

The Source for News and Information on the U.S. EB-5 Visa Program



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EB-5 Funded Project Up and Running, pg. 20



The Rise and Fall of South Dakota, pg. 12



Q&A on SEC and USCIS Joint
Investor Alert, pg. 23



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CONTACT

Michael Gibson,
Managing Director
Registered Investment Advisor
CRD #157403
michael@usadvisors.org
LinkedIn @EB5Info
Facebook
cell : 305.978.1108
office : 239.465.4160
Skype: usadvisors.org

Kris Stell, Editor-in-Chief
kris@usadvisors.org
Skype: eb5news1

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EDITOR'S LETTER

by KRIS STELL
Editor-in-Chief



This issue of EB-5 News can't help but make it clear how important due diligence is for those taking the risk and putting their money, and hopes, out there. Our first story covers a \$150 million dollar Ponzi-like scheme surrounding Velocity Investment Group in Pasadena, CA while our second feature details the epic fail of South Dakota., which since established had raised more capital than 90 percent of the regional centers out there yet is now effectively shut down amidst federal and state investigations for "alleged misconduct."

On the flip side, we were able to report on an up-and-running \$17 million EB-5 project in Florida whose driving force behind it, Rodrigo Azpurua, is an example of how the industry should operate. The Professional Center at Riviera Point complex is Broward's first multi-tenant office development funded through EB-5 investment, and remains on a steady, forward track with 100 percent approval rate in I-526s and most importantly, the job creation based on tenant occupancy

Rounding the issue out nicely is the information-packed interview with our very own Michael Gibson, a leading due diligence investigator for the EB-5 program. He discusses how investors can protect themselves, the value of transparency, and other ideas for the betterment of everyone involved in this turbulent industry.

Lastly is a collection of stories from other due diligence companies that saved money for their clients, stories that really bring home the importance of investigating a project before handing over the money.

Kris Stell
Editor-in-Chief
EB-5 News

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CONTACT

Michael Gibson,
Managing Director
Registered Investment Advisor
CRD #157403
michael@usadvisors.org
LinkedIn @EB5Info
Facebook
cell : 305.978.1108
office : 239.465.4160
Skype: usadvisors.org

Kris Stell, Editor-in-Chief
kris@usadvisors.org
Skype: eb5news1

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by KRIS STELL
Editor-in-Chief



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Kris Stell
Editor-in-Chief
EB-5 News

SEC Halts \$150 Million Ponzi Scheme

with ties to EB-5 Regional Center

On Oct. 15, 2013, the Securities and Exchange Commission (SEC) obtained an asset freeze in order to halt an ongoing Ponzi-like scheme being perpetrated by defendants Michael Wang, Wendy Ko, Velocity Investment Group, Inc., Bio Profit Series I, LLC, Bio Profit Series II, LLC, Bio Profit Series III, LLC, Bio Profit Series V, LLC, and Rockwell Realty Management, Inc., which are all based in Pasadena, CA.

A press release on www.sec.gov states: "The SEC alleges that Yin Nan (Michael) Wang and Wendy Ko have raised more than \$150 million from approximately 2,000 investors by selling promissory notes issued through Velocity Investment Group, which manages a series of investment funds entitled the Bio Profit Series. Each of the Bio Profit Series funds purports to be primarily in the busi-

ness of making real estate-related loans in California, but in reality Wang and Ko have used money received from newer investors to make the promised quarterly interest payments to earlier investors in Ponzi-like fashion."

According to the SEC's complaint, Wang and Velocity Investment Group have been raising money

Contributing to this story:



Andrew Stephenson,
Crowd Check



Yi Song,
Mona Shah & Associates



Paul Scheuren,
Impact Data Source

U.S. Securities and Exchange Commission

ABOUT DIVISIONS ENFORCEMENT REGULATION EDUCATION FILINGS

PRESS RELEASE

SEC Obtains Asset Freeze in California-Based Real Estate Investment Scheme

FOR IMMEDIATE RELEASE
2013-233

Washington D.C., Nov. 1, 2013 — The Securities and Exchange Commission today announced fraud charges and an emergency asset freeze against a group of Pasadena, Calif.-based companies at the center of an ongoing real estate investment scheme.

The SEC alleges that Yin Nan (Michael) Wang and Wendy Ko have raised more than \$150 million from approximately 2,000 investors by selling promissory notes issued through Velocity Investment Group, which manages a series of investment funds entitled the Bio Profit Series. Each of the Bio Profit Series funds purports to be primarily in the business of making real estate-related loans in California, but in reality Wang and Ko have used money received from newer investors to make the promised quarterly interest payments to earlier investors in Ponzi-like fashion.

"The SEC sought emergency action to prevent the further dissipation of investor assets through an expected set of upcoming Ponzi-like payments," said Michele Wein Layne, director of the SEC's Los Angeles Regional Office. "Wang falsified financial records and used another company to create the illusion of legitimate economic activity."

According to the SEC's complaint unsealed today in U.S. District Court for the Central District of California, Wang and Velocity Investment Group have been raising money since at least 2005. Wang is the sole owner of Velocity Investment Group, and the Bio Profits Series fund accounts are controlled by Wang and Ko, who transferred some investor funds to make quarterly interest payments to other investors. The SEC's complaint says Wang has admitted that Velocity was using new investor money to pay earlier investors.

The SEC alleges that Wang directed one of the Bio Profit Series funds to provide its outside accountant with inaccurate financial information that materially overstated its mortgage loans receivable and mortgage income figures. The more than \$9.8 million of mortgage loan income shown in those financial statements included accrued interest that Wang knew that the fund would never actually receive. Wang told Velocity's accounting manager that investors would flee if they were told the true numbers, and it would be difficult for him to raise money.

since at least 2005. Wang is the sole owner of Velocity Investment Group, and the Bio Profits Series fund accounts are controlled by Wang and Ko, who transferred some investor funds to make quarterly interest payments to other investors.

The SEC's complaint also says Wang has admitted he ran Velocity and the funds it managed as a Ponzi-like scheme. In each of the first three quarters of 2012, defendants caused one or more of the BPS funds to transfer large sums of money to BPS I – more than \$4.8 million in 2012 alone. Instead of investing this money, BPS I instead used some or all of the money transferred to it to make quarterly interest payments to its investors.

Allegations

The SEC alleges that Wang directed one of the Bio Profit Series funds to provide its outside accountant with inaccurate financial information that materially overstated its mortgage loans receivable and mortgage income figures. The more than \$9.8 million of mortgage loan income shown in those financial statements included accrued interest that Wang knew that the fund would never actually receive. Wang told Velocity's accounting manager that investors would flee if they were told the true numbers, and it would be difficult for him to raise money. Wang posted the falsified financial statements on an Internet website open to BPS I investors.

Each of the BPS Fund offerings promised a substantial rate of return for the investors purchasing the notes issued by the funds. In addition, the offering proceeds were subject to a variety of management fees, expense reimbursements, and sales commissions that significantly reduce the amount of investor principal available for investment (between only 82 to 86 percent of the offering proceeds were available for investment). As a result, the BPS Funds had to generate returns on investment that were well above market average just to meet the interest obligations they owed to investors.

The SEC further alleges that Wang and Ko used transactions between the Bio Profit Series funds and another company charged in the complaint – Rockwell Realty Management – with the apparent purpose of concealing the fraud. These transactions appear to have had no purpose other than to obfuscate the amount of transfers among the various funds. This went on from June 2007 to April 2013. The filed complaint shows that Rockwell is a California corporation ostensibly controlled by an individual who is not a party to this action. But this person had virtually no control over or knowledge of Rockwell's day-to-day operations. Instead, Rockwell is actually controlled and managed by Wang and Ko. Both defendants opened bank accounts for Rockwell on which they are the sole signatories, and these are the accounts in which the overwhelming majority of Rockwell's bank-

JOHN W. BERRY (bar admission pending, L.R. 83-2.4.1)
Email: berryc@sec.gov
LYNN M. DEAN, Cal. Bar No. 205562
Email: deanl@sec.gov
DAVID J. VAN HAVERMAAT, Cal. Bar No. 175761
Email: vanhavermaatd@sec.gov

Attorneys for Plaintiff
Securities and Exchange Commission
Michele Wein Layne, Regional Director
Lorraine B. Echavarria, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
Telephone: (323) 965-3998
Facsimile: (323) 965-3908

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,
vs.
YIN NAN "MICHAEL" WANG,
WENDY KO, VELOCITY INVESTMENT GROUP, INC., BIO PROFIT SERIES I, LLC, BIO PROFIT SERIES II, LLC, BIO PROFIT SERIES III, LLC, BIO PROFIT SERIES V, LLC, and ROCKWELL REALTY MANAGEMENT, INC.
Defendants.

Case No. **CV 13-07553-JAK (SSx)**
COMPLAINT
(FILED UNDER SEAL)

Plaintiff Securities and Exchange Commission (the "SEC") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77f(b), 77f(d)(1) & 77v(a)], Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the

1

Case No.

SUMMARY OF THE ACTION

3. This is an action brought to halt an ongoing Ponzi-like scheme perpetrated by the Defendants. It is brought on an emergency basis in order to prevent the Defendants from making an imminent suspected Ponzi payment on or around October 15, 2013.

4. Defendant Velocity Investment Group ("Velocity"), an entity controlled by Defendant Michael Wang, with the assistance of co-Defendant Wendy Ko, manages four series of investment funds called the "Bio Profit Series:" Defendants Bio Profit Series I, LLC ("BPS I"), Bio Profit Series II, LLC ("BPS II"), Bio Profit Series III, LLC ("BPS III") and Bio Profit Series V, LLC ("BPS V") (collectively, the "BPS Funds"). In raising over \$150 million from approximately 2,000 investors, Defendants have claimed that the BPS Funds invest in California real estate.

5. Wang, however, admitted that he ran Velocity and the Funds it managed as a Ponzi-like scheme, using new investor money to pay previous investors. In each of the first three quarters of 2012, Defendants caused one or more of the BPS Funds to transfer large sums of money to BPS I – more than \$4.8 million in 2012 alone. Instead of investing this money, BPS I instead used some or all of the money transferred to it to make quarterly interest payments to its investors.

6. Wang, as the owner and manager of Velocity, is the key architect of this fraudulent scheme. Defendant Ko, has actively participated in the fraud as well. Defendants use Rockwell Realty Management, Inc. ("Rockwell") to transact with the BPS Funds with the apparent purpose of concealing the fraud.

