

Testimony on the EB-5 Immigrant Investor Program

by

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Chairman Grassley, Ranking Member Leahy, and Members of the Committee:

Thank you for inviting me to testify on behalf of the Securities and Exchange Commission regarding the SEC's work related to the United States Citizenship and Immigration Services' (USCIS) EB-5 Immigrant Investor Program (EB-5 program).

The SEC's tripartite mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The SEC's Division of Enforcement furthers this mission by, among other things, investigating potential violations of the federal securities laws, recommending that the Commission bring cases against alleged fraudsters and other securities law wrongdoers, and litigating the SEC's enforcement actions. Through its Office of Investor Education and Advocacy (OIEA), the SEC also protects investors by disseminating information to the investing public to educate investors and allow them to make informed investment decisions. OIEA produces and distributes educational materials, leads educational seminars and investor-oriented events, and partners with federal agencies, state regulators, and self-regulatory organizations on financial literacy initiatives. The SEC's Office of Compliance Inspections and Examinations (OCIE) conducts examinations of registrants such as investment advisers, investment companies, broker-dealers, and others. Although the SEC has no role in administering or overseeing the EB-5 program, the Enforcement Division, OIEA, and OCIE have worked together over the last few years – both internally with other SEC divisions and offices and with other law enforcement partners at the state, federal and international level – to focus on potential violations of the federal securities laws related to the EB-5 program. These efforts have coincided with a strong working relationship with the USCIS, which administers the program.

In 1990, Congress created the EB-5 program to stimulate the U.S. economy through capital investment by foreign nationals seeking a legal path to U.S. residency. Individuals who invest a minimum amount of either \$500,000 or \$1 million, depending on certain circumstances, may qualify for an EB-5 visa if their investment leads to the creation or preservation of 10 or more jobs for qualifying U.S. workers. Foreign investors who invest through EB-5, however, are not guaranteed a visa or to become lawful permanent residents of the United States. Initially, each EB-

5 investment was an individual infusion of capital by an EB-5 applicant into a new enterprise or troubled business that was then managed directly by the EB-5 applicant, such that the federal securities laws were not typically implicated. Starting in 1992, however, a pilot program began setting aside EB-5 visas for investments made through USCIS-designated regional centers. As regional centers pool multiple investors' funds into commercial enterprises, this change allowed regional centers, and their related entities, to offer EB-5 investments that can qualify as securities. These investments are often limited partnership interests or limited liability company units and are also typically offered under one or more exemptions from the registration requirements of the federal securities laws. As a consequence, just like the thousands of other unregistered private offerings in the U.S. every year, the SEC has limited visibility into this market as compared to registered offerings in the public market. Despite any potential exemption from registration, however, these investments are still subject to the statutes and rules governing the offer and sale of securities, including the antifraud provisions of the federal securities laws.

Because the Commission does not administer the EB-5 Program, it generally does not receive or review materials related to applications under this program. Additionally, as EB-5 investments are sold to non-U.S. persons, there is limited regulatory transparency with these offshore offers and sales of securities. In carrying out the Commission's mandate to investigate and prosecute violations of the federal securities laws, however, the SEC's Division of Enforcement scrutinizes allegations regarding specific investments arising out of the EB-5 program. EB-5-related inquiries have been a small but growing percentage of the approximately 15,000 tips, complaints, and referrals that the SEC receives each year. The Enforcement Division has brought a number of fraud claims arising out of these investments, as well as certain cases focused on unregistered broker-dealer activity related to EB-5 investments. Although the EB-5 program adds a different context to these actions, in most regards these fraud cases are no different than the many other offering fraud cases we bring every year.

Between February of 2013 and December of 2015, the Commission filed 19 cases involving EB-5 offerings, almost half of which involved fraud allegations. Seven of these fraud-related matters alleged offering fraud, while one involved fraud in connection with unregistered broker conduct. Another eleven settled matters each involved unregistered broker conduct, but no fraud allegations. In each of these cases, US-based persons or entities are involved in the offer or sale of securities to foreign nationals seeking to participate in the EB-5 program. The following actions are examples of significant EB-5 cases brought by the Commission, with a full list of EB-5-related actions attached as Exhibit A:

- 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. With the assistance of the USCIS, the Commission stopped the alleged fraud and obtained an emergency court order that led to the return of over \$145 million to injured investors.¹ This matter was settled in March of 2014² with the Commission

