppardmullin.com
 - <http://www.sheppardmullin.com/>

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