7. By engaging in this conduct, Defendants are violating the antifraud provisions of the federal securities laws. With this action, the SEC seeks the imposition of a temporary restraining order and preliminary injunction and an asset freeze over the Defendant entities' bank accounts. It also asks for the appointment of a receiver over Velocity, the BPS Funds, and Rockwell, as well as other necessary,

ing activity is transacted. Of the hundreds of checks that Rockwell has issued over the years, its supposed owner (the non-party) has signed, and has knowledge of, fewer than a dozen.

Rockwell was ostensibly tasked with collecting monies owed to the BPS Funds from borrowers or renters of BPS-owned properties. The aggregate amount of income from this activity for the period June 2007 to April 2013 appears to total no more than \$2.5 million. During the same time period, Wang transferred almost \$40 million back-and-forth between the BPS Funds and Rockwell. These transactions appear to have no discernible purpose other than to foster the illusion that transfers between the BPS Funds were legitimate business activity. Rockwell has transferred more than \$3.7 million directly to Wang.

According to the SEC complaint, despite the fact that Rockwell collected no more than \$2.5 million in rents and loan payments on behalf of BPS, Rockwell has transferred more than \$7.2 million net to Velocity Investment Group, a sum which almost certainly exceeds the management fees, expense reimbursements and sales commissions to which Velocity Investment Group is entitled.

EB-5 Regional Center Tie-In?


In addition to managing Velocity Investment Group named in the SEC complaint, Michael Wang and Wendy Ko have been affiliated with Velocity Regional Center based in Pasadena, CA. While the SEC complaint and asset freeze order do not relate to the activities of the regional center, the current litigation will likely have an impact on the regional

center activities and raise concerns about the handling of investor funds in the projects it sponsored.

Presently, the Velocity Regional Center website, www.v-regionalcenter.com, indicates that Jason Wang is the current president of the regional center. However, a search of public records show that Michael Wang has been publicly identified as the president of the regional center while Wendy Ko is a listed owner.

Michael (Yin-Wang) Wang is further connected to the management of the regional center through the first few investment funds sponsored by Velocity Regional Center. Michael Wang is listed as the executive officer responsible for Velocity I LP, Velocity II LP, and Velocity III LP funds sponsored by the regional center, see <http://www.sec.gov/Archives/edgar/data/1556923/000155692312000001/xslFormDX01/>

U.S. Department of Homeland Security
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677

 U.S. Citizenship and Immigration Services

January 20, 2011

Michael Y. Wang
Velocity Regional Center, LLC
1055 E. Colorado Blvd. Suite 225
Pasadena, CA 91106

Application: Request for Amendment to a Regional Center
Applicant(s): Michael Y. Wang, CEO

Re: Velocity Regional Center, LLC.
File no: RCW1033650015 (Formerly W09003070)

Pursuant to Section 610 of the Appropriations Act of 1993, on December 1, 2009, Michael Y. Wang submitted a proposal seeking approval and designation by U.S. Citizenship and Immigration Services (USCIS) of the Velocity Regional Center, LLC. The proposal was approved on July 6, 2010. On November 18, 2010, Mr. Wang requested that the Velocity Regional Center, LLC be amended to include 5 additional capital investment projects in the economic clusters of Crop and Farm Production, Health Care and Social Assistance, Finance and Insurance, Educational Services and Casinos.

Based on its review and analysis of your amendment, USCIS hereby approves the amendment to Velocity Regional Center, LLC. The amended Regional Center is approved as described below:

GEOGRAPHIC AREA:

The Velocity Regional Center, LLC (VRC) shall have a geographic scope which includes the California Counties of San Joaquin, Stanislaus, Merced, Fresno, Kings, Kern, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial.

FOCUS OF INVESTMENT ACTIVITY:

As depicted in the economic model, the general proposal and the economic analysis, businesses within the Regional Center will engage in the following economic activities: Commercial and residential construction and operation, industrial warehouses, retail, hotel and hospitality, food services, alternative energy and alternative energy technology.

primary_doc.xml. Velocity I LP also provides the same address as Velocity Investment Group in the SEC complaint.

Domain registration records for the EB-5 Regional Center show the owner as Velocity Investment Group, LLC.

In the filings with the SEC for Velocity I LP, Velocity II LP, and Velocity III LP, Michael Wang lists himself as the executive for the fund and the managing member of the managing partner of the fund, but does not state the entity that is actually the managing partner. If Velocity Investment Group is the managing partner of these funds, it is possible that these funds will be brought into the litigation with negative implications for EB-5 investors.

More recent funds sponsored by Velocity Regional Center, including Velocity V LP and Velocity VIII LP, designate Jason Wang is the executive for the fund and the managing partner of the fund. No reference to managing member of the managing partner, which may indicate

that Velocity Investment Group is not directly involved in the placement of the funds.

An additional EB-5 connection to the current litigation may come from the involvement of Velocity Regional Center Vice President Thomas Liu. Thomas Liu has previously served as general manager of Natural Biotechnology Pharmaceutical Manufacturing Company, which may be related to the "Bio" description on the funds sold by Velocity Investment Group. However, a search for Natural Biotechnology Pharmaceutical Manufacturing Company did not reveal any results to confirm the connection to the supposed real estate investments of the funds.

About the Defendants

• **Yin Nan "Michael" Wang**, age 55, resides in Hacienda Heights, CA. Wang is not registered in any capacity with the SEC. He is the sole owner of Velocity, through which he controls each of the BPS Funds, and is the cosignatory along with Wendy Ko on sev-

VELOCITY REGIONAL CENTER

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Welcome to Velocity Regional Center

VELOCITY REGIONAL CENTER

Velocity Regional Center LLC, hereafter referred to as "Velocity," is a California Limited Liability Company established for the purpose of engaging in development opportunities through the financing, acquiring and/or managing of real estate properties throughout the state of California.

Velocity has been formed for the purpose of developing full service real estate development and management of retail and office spaces, solar powered units, gas stations, restaurants and fast food eateries, lodging facilities, an energy manufacturing facility, durable wholesale establishment, warehousing and other vital projects that will help stimulate job and business growth in 13 counties across the state of California.

By undertaking this type of development locally, Velocity assists local governments in revitalizing their communities. Their development efforts will encourage additional new developments by other entities, create jobs directly and indirectly and generate much needed tax revenues for the local cities.

Management Team

President - Jason Wang

Jason Wang has served as Chief Executive Officer and Chief Financial Officer of Velocity Regional Center LLC since 2012. Mr. Wang has over 35 years of leadership experience in the business, political, and military industries. Mr. Wang is the Vice President of America Asia Trading Committee in Guangzhou, China where he takes an active role in strengthening the cooperation and communication among companies from the U.S. and China.

Vice President - Thomas Liu

Thomas Liu currently serves as Secretary for Velocity Regional Center LLC. Mr. Liu received his Bachelors from Soochow University graduating with a degree in International Trade, and a Master degree from the Theology Institute of Jesus Christ of Latter Day Saints. Mr. Liu has over 20 years of experience in the area of marketing and business development. This comprehensive background has enabled him to become a successful manager of high-level business operations.

Congress Supporting Letter

Certificate of Congressional Recognition

VELOCITY REGIONAL CENTER LLC

A document of this type is hereby presented to you as a recognition of your contribution to the economic development of the United States. This document is not a guarantee of any kind and is not to be used for any purpose other than as a recognition of your contribution.

GRANTED: JUNE 10, 2011

Gusty Chen
U.S. Representative

Christine with Obama

SUMMARY OF THE OFFERING

This summary of certain provisions of this Memorandum is intended only for convenient reference. It is not intended to be complete and is qualified in its entirety by the more detailed information about us and the Securities being sold in this Offering contained elsewhere in the Memorandum and in the exhibits hereto. Because this is a summary only, each Investor should read this entire Memorandum carefully, including the discussion of the material risks of investing in the Securities in "Risk Factors." The term "Investor" shall mean qualified entities receiving this Memorandum. Upon acceptance of an Investor's subscription, the Investor shall then become a "Limited Partner" of our Partnership.

The Partnership:

Velocity VIII Limited Partnership was formed on June 27, 2011 primarily to (i) make a loan to REO Group Properties LLC (the "Loan"), and (ii) promote economic growth within Velocity Regional Center LLC by improving regional productivity, creating jobs, and increasing domestic capital investments. REO Group Properties LLC operates a shopping mall in the City of Indio, California, a location which is a Targeted Employment Area (as defined in Title 8, Section 204.6 of the Code of Federal Regulations). Our address is 82227 U.S. Highway 111, Indio, CA 92201; telephone (626) 793-7297. See "Our Business."

General Partner:

Our General Partner is Velocity Regional Center LLC, a California limited liability company organized on September 24, 2009 (the "General Partner"). The General Partner is managed by Michael Y. Wang.

Regional Center Status:

The Partnership is affiliated with a Regional Center (as such term is defined in Title 8, Section 204.6 of the Code of Federal Regulations) designated by the U.S. Citizenship and Immigration Services ("USCIS"), pursuant to Approval No. W09001190. Therefore, Limited Partners are eligible in obtaining an EB-5 visa. However, we do not guarantee that we will be able to help any or all of our Limited Partners obtain a visa or otherwise gain entry into or maintain lawful resident status in the U.S. See "Plan of Operation—Administration of the EB-5 Investor Program" and "Our Business—Our Mission and Goals—Immigrant Investor Pilot Program."

Securities Offered:

Velocity VIII LP is offering up to fifty (50) of our limited partnership interests ("Units") at a price of \$500,000 per Unit to

eral bank accounts of Rockwell.

- **Wendy Ko**, 48, resides in Pasadena, CA. Ko is not registered in any capacity with the SEC. She is co-signatory, along with Wang, on several bank accounts of Rockwell.

- **Velocity Investment Group, Inc.** is a Delaware corporation with its principal place of business in Pasadena, CA. Velocity is not registered with the SEC in any capacity. Velocity manages at least eight unregistered investment funds, six of which have claimed exemption from registration under Rule 506 of the Securities Act.

- **Bio Profit Series I, LLC** is a Delaware limited liability company with its principal place of business in Pasadena, California. BPS I has two Forms D on file with the SEC, dated June 27, 2005 and June 4, 2010, and claimed exemption from registration for both offerings under Rule 506.

- **Bio Profit Series II, LLC** is a Delaware limited liability company with its principal place of business in Pasadena, California. BPS II has one Form Don file with the SEC, dated November 14, 2007, and claimed exemption from registration under Rule 506.