¹ See *SEC v. A Chicago Convention Center, LLC, Anshoo Sethi, and Intercontinental Regional Center Trust of Chicago, LLC*, Civil Action No. 13-cv-982 (N.D. Ill. Feb. 6, 2013), Litigation Release No.22615 (Feb. 8, 2013), <https://www.sec.gov/litigation/litreleases/2013/lr22615.htm>.

securing favorable relief. The key individual defendant was indicted based on the same conduct in August of 2014, and on January 12 of this year that individual pled guilty to a wire fraud charge.³

- On June 23, 2015, in a settled administrative proceeding, the Commission brought the first stand-alone unregistered broker-dealer case charging two firms involved in handling investments for more than 150 EB-5 investors.⁴ While the firms promised to help investors choose the right regional center with which to invest, they allegedly directed most EB-5 investors to the same handful of regional centers: those that paid the firms commissions of about \$35,000 per investor. Without admitting or denying the SEC's findings, the firms agreed to be censured and to cease and desist from committing or causing similar violations in the future. They also agreed to administrative proceedings to determine whether they should be ordered to return their allegedly ill-gotten gains, pay penalties, or both based on their violations. This matter is still ongoing.
- On December 7, 2015, the Commission announced 10 settled administrative proceedings against 7 individuals (6 of whom are lawyers) and 3 law firms, and also announced a litigated district court action against a lawyer and his law firm alleging fraud. These 11 cases were the first to bring charges against lawyers and law firms for acting as unregistered brokers in the context of EB-5 offerings.⁵ In these actions, the regional centers or entities affiliated with them paid commissions to individuals, many of whom were lawyers, who successfully assisted in marketing securities to investors. The lawyers received these commissions on top of legal fees that clients paid them for legal work associated with the clients' applications under the EB-5 Program. In the litigated action, the Commission alleges that the defendants, directly or indirectly, received over \$1.1 million in commissions in connection with sales of EB-5 investments to over 100 foreign investors who were also their legal clients and were contractually entitled to at least an additional \$3.1 million in commissions. In the settled actions, disgorgement amounts ranged from \$30,000 to roughly \$225,000 per respondent, reflecting commissions received by these defendants as a result of sales of EB-5 interests.

Beyond specific enforcement actions, the SEC's OIEA has worked to educate investors about EB-5-related securities offerings. On October 9, 2013, in connection with the filing of an SEC enforcement action, OIEA and USCIS issued a joint Investor Alert on the SEC's public websites to alert investors about potential investment scams targeting foreign nationals who seek

² See also, <https://www.sec.gov/litigation/litreleases/2014/lr22945.htm>.

³ See <http://www.justice.gov/usao-ndil/pr/chicago-man-allegedly-exploited-us-visa-program-defraud-chinese-investors-160-million>; <http://chicago.suntimes.com/news/7/71/1246875/guilty-plea-158-million-visa-fraud-failed-ohare-hotel-project>.

⁴ See *In the Matter of Ireeco, LLC and Ireeco, Limited* (Jun 23, 2015), Release No.2015-127, <http://www.sec.gov/news/pressrelease/2015-127.html>

⁵ See <http://www.sec.gov/news/pressrelease/2015-274.html>.

residency through the Immigrant Investor Program. The Investor Alert included a number of steps investors could take before investing and also listed six warning signs of possible fraud.⁶

Likewise, earlier this year, in its yearly priorities letter to the securities industry, OCIE stated that in its inspections and examinations, it would “review private placements, including offerings involving Regulation D of the Securities Act of 1933 or the Immigrant Investor Program . . . to evaluate whether legal requirements are being met in the areas of due diligence, disclosure, and suitability.”⁷

The SEC has also worked cooperatively with the Financial Industry Regulatory Authority (FINRA) to appropriately share information and expertise regarding the role of brokers and dealers in the EB-5 industry. FINRA is an independent, not-for-profit self-regulatory organization that provides regulatory oversight for the securities industry, in particular with respect to the brokers and dealers that make up FINRA’s membership. In addition to the information-sharing relationship described above, SEC staff have presented on panels at EB-5 industry conferences with senior representatives of FINRA. FINRA has also released guidance and rulemaking relating to EB-5 offerings, specifically addressing suitability and due diligence obligations for brokers facilitating EB-5 transactions and the role of foreign brokers or finders as they relate to FINRA-registered brokers dealers.⁸

SEC staff has consistently received cooperation from USCIS in connection with our work and believes that we have developed an effective information sharing relationship with appropriate procedural safeguards. The SEC and USCIS have also provided each other with training and technical assistance, allowing both agencies to independently fulfill their mandates. For example, the Enforcement division and OIEA provided USCIS with training on detecting securities fraud and other potential federal securities laws violations related to EB-5 investments. This ongoing collaboration has also benefitted the other law enforcement partners with which we conduct parallel investigations or to which we send referrals. These coordinated regulatory and education efforts, including the October 2013 joint investor alert referenced above, have also been effective in sending a deterrent message to the EB-5 marketplace and increasing awareness of potential risks to investors who participate in this USCIS program.

