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May 6, 2019

Ms. Molly C. Dwyer
Clerk of the Court
United States Court of Appeal for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: SEC v. Feng et al., No. 17-56522, Notice of Supplemental Authority

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28-6, Appellant, Hui Feng, respectfully submits United States Congress draft EB-5 Reform Act of 2018, 2017, 2016 and 2015 (attached), as supplemental authority.

The United States Congress has been trying to reform the EB-5 program every year since 2015. Recognizing the confusing issues regarding the roles of 3rd party promoters, agents, finders or brokers in the EB-5 program, Congress has included several important provisions in its draft reform legislation to solve and clarify these issues.

Unfortunately, due to a Congressional impasse on immigration reform, these draft EB-5 reform legislations have not been passed into law. Nonetheless, these draft provisions shed a clear light on how the lawmakers propose to solve these controversial issues currently being litigated by the SEC in several federal courts. As demonstrated in the attached, an act of Congress is the proper way to make laws in this field, not the litigation currently pursued by the SEC.

Pertinent provisions in draft EB-5 Reform Act of 2018 are as follows:

1. Section 203A(f)(4)(B)(iv)(IV)(aa) (page 15) requires regional centers when filing its specific EB-5 offering to the USCIS for approval shall include any fees paid or to be paid by regional centers to alien investors, agents, finders or broker dealers involved in the offering.
2. Section 203A(f)(6)(B)(vi)(V) (page 20) requires regional centers to disclose in their annual statements to the USCIS all the fees collected from the alien investors and how those fees are paid to alien investors, any promoter, finder, or broker dealer to locate individual investors.
3. Section 203B(a)(8)(A)(i) (page 34) requires direct and 3rd party promoters, including migration agents be registered with the USCIS (not the SEC).

4. Section 203B(a)(8)(D) (page 35) requires all the fees paid to agents, finders or brokers involved in the offering be disclosed and acknowledged by the investor in immigration petition.

This legislative intent is clearly different from the position that the SEC is taking. Congress intends to allow anyone, not just broker dealers registered with the SEC to act as a third party promoter, agent or finder as long as proper disclosure is made by the regional centers. Alien investors, agents and finders are recognized as equals with broker dealers for the purpose of marketing EB-5 programs.

Very truly yours,

/s/ Hui Feng

Hui Feng