- **Bio Profit Series III, LLC** is a Delaware limited

MANAGEMENT AND EXECUTIVE COMPENSATION

We are managed by the General Partner. Currently, we have only one General Partner, Velocity Regional Center LLC, a manager-managed California limited liability company that was formed on September 22, 2009. The General Partner's Operating Agreement permits the appointment of executive officers as well as managers.

The General Partner's Management

The General Partner's management personnel and their ages as of the date of this Memorandum are as follows:

<u>Name</u>	<u>Position</u>
Michael Y. Wang	Manager and Chief Executive Officer
Bob Li	Chief Financial Officer

Background of Manager and Executive Officers

Michael Y. Wang has served as manager of Velocity Regional Center LLC since its founding. Mr. Wang has over 20 years experience in all aspects of the mortgage industry, including, but not limited to loan origination, servicing, underwriting, appraisal analysis, collection of defaulted loans, management of loans in foreclosure, marketing and closing of real estate owned properties. Mr. Wang is also the owner of several start-up companies involved in a variety of businesses including software development, retail, web design, collections, marketing and consulting.

Bob Li currently serves as the Chief Financial Officer of Velocity Regional Center LLC. Mr. Li received more than four degrees in the United States, including a Bachelor in Accounting, a Master in Statistics, a Master in Business Administration and a Ph.D. in Finance from Stanford University, in addition to a Bachelor in law from National Taiwan University. Mr. Li worked for the World Bank from 1972 to 1994. During his service at World Bank, he provided advice and planning in more than thirty projects for various countries throughout the world in the areas of investment, economic development, technical resources, development evaluation and human resource planning. These projects span from Africa, Middle East and Asia to Europe. From 1985 to 1990, Mr. Li was responsible for training numerous high level banking and economic policies makers from China and Vietnam.

liability company with its principal place of business in Pasadena, CA. BPS III has one Form D on file with the SEC, dated Nov. 15, 2007, and claimed exemption from registration under Rule 506.

• **Bio Profit Series V, LLC** is a Delaware limited liability company with its principal place of business in Pasadena, CA. BPS V has one Form D on file with the SEC, dated Dec. 12, 2011, and claimed exemption from registration under Rule 506.

• **Rockwell Realty Management, Inc.** is a California corporation with its principal place of business in Temple City, CA. Rockwell is not registered with the SEC in any capacity and has not registered any offering of its securities under the Securities Act or a class of securities under the Exchange Act. ■



The screenshot shows the 'Business Entity Detail' page for 'VELOCITY INVESTMENT GROUP, INC.' The page includes fields for Entity Name, Entity Number, Date Filed, Status, and Jurisdiction. A red box highlights the 'Entity Address' and 'Agent Address' fields, both showing '1055 E COLORADO BLVD STE 225 PASADENA CA 91106'. The page also includes a 'Business Entity Detail' section with a table of 'Business Entity Details' and a 'Business Entity Summary' section.

1 OF 1 RECORD(S)

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Full Name	Address	County	Phone
WANG, YIN NAN	15230 CARGREEN AVE APT 3 01 HACIENDA HEIGHTS, CA 91745-6124 LOS ANGELES COUNTY	LOS ANGELES	(310) 913-5557

ADDITIONAL PERSONAL INFORMATION

SSN	DOB	Gender	LexID(snn)
104 50 XXXX	1/1968 (Age 55)		001815250246

Subject Summary

Name Variations

- 1: WANG, MICHAEL
- 2: WANG, MICHAEL Y
- 3: WANG, MIKE N
- 4: WANG, NAN
- 5: WANG, NAN Y
- 6: WANG, YIN
- 7: WANG, YIN N
- 8: WANG, YIN NAN
- 9: WANG, YINNAN N
- 10: WANG, YIN-NAN NAN
- 11: WONG, MICHAEL Y
- 12: WONG, YIN N

1 OF 1 RECORD(S)

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Subject Summary Name	Address	Phone	County/FIPS
VELOCITY INVESTMENT GROUP INC	1055 E COLORADO BLVD STE 225 PASADENA, CA 91106-2370	(626) 793-7297	

Name Variations/DBAs

Name Variations

1. VELOCITY ALLIANCE FUND, LLC
2. VELOCITY CASH FLOW FUND, LLC
3. VELOCITY INVESTMENT GROUP INCORPORATED

Phone Summary - 3 records found

Telephone Number

1. 267-5038
2. (626) 287-5038
3. (626) 793-7297



The Rise and Fall of South Dakota

A Cautionary Tale for EB-5 Public Private Partnerships, Part I

South Dakota's EB-5 Program was, until recently, a show-case example of what State governments could do with the promise of capital investment from foreigners through the EB-5 visa program.

What has transpired, though, is a potential warning to the other EB-5 Public Private Partnerships (PPP) that contract outside entities to raise capital and manage the investments of what can go wrong when the state exercises little to no controls, audits or oversight of the people and firms that it has contracted to promote investment, recruit investors and operate its Regional Centers to.

Allegations

The South Dakota program had to date raised more capital than 90% of the designated EB-5 Visa Regional Centers, a long established track record and was a favorite among foreign agents and U.S. immigration attorneys because of the perception of the State's involvement, has effectively shut down amidst federal and state investigations for "alleged misconduct" and the mysterious death of one of

its principal architects.

At the center of attention in the investigations are Joop Bollen, the person appointed by South Dakota to oversee the capital raising, promotion and operation of the EB-5 program for the state (under both SDIBI and SDRC) and Richard Benda, former Cabinet Secretary and Director of Tourism & State Development for the state and later employee of SDRC.





And the CEO Mr. Wang Limin and Southern states EB-5 project director SEZ officials Mr. Joop Bollen South State Tourism Business Development Minister Mr. Richard Benda special plane to go to Beijing New Power Group field trips, group photo before departure

Until December 2009 Bollen served as Director of the South Dakota International Business Institute (SDIBI) which was created under the South Dakota Board of

Regents and administered by Bollen as part of an administrative unit of Northern State University and partially funded by Benda's department which was tasked with overseeing the investments in the state. Established in 1994, it achieved USCIS designation as a Regional Center in April, 2004 and was among the oldest of the existing EB-5 Regional Centers.

It was terminated by the State at the end of 2009 and replaced with a private entity, SDRC, which was controlled and administered by Bollen who requested and was granted permission to change the name of on the federal designation to the South Dakota Regional Center. The new entity then entered into a contract with the state to continue to promote EB-5 investment into South Dakota

**AMENDED AND RESTATED
CONSULTING CONTRACT**

**SOUTH DAKOTA DEPARTMENT OF TOURISM AND STATE DEVELOPMENT
AND
SDRC, INC.**

THIS AGREEMENT is made and entered into the 22nd day of December, 2009 by and between the South Dakota Department of Tourism and State Development ("DTSD") and SDRC, Inc., a South Dakota corporation ("SDRC").

RECITALS

A. DTSD is an agency and instrumentality of the State of South Dakota empowered and directed to promote economic development in South Dakota and to enter into public-private partnerships for the purpose of promoting economic development in South Dakota.

B. Pursuant to a letter ruling dated April 2, 2004, as revised by a letter ruling dated June 13, 2004; an unrelated letter ruling issued in response to a December 10, 2006 request; a letter ruling dated June 25, 2008; and an unrelated letter ruling entitled Third Amendment revising the June 25, 2008 letter ruling, DTSD has been designated by the U.S. Customs and Immigration Service ("CIS") as a regional center (the "Regional Center") for the purposes of and pursuant to 8 CFR 204.6 and other applicable law.

C. SDRC is a South Dakota corporation with its principal place of business in Aberdeen, South Dakota. SDRC and its principal, Joop Bollen, have extensive experience in the marketing and administration of the so-called "EB5 Program" provided for and authorized by 8 CFR 204.6 and other applicable law.

D. DTSD desires to contract with SDRC for the purpose of having SDRC administer the Regional Center and the EB5 Program and to market the EB5 Program for the benefit of South Dakota, all in conformity with applicable statutes and regulations.

AGREEMENT

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties hereto, the parties agree as follows:

1. SDRC shall undertake all activities necessary to administer the Regional Center for DTSD, which administrative duties shall include, but not necessarily be limited to, the following:

a. Contacts with CIS for and on behalf of DTSD, including but not limited to filing all necessary reports, requests for approval, notifications, and responding to inquiries from CIS. SDRC's duties hereunder shall include giving such notifications and obtaining such approvals of this Agreement and the terms hereof as may be required by CIS;

21. SDRC agrees to report to DTSD any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject SDRC, the State of South Dakota or the State's officers, agents or employees to liability. SDRC shall report any such event to DTSD immediately upon discovery. SDRC's obligation under this section shall only be to report the occurrence of any event to DTSD and to make any other report provided for by SDRC's duties hereunder or applicable law. SDRC's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications).

22. SDRC agrees to avoid conflicts of interest, and to provide DTSD with prompt written notification of any circumstances which may give rise to actual or apparent conflict of interest. The existence of an unresolved conflict of interest shall constitute cause to terminate this Agreement.

23. Nothing in this Agreement shall be construed to give rise to a partnership or joint venture between SDRC and DTSD or any other agency or instrumentality of the State of South Dakota. Rather, SDRC shall be acting as an independent contractor and this Agreement is intended to be in the nature of a professional services and licensing agreement.

Dated this 22nd day of June, 2010.

SDRC, Inc.

By [Signature]

Its President

(SEAL)

Dated this 22nd day of June, 2010.

South Dakota Department of Tourism and State Development

By [Signature]

Richard Benda, Secretary

and manage the investments and contracts with the law firms and agents that supported his efforts. Interestingly enough, this contract was signed on behalf of the state by Benda.

The program initially focused (under SDIBI) on funding dairy farms with a mix of European and Asian investors. Remarkable about that period of time and perhaps a foreshadowing of things to come were the bankruptcies of both the Winters Dairy and Veblen farms.

Despite moving the program from state control to

the privately held SDRC, Benda and other state officials continued to be heavily involved in the promotion of investments into South Dakota by traveling to overseas seminars and entertaining agents and investors on trips to the state.

Small Time to Prime Time

When I met with Joop in 2008, he told me he was tired of funding small time farm operations and wanted to capture some of the limelight and compete with

the attention that the other prominent Regional Centers at that time: CMB, American Life and RC manager CanAm were getting in the Chinese & Korean markets by funding larger, higher visibility projects.