We look forward to continuing these mutually beneficial relationships and working further with the USCIS and our other law enforcement partners to help insure the integrity of EB-5 offerings as we enforce the securities laws in relation to EB-5 investments. The SEC is committed to investigating fraudulent investment schemes arising from the EB-5 program, and will remain focused on this area and the key participants who offer and sell these investments.

⁶ See <https://www.investor.gov/news-alerts/investor-alerts/investor-alert-investment-scams-exploit-immigrant-investor-program>

⁷ See <http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf>

⁸ See <http://www.finra.org/industry/interpretive-letters/august-26-2013-1200am>. See also http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11780

Exhibit A

Announcement Date	Principal Entity Defendant Name	Litigation Release (L.R.) or Press Release No.	Brief Description of Principal Allegation at Time of Filing
February 8, 2013	A Chicago Convention Center, LLC	L.R. 22615	The SEC alleged that defendants fraudulently sold more than \$145 million in securities and collected \$11 million in administrative fees from more than 250 investors based on false claims about the defendants' plans to construct a hotel and conference center near Chicago's O'Hare Airport. The SEC obtained an asset freeze and other relief.
October 1, 2013	USA Now, LLC	Press Release 2013-210	The SEC alleged that defendants fraudulently raised at least \$5 million, but instead of investing the money as promised, routinely diverted investor funds to other undisclosed businesses and for their personal use.
September 4, 2014	American Immigrant Investment Fund I, LLC	L.R. 23077	SEC alleged that defendants raised nearly \$11.5 million from two dozen investors in an ethanol production plant, however, investors' money was misappropriated for other uses instead of the ethanol plant project.
June 23, 2015	Ireeco, LLC	Press Release 2015-127	In this non-fraud case, the SEC charged two firms with acting as unregistered brokers for more than 150 EB-5 investors involved in \$79 million worth of investments. Without admitting or denying the SEC's findings defendants agreed to be censured and to cease and desist from committing or causing similar violations in the future and to administrative proceedings to determine whether they should be ordered to return their allegedly ill-gotten gains, pay penalties, or both based on their violations.
July 6, 2015	Luca International Group, LLC	L.R. 23298	SEC charged a Bay Area oil-and-gas company and its CEO with running a \$68 million Ponzi-like scheme and affinity fraud that targeted the Chinese-American community in California and investors in Asia, including some solicited as part of the EB-5 Immigrant Investor Program. In a related administrative proceeding, other

			respondents agreed to settle charges that they acted as unregistered brokers.
August 25, 2015	Path America, LLC	L.R. 23326	The SEC alleged defendants raised at least \$125 million for two real estate projects: a skyscraper in downtown Seattle and a mixed-use commercial and residential development, but a defendant diverted \$14 million for unrelated real estate projects and \$3 million for personal use including the purchase of a home and cash withdrawals at casinos. The SEC obtained an asset freeze and other relief.
November 10, 2015	EB5 Asset Manager, LLC	L.R. 23409	SEC obtained a court order freezing the assets of a South Florida woman and her company for allegedly purchasing a boat and luxury cars with money raised from EB-5 investors. The SEC obtained an asset freeze and other relief.
November 19, 2015	Suncor Fontana, LLC	L.R. 23414	SEC alleged that defendants raised approximately \$20 million from 40 investors but that certain individual defendants diverted more than \$10 million for personal and other uses. The SEC obtained an asset freeze and other emergency relief.
December 7, 2015	Mehron P. Azamehr Azarmehr Law Group Michael A. Bander Bander Law Firm Roger A. Bernstein, Esq. Allen E. Kaye, Esq. Taraneh Khorrami, Esq. Mike S. Manesh Manesh & Mizrahi Kefei Wang	Press Release 2015-274	SEC announced 10 settled, non-fraud enforcement actions against lawyers and law firms across the country charged with offering EB-5 investments while not registered to act as brokers.
December 7, 2015	Law Offices of Feng & Associates, P.C.	L.R. 23420	The SEC alleged that defendants not only acted as unregistered brokers by selling EB-5 investments to more than 100 investors, but also that they defrauded clients by failing to disclose they received commissions on the investments in breach of their fiduciary and legal duties. They also allegedly defrauded some entities offering the EB-5 investments.