The agents and immigration law firms prefer the larger projects as they are more cost effective to package and process and more lucrative because of the volume. If the investors begin to sound like cattle at a beef processing plant with the same end result then this might be an appropriate metaphor for how most of them are treated in our industry.

So Bollen began looking for the perfect showcase example of a large scale, larger investment project and, along with Benda and others in South Dakota, determined that a state-of-the art beef processing plant was exactly what was needed.

The Chinese and Korean agents and attorneys loved the idea. The first round of financing involved 69 Korean investors, the second round, SDIF LP6 would allow them to raise \$35 million from 70 Chinese



Southern State Minister Joop Bollen on the project, "the return of funds and green card security," published wonderful resolution



USAdvisors / EB5News.com's Michael Gibson, left, interviewing Joop Bollen in 2008.

The Northern Beef story so far

CONCEPT: The Northern Beef Packers plant was an ambitious attempt to bolster South Dakota's economy by slaughtering the state's cows in Aberdeen instead of shipping them out of state.

FOREIGN INVESTORS: Through years of development and false starts, most of Northern Beef's funding came from more than 100 foreign investors under the federal EB-5 program, where foreigners could get green cards for investing \$500,000 in American businesses.

EB-5: The state of South Dakota worked closely with the EB-5 program. It was promoted by Richard Benda, who then was secretary of Tourism and State Development and oversaw overseas investors. State official Joop Bollen also created private companies to manage EB-5 investments. Bollen resigned the same day he signed a contract for his own business to handle the state's EB-5 program.

INVESTIGATIONS: State and federal officials are investigating Northern Beef, its handling of the EB-5 program, and South Dakota's economic development office.

BENDA DEATH: Meanwhile, Benda died in late October from a gunshot wound. His death is being examined by authorities.

MAJOR PLAYERS

Richard Benda: Cabinet secretary for then-Gov. Mike Rounds in the Department of Tourism and State Development. Recruited foreign investors for Northern Beef of Aberdeen and later monitored Northern Beef in a private-sector job.

Joop Bollen: Director of the South Dakota International Business Institute until 1979, a state agency partly funded by Benda's Department of Tourism and State Development. Oversaw EB-5 investment such as those Benda recruited for Northern Beef.

Mike Rounds: Governor during the heavy state involvement in recruiting foreign investors for the Northern Beef Plant in Aberdeen and use of the EB-5 program to promote more business ventures in the state.



Richard Benda



Mike Rounds

nationals and later SDIF LP9 to raise an additional \$25 million from 50 more investors and subsequent offerings totaling close to \$100 million. This would be the first of several large scale investments and a departure from the smaller dairy projects which had been the staple of SDIBI promotions.

For the agents, law firms and the SDRC it meant several million dollars in legal, commission and other fees for these larger asset investments (more on the fee agreements, SDIBI and SDRC projects, bankruptcies and lawsuits in Part II).

Public to Private

Such lucrative contracts do not go un-noticed among public officials, so a year after Benda signed the SRDC contract, he left public service and the government to work with Bollen at SDRC to oversee the Beef Packing plant investment, but assumably at a much higher pay grade. Because the problems encountered

at the NBP plant with both development and later operations, the Chinese investors were becoming concerned and approached Bollen about installing their own manager to "participate in management decisions" and protect their interests.

According to news sources, Bollen opposed that idea saying that Benda was "an effective monitor and four times less expensive" than bringing in a Chinese caretaker.

On June 23 and 24 of 2012, Bollen received both formal and written requests from an attorney investigating SDRC's activities in the Northern Beef Packers (NBP) in Aberdeen and the Dakota Provisions Turkey Plant in Huron. According to press reports, the attorney asked, "What steps are being taken to ensure that the described turkey plants have created the minimum number of jobs prescribed on attached USCIS memorandum HQSCOPS 7A16.1.2-C?"

The attorney also asked for "a listing of entities and

ArgusLeader.com

A GANNETT COMPANY

News

Beef plant: Investment recruiter took cut of money

Fees added up to millions for South Dakota company asked to find foreign investors

Timeline of major developments in the Northern Beef saga

2004: As head of the South Dakota International Business Institute, Joop Bollen forms the South Dakota Regional Center, one of the first state agencies managing EB-5 visas.
2006: Richard Benda appointed Secretary of Tourism and State Development
May 1, 2007: Construction begins on the Northern Beef Packers plant in Aberdeen
Jan. 10, 2008: Bollen incorporates SDRC Inc., and three related limited partnerships.
Oct 28, 2009: A wave of 70 Chinese investors puts in \$500,000 each in to South Dakota Investment Fund Limited Partnership 6, for the purposes of loaning money to Northern Beef

Dec. 22, 2009: Benda signs a contract transferring management of the state's EB-5 visa program from a state agency to SDRC. Bollen, the president of SDRC, resigns his state position as head of the South Dakota International Business Institute.
August 2012: A second wave of 50 Chinese investors puts \$500,000 each in to SDIF LP9
Sept. 28, 2012: Northern Beef slaughters its first cows
July 22, 2013: Northern Beef files for bankruptcy
Sept. 19, 2013: Gov. Dennis Daugaard quietly cancels the state's contract with SDRC "for cause, immediately."
Oct. 20, 2013: Benda dies of a gunshot wound near Lake Andes.
Oct. 29, 2013: Benda's funeral is held.
Oct. 30, 2013: Gov. Dennis Daugaard announces state and federal investigations of the Governor's Office of Economic Development are underway.
Oct. 31, 2013: Former Northern Beef officials say federal investigators are examining that company and its use of EB-5 money



South Dakota Regional Center chairman
Joop Bollen

amounts of EB-5 funds distributed to South Dakota entities from 2000 to present" and "a list of pending EB-5 applications involving South Dakota entities."

According to these reports, on July 5, 2012, at 4:37

p.m., Bollen responded thus: "If you please could forward the necessary funds for my legal counsel I will certainly obtain it" [Joop Bollen, e-mail, 2012.07.05].

Shortly thereafter, on August 29, 2012 the Gover-

DEPOSIT ACCOUNT CONTROL AGREEMENT

This Agreement is made this 29 day of August, 2012, by and among the South Dakota Governor's Office of Economic Development, successor in interest to the South Dakota Department of Tourism and State Development, 711 E. Wall Avenue, Pierre, South Dakota, 57501 ("Secured Party"); SDRC, Inc., _____, Aberdeen, South Dakota, _____ ("Debtor"); and Great Western Bank, Aberdeen Branch, 119 SE 6th Avenue, Aberdeen, South Dakota, 57402 ("Bank"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties agree as follows:

1. Definitions and Rules of Interpretation.

In this Agreement, (a) terms defined in the UCC and not otherwise defined in this Agreement have the same meanings in this Agreement as in the UCC, (b) the rules of interpretation in Article 1 of the UCC apply to the interpretation of this Agreement and (c) the term "or" is not exclusive. Unless otherwise stated, section references are to sections of this Agreement. In addition, the following terms in this Agreement have the following meanings or interpretations:

This "Agreement" means this Agreement dated the Agreement Date among the Secured Party, the Debtor and the Bank.

2. The Debtor's Dealings with the Deposit Account.

(a) The Bank may not comply with any Disposition Instructions from the Debtor without the Secured Party's written consent.

3. The Secured Party's Right to Give Instructions as to the Deposit Account.

(a) The Bank will comply with the Disposition Instructions, and with any Disposition Instructions originated by the Secured party, in each case (i) without the Debtor's further consent, and (ii) even if following the instruction results in the dishonoring by the Bank of items presented for payment from the Deposit Account or the Bank otherwise not complying with the Debtor's Disposition Instructions. The Disposition Instruction may not be rescinded or otherwise modified without the Bank's consent.

SECURED PARTY

SOUTH DAKOTA GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT, SUCCESSOR IN INTEREST TO THE SOUTH DAKOTA DEPARTMENT OF TOURISM AND STATE DEVELOPMENT

[Signature]
BY: J. Pat Costello

ITS: Commissioner

DEBTOR

SDRC, INC.

BY: Joop Bollen

TS: President

BANK

GREAT WESTERN BANK, ABERDEEN BRANCH

BY: [Signature]

TS: Barbara B. Hargrave

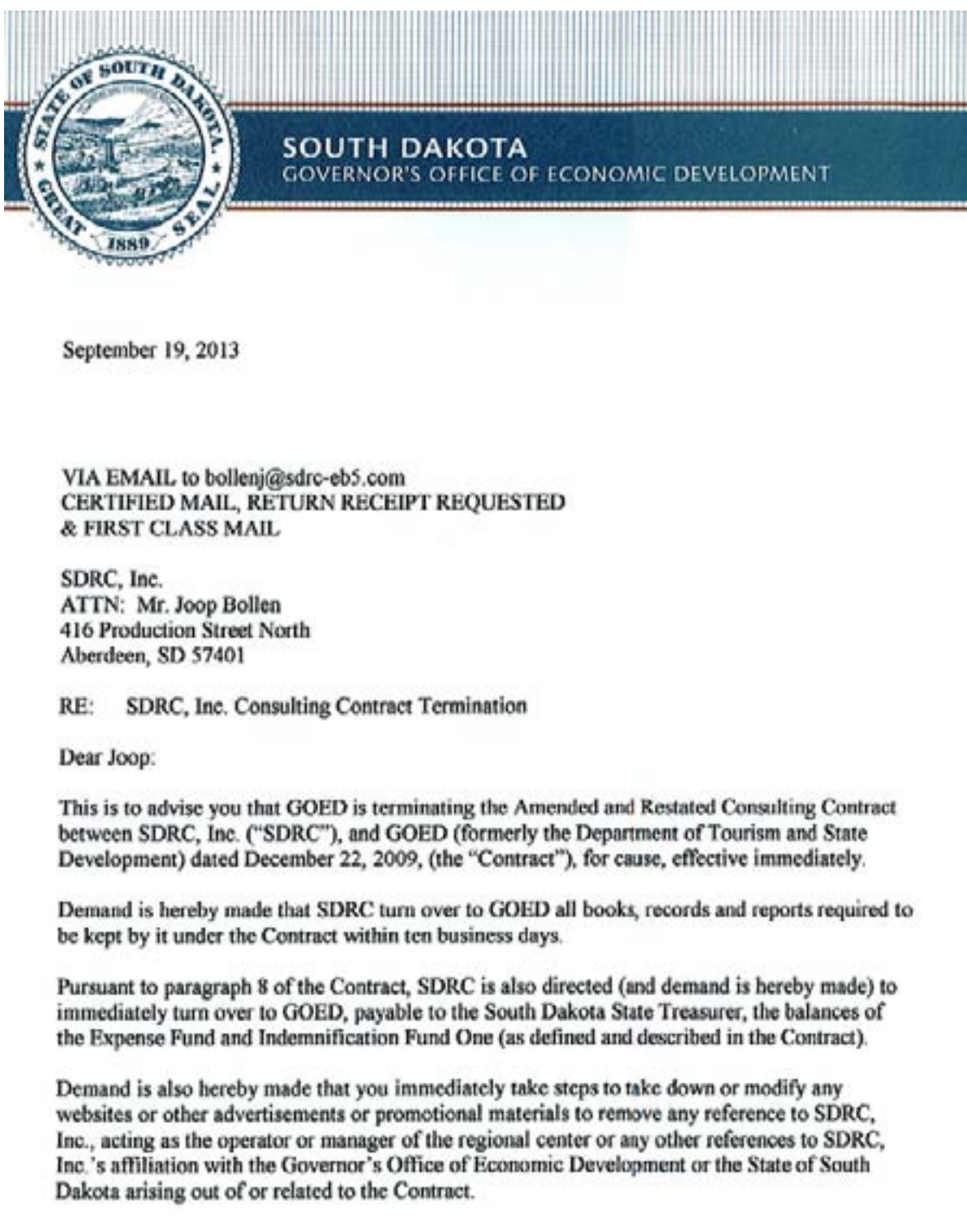
nor's Office of Economic Development took over the bank accounts of SDRC by imposing a "Deposit Account Control Agreement."

This agreement restricts Bollen from accessing any of the funds from the SDRC account that had been under his control and gives the State complete access to all bank records and activity. For the State to exert such control over a private contractor appears to be an

extraordinary action.

One month after the state issued the letter, former Sec. Benda dies of gunshot wounds at his sister's house near Lake Andes and his death remains under review by State Attorney General Jackley who has promised to release information about the autopsy later this month.

The current administration under Gov. Daugaard and the Commissioner of Economic Development Pat



Costello appear to have distanced themselves considerably from the EB-5 program in South Dakota.

"Earlier this year, I became aware of alleged misconduct, prior to my administration, at the economic development office," Daugaard said in a statement. "I asked the state attorney general to investigate and provided all relevant materials to him. There has also been a federal investigation."

Daugaard referred all further questions to Attorney General Marty Jackley and U.S. Attorney Brendan Johnson. At this time no criminal charges have been filed in either the federal or state investigations.

Jackley acknowledged the investigation but declined to release any details.

"I will confirm that requests have been made for authorities to review allegations of financial misconduct at the Office of Economic Development," Jackley said in a statement. "That investigation is ongoing, and I am therefore unable to provide further information." "GOED has not actively promoted the EB-5 program during the Daugaard administration"

"There are certainly projects that make use of or plan to make use of EB-5 investments that GOED works with, and tries to encourage or promote those projects, but they have not been actively promoting the EB-5 program."

It appears that they have ceased all marketing and promotion of South Dakota EB-5 projects. ■

In Part II we will discuss the relationship between the state, SDRC, agents, attorneys and the projects that Bollen, Benda and others promoted to investors.

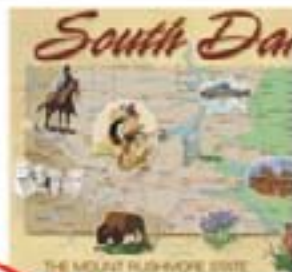


美国南州商务部部长Joop Bollen会前接受温州电视台联合采访



Regional Center Inc

ity Companies, manages limited
development projects on behalf of EB-5
investors in accordance with federal laws and regulations.



notice, stripping the home page of links and of any mention of affiliation with the State of South Dakota. In August, SDRC greeted visitors with this text:

SDRC Inc., an independent and privately owned company established in late 2008, is the overarching management company that operates and manages the regional center on behalf of the Governor's Office Of Economic Development. Additionally, SDRC Inc. operates as the general partner for the South Dakota Investment Fund Limited Partnerships (EB-5 entities) to assure that the interest of the limited partners are met, including the creation of necessary job credits needed for the I-829 process and the repayment of the loans [SDRC home page, downloaded 2013.08.18].

Now visitors see this message:

SDRC Inc., through Limited Liability Companies, manages limited partnerships which fund economic development projects on behalf of EB-5 investors in accordance with federal laws and regulations [SDRC homepage, downloaded 2013.11.04].

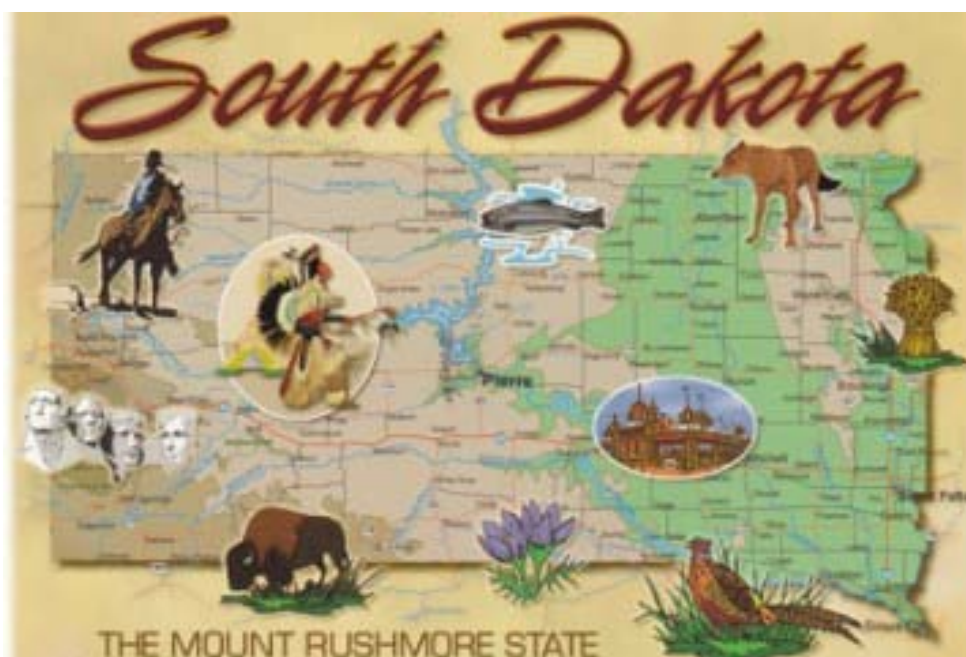
NATIONAL, INTERNATIONAL BUSINESS NEWS

APNewsBreak: SD cancels contract with EB-5 center

November 2

BY DIRK LAMMERS
Associated Press

SIOUX FALLS, S.D. — The South Dakota Governor's Office of Economic Development has terminated its contract with a regional center that handled a U.S. immigration foreign investment program, according to documents obtained by The Associated Press on Saturday.



EB-5 Funded Project Up and Running

In the February 2013 issue of *EB5News*, we reported on Riviera Point Holdings, LLC, an EB-5 funded office center under development in West Broward, FL. The \$17 million The Professional Center at Riviera Point, the Miramar market's first new Class A office development since 2009, is located on a four-acre site at University Drive and the Florida Turnpike. The "green," two-building 70,000-square-foot business complex is Broward's first multi-tenant office development being funded through job-creating international EB-5 investment, according to Riviera Point CEO Rodrigo Azpurua, CCIM.



Steady Growth and Progress

We're glad to report the project remains on a steady, forward track with 100 percent approval rate in I-526s and most importantly, the job creation based on tenant occupancy as building one, which is 89 percent constructed, has 50 percent of its space leased and letters of intent for another 38 percent of the leasable area. This

process is taking a little longer than usual to convert into lease as they are startup companies and details are still being negotiated. The company, which has changed its name to Riviera Point Development Group (RPDG), received full funding for the project in April 2013 after Azpurua, an attorney and real estate executive who emigrated to the U. S. in 2001 from Venezuela, completed one last trip to Shenzhen, China. The second building

An Open Book

In September 2013 Azpurua had a book published titled *EB5 Visas and Real Estate Development* based on his experiences and methodology in navigating the EB-5 world such as pursuing foreign investors in accordance with the USCIS EB-5 program, working with immigration attorneys, corporate attorneys, SEC compliance officers, economists, accountants, marketing people, etc.

"I've been strongly criticized for revealing to others what we've done, but I feel compelled to see the industry with good projects instead of so many failures. As more good projects come out in the industry, it's better for all of us in the EB-5 community. The USCIS and the foreigners deserve good projects with business plans that make sense, good management and

a culture of following best practices," said Azpurua.

"EB-5 money is not about dumb people willing to give up half a million dollars for a Utopian American dream, it's about wealthy immigrant entrepreneurs that bring additional capital to create jobs, skilled immigrants with innovative vision and ideas for many industries, and a restless driving force to boost local economy."





should start vertical construction in January 2014.

"In all our previous developments we have done forecast demand and market analysis, the data that we gathered and the methodology that we use to project such demand did fulfill USCIS (United States Citizen and Immigration Service) economist requirements to accept those jobs," explained Azpurua.

The EB-5 program allows a foreign national interested in obtaining permanent U.S. residency to do so by investing in a commercial enterprise that generates at least 10 jobs for U.S. workers for two years. The EB-5 Visa then becomes permanent. The qualifying investment for a project such as Riviera Point, which is located in a Targeted Employment Area (TEA), is \$500,000. According to an economic impact study by Wright Johnson LLC of Palm Beach, The Riviera Point development will result in creation of 441 jobs from the construction and operation of the center once fully tenanted.

The Professional Center at Riviera Point qualified as an EB-5 investment opportunity under the U.S. Citizenship and Immigration Services (USCIS) program, and is part of the Florida Regional Center EB-5 Investment, LLC. The building is funded primarily by investors from Venezuela, Argentina, Spain, Russia and China.

Using EB-5 Funding

After successfully managing development of seven Florida commercial developments totaling about one million square feet, the \$17 million Professional Center is Riviera Point's first EB-5-funded project.

CEO Rodrigo Azpurua, an attorney and real estate executive who emigrated to the U. S. in 2001 from Venezuela, reports the EB-5 funding process can be lengthy and extremely complicated, but definitely worth pursuing with conventional lending sources tight.

"It requires the developer have a firm grasp of the process, and just as importantly, the ability to convey it clearly to foreign investors who don't understand the complexities of U.S. laws," said Azpurua.

"Using EB-5 funding also requires carefully managing procurement of consultant and construction services since

a developer won't have the luxury of making draws against a pre-approved construction loan. It's crucial to structure contracts to match up with the very unique way that EB-5 money flows, coming in \$500,000 at a time as investors' applications are approved."

A Strong Future

In June, Riviera Point Development Group bought land in the City of Doral (Miami) to build another office building of 40,000 square feet and will use \$9.5 million in EB-5 funding. The contemporary building will offer small businesses and start-ups affordable space as it's being designed to house 36 small suites of approximately 1,000 square feet. "When we first started, most of our investors were from Venezuela and Argentina," Azpurua said. "It was a bit of a hard sell because not many people had heard of the EB-5 program, but now things are different and a lot of investors have heard of it, especially in China."

More personnel has also been recruited to make the



team stronger, such as COO and Vice President Noel Epelboim, who has a degree in civil engineering from Universidad Metropolitana and a master of science in civil engineering from Georgia Institute of Technology with a heavy background in commercial construction and office development and new Global Marketing Director Dan Li, who is originally from China who has made it her personal mission to provide a safe harbor for investors through integrity and her own first-hand immigration experience.

Additionally, RPDG is in negotiations with a large developer from Shanghai and a hedge fund in New York to develop a China Town in the Greater Miami Area, explained Azpurua.

The company has also launched a new website, www.rivierapmo.com. ■

Miami Herald

Posted on Mon, Jul. 29, 2013

Doral office building trading investments for visas

A planned \$10 million office building in Doral could mean quick visas for 19 foreign investors.

Developer Rodrigo Azpurua hopes to finance 100 percent of the \$9.5 million budget for the Riviera Point Business Center by selling shares to foreigners seeking investor visas. The visas are allowed under a special program that fast-tracks green cards in exchange for capital. Investors must put at least \$500,000 into a project approved by Washington as likely to boost a local economy. For each \$500,000 share, the developer must prove at least 10 new jobs were created.

Known as EB-5, the program gained popularity during the credit crisis, when developers had trouble securing loans from banks. Azpurua said he has sold out shares for an earlier EB-5 project, an office complex in Miramar.

The 40,000-square-foot Riviera Point Business Center would go up on land Azpurua bought at 9000 NW 89th Court and NW 15th St. Azpurua said the building will house 36 small suites of about 1,000 square-feet, the kind of affordable space favored by the start-up companies he will need to justify the job-creation requirements for the visas.

DOUGLAS HANKS



Rodrigo Azpurua, center, has added more personnel and is currently in negotiations to develop a China Town in Greater Miami using EB-5 funding.



On October 1, 2013, the Securities and Exchange Commission (SEC) and U.S. Citizenship and Immigration Services (USCIS) published a joint investor alert (Joint Alert) regarding recent investment scams exploiting the EB-5 program. Separately, the SEC announced its second major enforcement action against a regional center for perpetrating a fraud on investors. The first such action against Intercontinental Regional Center in Chicago sent shock waves through the EB-5 community that continue to reverberate in the market.

Q&A on SEC and USCIS Joint Investor Alert Regarding EB-5 Fraud



What was the latest SEC enforcement action against a regional center?

In *SEC v. Marco A. Ramirez, et al.*, the SEC alleged that defendants, owners of the USA Now regional center:

- Made false promises to investors concerning the opportunity to receive visas and returns on investments;
- Solicited EB-5 investments before receiving regional center designation;
- Misrepresented to investors that funds were held in escrow; and

- Misappropriated investor funds.

Specifically, the SEC alleges that investor funds were diverted to a separate business not described in the offering materials, to repay another investor, and even to purchase a car for an employee.

In July, the press reported that the FBI raided the offices of the regional center and the home of Mr. Ramirez. Press reports included a link to the FBI search warrant, which described the alleged fraud in detail. Nonetheless, the regional center continued to operate and market to new investors until the SEC successfully obtained emergency relief to freeze its assets and accounts.

According to the SEC complaint, the USCIS had not approved any of the I-526 immigration petitions filed by defrauded investors.

What Does the Joint Alert say?

The Joint Alert states that foreign investors are frequently targeted by regional centers in an attempt to use the EB-5 program as a means to carry out fraudulent securities offerings. The Joint Alert also reminds investors that a regional center designation by USCIS does not mean that USCIS, the SEC, or any other government agency has approved the investments offered through the regional center.

The Joint Alert also reminds investors that if an investment through EB-5 turns out to be in a fraudulent securities offering, the foreign investors may lose both their investment and the path to lawful permanent residency in the United States.

How does the Joint Alert recommend that investors protect themselves from fraud?

The SEC and USCIS recommend the following steps for foreign investors to help protect themselves from fraud:

- Confirm that the regional center is designated by USCIS. Designation by USCIS lends credibility because it confirms that the regional center has made all required filings with USCIS. It does not however mean that USCIS has endorsed the regional center or reviewed the quality of the investment it offers.
- Obtain copies of documents provided to USCIS by the regional center. These include the I-924 application, each I-924A filed at the end of each calendar year, and the supporting documentation provided to USCIS.
- Demand written information regarding the offered investment. Carefully review the offering memorandum and research similar projects in evaluating the proposal. Follow up with any questions. If you do not understand the information in the document or if the issuer is unwilling or unable to answer your questions, do not invest.
- Ask if promoters are being paid. Ask whether any third parties assisting with the offering (including consultants, lawyers or agencies recommending or endorsing the investment), are being paid for recommending the investment, including how much money and what type of benefit they expect to receive.
- Be skeptical of information from promoters that is inconsistent with the investment offering memorandum.
- Perform due diligence. Seek independent verification that the claims regarding the investment are true.
- Examine structural risk. Understand that the new commercial enterprise receiving the investment may have no assets other than its loan or other interest in a separate project. Review the offering documents carefully to determine what rights the new commercial enterprise has compared to others with interests in the project.
- Consider the developer's incentives. Regional center owners and developers who do not make a capital investment into the project may not have the same interest in the project's success as its investors.

Is there anything else investors should do to protect themselves from fraud and select an appropriate investment?

Absolutely. We consider the recommendations in the Joint Alert to be a good, but only partial, list of the important due diligence that investors should perform on any project. Below are some additional due diligence steps we recommended in a Sheppard Mullin alert:

- Review the backgrounds of regional center and/or project principals;
- Study the qualifications and reputation of the economist producing the economic regional center study;
- Have a qualified individual breakdown the fees, the specifics of the return of investment, and the "waterfall" (the priority of payments ahead of the EB-5 investors);
- Evaluate the percentage of EB-5 money in the capital stack and where the other money is coming from;
- Consider the job cushion (i.e., how many jobs over the requisite ten are being projected?);
- Evaluate the reasonableness of the data inputs, including whether or not third-party feasibility studies were conducted (consider engaging an industry expert to review data);
- Determine the investor's place in line for job allocation;
- Review the reasonableness of the project timeline (paying attention to when jobs will be created as well as the current delay in USCIS processing times – now over 18 months for I-526 adjudications); and
- Review and assess escrow terms and the possibility of return of funds if I-526 is denied based on no fault of the investor.

There is no perfect project for every investor. Some projects may present strong and highly supportable job creation, increasing the likelihood of obtaining a conditional visa and having conditions removed, but may have weaker investment characteristics (such as likelihood of a sale or refinance enabling return of investor capital). In other cases, investment characteristics may be stronger, but the risks of the immigration service not approving the project on its merits or not removing conditions is higher. With the assistance of qualified professionals, investors should carefully consider their individual priorities in selecting the best projects for themselves.

[continues next page](#)

What does the Joint Alert say are some warning signs of fraud?

The SEC and USCIS note the following as “hallmarks” of fraud:

- Promises or guarantees of a green card. EB-5 investments only make an investor eligible to apply for a conditional visa. They are not guaranteed to result in conditional or permanent residency.
- Guaranteed investment returns or no investment risk. EB-5 investments must be “at-risk,” without the guarantee of any return.
- Overly consistent high investment returns. Be suspicious of an investment that claims to provide, or continues to generate, consistent high rates of return.
- Unlicensed sellers. Regional center designation does not confer any authority to a regional center to perform traditional investment banking functions such as raising capital for others. Those activities are the subject of separate broker-dealer laws enforced by the SEC and various states (and for registered broker-dealers, rules adopted and enforced by the Financial Industry Regulatory Authority (FINRA)). Licensed broker-dealers introduce a number of investor protection mechanisms that are absent when the sales agents are not licensed. (See below.)
- Layers of companies managed by the same individuals. In these circumstances, confirm that conflicts of interest have been fully disclosed and are minimized.

I am a potential investor and the project I am looking at has one or more of the above “hallmarks” of fraud. Should I walk away?

Not necessarily. For example, many EB-5 projects today are marketed without the use of licensed broker-dealers. In some cases, the activities of the regional center and foreign marketing agents are arguably not subject to licensing requirements. Additionally, many good EB-5 investments are made in new commercial enterprises that invest into related businesses. Investors without substantial experience in project finance and the particular industry will have a difficult time distinguishing good investments from bad investments without the benefit of professionals performing the due diligence identified above.

Is fraud the only concern of the SEC and the securities laws?

No. While all securities laws are designed for the protection of investors, these laws govern many activities that do not involve any deliberate attempt to deceive. A regional center that uses funds properly and in accordance with its disclosed use of funds might still have significant exposure in SEC civil enforcement actions, private actions by plaintiffs, and even criminal proceedings. (While the SEC has no criminal enforcement authority, the U.S. Department of Justice and state equivalents do.)

The SEC Staff has spoken on various activities unrelated to fraud that are subject to SEC oversight. These include:

- The need for an applicable registration exemption for the offer and sale of securities;
- Registration requirements for persons in the business of effecting transactions for the account of others (i.e., broker-dealer laws);
- Registration and operations requirements for investment advisers (i.e., persons who manage funds that hold investor money); and
- Registration and operations requirements for certain investment companies.

I am a regional center principal or a project sponsor and I am complying with the securities laws and providing a solid investment opportunity to persons seeking legal residency through EB-5. How can I distinguish my project in the marketplace from the weaker or fraudulent projects?

The following are ways to enhance the credibility of your offering:

- Align with experienced EB-5 professionals who have identities and accomplishments inside and outside of the EB-5 community. The use of EB-5 for larger, syndicated, third-party managed investments is relatively new, and securities laws were not enforced in the program until recently. Accordingly, past “successes” in EB-5 are not necessarily indicative of quality or reliability. Professionals that have established and maintained strong identities in other domains can lend credibility.
- Obtain reliable, third-party validation of project quality. Such validation can be in the form of reports from independent sources on important aspects of the project. It can also be in the form of others who have put substantially more capital at risk into the same project and therefore have done their own

due diligence on the project. Partnerships with governmental agencies can also provide some reliability, but unfortunately some of the troublesome projects causing the market concern have involved public-private partnerships.

- Use a broker-dealer. Broker-dealers have obligations under FINRA rules to determine both that there is a reasonable basis to recommend the investment generally and that the investment is suitable for the particular investors. Broker-dealers must perform involved due diligence to meet those obligations. Accordingly, investors investing in a project through a broker-dealer will know that a substantial amount of due diligence has been performed and a suitability has been determination made. ■



John Tishler is a partner in the Corporate Practice Group in Sheppard Mullin's Del Mar Heights, CA office.

To view the release in its entirety, visit <http://www.uscis.gov/news/alerts/investor-alert-investment-scams-exploit-immigrant-investor-program>.



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Investor Alert - Investment Scams Exploit Immigrant Investor Program

Release Date: October 01, 2013

The U.S. Securities and Exchange Commission's Office of Investor Education and Advocacy and U.S. Citizenship and Immigration Services are jointly issuing this Investor Alert to warn individual investors about fraudulent investment scams that exploit the Immigrant Investor Program, also known as "EB-5."

The U.S. Securities and Exchange Commission's ("SEC") Office of Investor Education and Advocacy and U.S. Citizenship and Immigration Services ("USCIS") are aware of investment scams targeting foreign nationals who seek to become permanent lawful U.S. residents through the Immigrant Investor Program ("EB-5"). In close coordination with USCIS, which administers the EB-5 program, the SEC has taken emergency enforcement action to stop allegedly fraudulent securities offerings made through EB-5.

The EB-5 program provides certain foreign investors who can demonstrate that their investments are creating jobs in this country, with a potential avenue to lawful permanent residency in the United States. Business owners apply to USCIS to be designated as "regional centers" for the EB-5 program. These regional centers offer investment opportunities in "new commercial enterprises" that may involve securities offerings. Through EB-5, a foreign investor who invests a certain amount of money that is placed at risk, and creates or preserves a minimum number of jobs in the United States, is eligible to apply for conditional lawful permanent residency.

Toward the end of the two-year period of conditional residency, the foreign investor is eligible to apply to have the conditions on their lawful permanent residency removed, if he or she can establish that the job creation requirements have been met. Foreign investors who invest through EB-5, however, are not guaranteed a visa or to become lawful permanent residents of the United States. For more details, read the [EB-5 Immigrant Investor](#) section of USCIS's website at www.uscis.gov.

The fact that a business is designated as a regional center by USCIS does not mean that USCIS, the SEC, or any other government agency has approved the investments offered by the business, or has otherwise expressed a view on the quality of the investment. The SEC and USCIS are aware of attempts to misuse the EB-5 program as a means to carry out fraudulent securities offerings. In a recent case, *SEC v. Marco A. Ramirez, et al.*, the SEC and USCIS worked together to stop an alleged investment scam in which the SEC claims that the defendants, including the USA Now regional center, falsely promised investors a 5% return on their investment and an opportunity to obtain an EB-5 visa. The promoters allegedly started soliciting investors before USCIS had designated the business as a regional center. The SEC alleged that while the defendants told investors their money would be held in escrow until USCIS approved the business as eligible for EB-5, the defendants misused investor funds for personal use such as funding their Cajun-themed restaurant. According to the SEC's complaint, the investors did not obtain even conditional visas as a result of their investments through the USA Now regional center.

EB-5 Investment Report

Interview with Michael Gibson

Part 1 of an interview with an industry expert covers the importance of due diligence, how investors can protect themselves, EB-5 hot topics, transparency and licensed brokers.



SAdvisors.org's
Michael

Gibson discusses the importance of due diligence, how investors can protect themselves from bad projects, the latest hot topics in the EB-5 industry, transparency, and immigration broker fees during his interview with *EB-5 Investment Report Magazine's* Aimee Rios.



U.S. Advisors' Michael Gibson, left, during a recent interview with EB-5 Investment Report's Aimee Rios.

Gibson's Background

Before founding US Advisors, Michael Gibson was with Citicorp Capital Markets, primarily working emerging markets doing mostly fixed income and some derivatives, hedging, trading. He helped manage the risk for the bank, manage risk for clients and did a lot of large-project funding for some very large, sovereign states.

After leaving Citibank, he met an immigration attorney who explained about the EB-5 program, and asked him to look at some of the projects. This was in 2006. At the time, there were only 13 regional centers, and maybe four or five different projects in the market. Seeing several issues and concerns, they decided he would go onsite for visits and meet with the developers because there was not a lot of information; no investment report, no trade associations, no EB-5 conferences.

He discovered that the business plans were a nightmare, if they even had any.

This experience showed Gibson that the EB-5 program is a fantastic program for developers raising capital and for the investors to get their green card, but he also saw there was a huge lack of information. As a result he formed U.S. Advisors as a way to facilitate the flow of information, the risk analysis, the due diligence, not only for the investors but for the attorneys who are seeking guidance on which projects were out there and how safe the projects were to accomplish their goals.

Fast-forward from 2007 to 2013, which has seen the industry mature tremendously and is approaching close to 300 regional centers. At any point in time in the market, there's probably between 30 to 50 projects being offered, all different sizes, shapes, different asset classes, different industry groups, and the problem is, there's just simply no one source for information. U.S. Advisors has set itself up to be that source by launching EB-5M.com.

"We have put together this platform, a central pro-

cessing place so people cannot only find out information about the different projects, but they can also act on it. They can actually subscribe. Since this is going through a registered broker-dealer, all of the people who access the information will have to be vetted. Our EB-5M.com platform will allow for everybody in the industry, whether they're issuers, attorneys, investors, agents, to log onto the system, see what all of the different projects are in the market, there'll be some general information about the projects, and depending on the issuer, they can upload more or less, so according to how comfortable they feel releasing information to the industry," explained Gibson.

"There are three things we will do – the "know your client," so we know who they are and some background information. We can determine that that person is actually the person who's accessing the information. We're going to do the accreditation test, so we'll know if they're accredited or non-accredited, and we'll do the suitability to ensure they are aware that these are liquid instruments and that they're suitable for investing in these instruments."

Importance of Due Diligence

"Michael, it sounds like your website is helping those involved in the industry do their due diligence. For our viewers, can you explain what "due diligence" is and why it's so important?" asked Rios.

"When somebody sees an offering package, it's quite comprehensive. If we had one on the table, it would be several inches high and weigh maybe 10 or 20 pounds. In there is typically a limited partnership agreement, a private-placement memorandum, a business plan, which may be detailed, and the economic impact analysis, and there may be additional information on top of that. What we try to do is go through all of these offering documents and provide the investors with the material information they would need to make an investment decision," said Gibson.

"Due diligence is all the information you would need to make a decision on whether the project is a suitable investment for EB-5 purposes, and that includes analyzing what the business plan says. We have additional constraints because all of these materials have to be compliant with USCIS requirements."

"What we need to see is, "Will the asset be performing?"



Will it stabilize? And will it do it in sufficient time to give the investors everything that they need so that they can file to remove the conditions at I-829 stage?"

Developers Beware

"How important is it for regional centers and developers who receive EB-5 financing to be truthful and provide accurate information about their proposed projects? And what happens to regional centers and their developers who fraudulently make material misrepresentations about their projects?" asked Rios.

"That's a great question. We're not a law firm so can't give legal advice, but what we would say from the investment standpoint is that you need to be truthful and honest with your investors – and that includes the marketing agents. The problem in our industry is that it is handed off to a third party, a marketing agent, who may not have the same constraints and they're being compensated to sell product. These marketing agents, here or offshore, have an incentive to not disclose a risk because if I tell you I want to sell you a car, and I tell you the engine doesn't start all the time when it's cold you won't buy the car," said Gibson.

"The problem is that when the agents do not fully disclose the risk to the investors, the investors invest thinking there isn't going to be a problem. In fact, I've heard, overseas, where there is discussion of guarantees and other things, when something goes wrong in the investment, you're going to find that the investor is going to look not to the marketing agent for relief, but to the developer and/or the issuer and say, "We were told this, this and that, and this was our understanding."

"And the developer will have some issues to deal with if they are to either make that investor hold or to come up with other sources of capital if there is something like rescission, where they may have to return the capital invested to these limited partners. I think it brings up

a whole host of issues for the developer if they're not keeping a close eye on what the marketing agent is saying."

Chicago Convention Center Example

"Michael, going along those lines, our research shows that as early as November 2011, you started reporting on this huge Chicago EB-5 multi-hotel project that was reported under scrutiny by investors. Can you tell us why that showed up on your radar?" asked Rios.

"At that time, it was probably the most heavily marketed project in China, so it was on our radar screens. This was not only the largest project being marketed at the time, but it was also the one paying the highest commissions," Gibson explains.

"We were sent the offering documents. It didn't take us very long, a few hours to realize that this was all nonsense. We found in this case nothing that he said was factual, so we reported on it and thought that would be the end of it – not that everybody in China reads our blog, but we thought, certainly, anybody who spent a few hours doing some level of due diligence would find out that none of the things that they were claiming were true. And yet two years later, we found that the project was still being marketed, and were actually in the process of writing a follow-up just as the SEC action happened. While that took the industry by surprise, I don't think anybody who spent just even a few hours looking at the documents would've been.

"Where did the investors fail on that – not doing their due diligence? How did this happen?" asked Rios.

"This was easy. There was no due diligence done by anybody. I don't think the state of Illinois who had the governor on stage presenting with the developer certainly had an idea. You don't even need to do a site visit but anybody who had done a site visit or even a Google search would've seen there is no possible way that they can make a convention center that is not only not anywhere near downtown but not even near the airport. It's in the middle of nowhere out by O'Hare in a small 3.1-acre parcel, and they were going to put five hotels there. The whole thing was fantasy, so I don't know anybody involved in that chain did any level of due diligence whatsoever," he said.

"It turns out that your concerns were right about the Intercontinental Trust of Chicago, and February 2013, the SEC filed a civil complaint against that regional center and its founder for securities fraud. So why does the SEC often refer to Sethi, the founder of this project, as the "14-year-old developer"?," asked Rios.

"In one of the claims he made, which was outstanding – and again, this is where I blame the U.S. service providers because I can see how the Chinese investors don't know where Chicago is, much less this small-acre parcel. I understand how the Chinese investors do not understand that you cannot fit five hotels onto a small block, and that there isn't a \$300 million sovereign commitment from a foreign entity or any of the other claims



The Securities and Exchange Commission (SEC) alleges that Anshoo Sethi created A Chicago Convention Center and Intercontinental Regional Center Trust of Chicago and fraudulently sold more than \$145 million in securities and collected \$11 million in administrative fees from more than 250 investors primarily from China.

that were being made," said Gibson.

"The U.S. service providers, and there were at least, I'd say, probably a dozen – attorneys, economists and service providers who were involved and, to some extent, supported the deal if not by going to China and making public support statements, they supported it by doing some service for this offering, and then the developer used that, their logos or their experience in their firm to show the investors that, "Don't believe what we're saying. Look at what these firms are saying. They trust what we're saying, and they've done the work."

"On the U.S. side, there was a lack of due diligence on the client engagement. You have attorneys and economists and others who will simply engage with almost any client regardless of the claim. One of the claims that the SEC was referring to was where Sethi had claimed that he had 15 years of commercial construction development experience, and he was only 29.

"He would've been 14 when he started, which when we review offering documents, we oftentimes find discrepancies between what the developer claims. And in this case, on the U.S. side, the people who provided service to Sethi and the others in his group may have been misled. But at the same time, it's their own proper responsibility, not only for their firms but then down the road for the investors who may come looking for relief to them because they supported that engagement."

About Third Parties

"There was another project that I read about in one of your newsletters. It was Neogenix Oncology. Can you explain that? And can you tell us what lesson can be learned when raising capital and dealing with finders' fees regarding this?" asked Rios.

"The case of Neogenix is a good warning sign for people who are raising capital by paying third parties who may not be registered. Neogenix used a U.S.-based finder to raise a significant amount of capital. The CPA firm doing the audits of their financial records would not sign off because they were concerned that the payments of fees to non-registered persons could invoke something called "rescission," meaning that Neogenix might have to return the capital back to the investors by paying a third party," explained Gibson.

"It was pretty clear the third party was a broker in that transaction. Whether he had to be registered or not could be a matter of some debate, but I think the SEC's view is that anybody paid a commission in the sale of a security should be registered. The CPA firm would not sign off on the financials if they did not include a note



Michael Gibson
Investment Advisor, Risk Analyst
USAdivisors.org

saying there is a possibility of rescission. All of the capital may have to be returned.

"This caused a delay in the filing of their quarterly statement – this was a fairly liquid company that relied on the pink sheets, which is an over-the-counter trading system. When this came out – the delay in the filing and the reason why the filing was delayed actually put the company into bankruptcy.

"In regards to EB-5, perhaps they didn't get their green card, the conditions removed at 829, and they find out that a third-party, non-registered person was compensated, was paid finders' fees in the raise. They could, then, theoretically, hire an attorney and ask the principles to return their capital because the exemption – the Reg. D or the Reg. S exemption – was violated. Violating the exemption provisions, which may include not paying third parties who are not registered, could be a problem for people raising capital in the EB-5 space.

Educate Your Investor

"How can investors protect themselves from being caught up in lawsuits and bad projects like we discussed? And how important is it for the investors to have an exit strategy?" asked Rios.

"I don't know that we can rely on investors to do a whole lot. By and large, these people, while they're very intelligent and have been very successful, they are not sophisticated investment analysts or experts. In our industry, I take a bit of an issue especially with the immigration attorneys who are not recognizing this," said Gibson.

It's our job to explain to them in as much detail as we can what all the risks are involved in these investments so they can make a better-informed decision. I

think that step is skipped in most cases, and the fault I would place firmly at the foot of the immigration attorneys who may not be giving their clients sufficient guidance. Now, they may say, "We won't give them investment guidance." But then they should find somebody who can because, unfortunately, what's going to happen is these clients, if they do make an investment and it turns out to be a poor choice, they're going to look to the immigration attorney for relief. For the immigration attorneys, I would guide them to get as much second-, third-party opinion on these investments because the investor, if they lose their money or they lose the petition for residency, are going to be very upset, and they're going to look to them for relief."

Using Licensed Brokers

"Michael, recently CIS hosted a stakeholders' conference with SEC, do you agree with SEC's latest guidelines that immigration brokers directly associated with EB-5 regional centers who are operating within the U.S. and abroad are required to be registered security brokers?" asked Rios.

"I'm going to leave the debate really up to the securities attorneys. I'm probably not qualified to answer that, but having studied for a number of these exams both with Citicorp and now with my present firm, my sense is that yes, they need to be registered," answered Gibson.

"If you go to the Securities and Exchange website you will see their primary mandate is to protect the investor. Their secondary function is to create efficient markets to raise capital. That's why these laws were passed. They have a reason. And the reason is because when unregistered persons get involved in a market – and this isn't unique to EB-5 –and raising capital and telling things to investors that are not true, harm comes, and the problem is there's no remedy for the investors because these are unlicensed people. There's a lot of things that we as registered people have to do and there's a reason we have to do it – to protect the investor. I think by doing so we only strengthen the industry. It's a best practice. You would be showing the investor that you have due care and concern for their well-being.

"It's our understanding that the larger Chinese immigration brokers maintain active offices in the United States. Are these types of immigration brokers who have offices in the U.S. possibly violating U.S. security laws?" asked Rios.

"We cannot give guidance because we're not on the regulatory side, but if you go through some of the case law and these No Action Letters, it becomes quite clear, at least to me, that people who are residing in the U.S. and operating and doing business to affect the securi-

ties' transactions absolutely should be registered," said Gibson. "I don't think there's any gray area. It would be up to the regulators to decide if the migration agents who have offices in the United States if they're violating securities law. But I think you can do capital raises without engaging with firms who have U.S. representatives. ■

Part 2 of Gibson's interview will be in the next issue of EB5 News covering Chinese immigration agents and the developing role of regional centers.

For more information about the due diligence performed by U.S. Advisors, please visit USAdvisors.org or the newest platform, EB5M.com for EB-5 industry offerings and projects.

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Center Project analysis,
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Inform your client, protect your practice

To Due Diligence Or Not

Due diligence is a necessary part of any investment program. We asked some leading due diligence firms for examples of where due diligence played a major role in saving major investment dollars.

Have you ever seen an offering package regarding potential investments? If you have, you've realize they can be several inches high and weigh upwards to 20 pounds. They are quite comprehensive with business plans, private-placement memorandums, limited partnership agreements, economic impact analysis, etc. When someone performs due diligence on an offering, they are basically sorting through this stack in order to let you know if what it says is true so you can make an informed investment decision.



Regarding EB-5, due diligence will determine: Will the asset be performing? Will it stabilize? And will it do it in sufficient time to give the investors everything that they need so they can file to remove the conditions at I-829 stage? Do they follow with all of the new and old USCIS guidelines regarding the job creation and the artificial constraints imposed on the job creation timeline?

The U.S. Advisors risk analysis/due diligence analysis is designed to provide project developers, issuers, Regional Center principals, investors, attorneys, advisors and marketing agents an independent third-party identification and verification of the various risks involved with the project's ability to achieve two objectives:

- That the economic activity generated from the cre-

ation, expansion, restructuring or preservation of the asset will be sufficient to create sufficient employment to satisfy USCIS regulations within the required period of time and as outlined in the business plan and economic impact report.

That the value of the asset created or saved will be sufficient to return capital to all investors and creditors in a reasonable period of time and that the exit strategy is clearly is defined and achievable.

Without this verification process, an investors' money could just disappear in a puff of smoke as fraud is not unheard of regarding the EB-5 investor program.

Chicago Convention Center Example

The largest example of fraud in the EB-5 community happened just this past year, which serves as a warning as to why due diligence is so important. As early as November 2011, the Chicago Convention Center project came to the attention of U.S. Advisors. At that time, it was probably the most heavily marketed project in China with at least two dozen or more migration agents in China promoting it. By January 2013 the SEC and USCIS had taken action to stop the fraud -- 250 investors were duped for more than \$145 million.

"We were sent the offering documents. It didn't take us very long, a few hours, to realize that this was all nonsense. There was no substance to anything they were claiming or promoting in the marketing material, and it was more disturbing because it wasn't just the marketing material from the regional center that was of concern -- but when you looked at what all the agents were saying on top of that -- the additional guarantees and claims that were simply not true," said Michael Gibson of U.S. Advisors. "Typically, you're going to find problems with one or two areas where there could be some doubt as to what might be accurate or not; but in this case we

found nothing that he (Anshoo Sethi) said was factual.”

How does fraud of this magnitude occur if it was so easy to spot the fictional claims?

“There was no due diligence done by anybody. You don’t even need to do a site visit to figure this one out. Anybody who had done a site visit or even a Google search would’ve seen there is no possible way they can make a convention center that is not only not anywhere near downtown but not even near the airport. It’s in the middle of nowhere out by O’Hare in a small – I think it’s a 3.1-acre parcel, and they were gonna put five hotels there. The whole thing was fantasy, so I don’t know anybody involved in that chain, whether they were the attorneys or the agents or the service providers, I don’t think anybody did any level of due diligence whatsoever,” Gibson stated.

From Due Diligence Experts

U.S. Advisors is the source for news, projects and information about EB-5 Regional Centers and their investment projects. U.S. Advisors works with U.S. firms looking for capital and foreign investors interested in funding U.S. enterprises through private placement agents and broker/dealers and their registered agents. Their database of project offerings is distributed to these firms who evaluate the risk and work with their investors and clients to fund the U.S. commercial enterprises with either debt or equity.

One of the companies, Crowdcheck, Alexandria, VA, performs due diligence on companies raising funds in offerings not registered with the Securities and Exchange Commission. These include offerings to overseas investors under the EB-5 visa program, online offerings to accredited investors under Regulation D, and the offerings that will be made under the new crowdfunding regulations. Crowdcheck focuses on obtaining information that establishes the legitimacy of the entity offering securities and establishing whether the investor has the information he or she needs to make an informed investment decision. CrowdCheck is comprised of very experienced securities attorneys, business lawyers and entrepreneurs as well as researchers with varied backgrounds in law and finance.

“Here at CrowdCheck, we provide due diligence on the company issuing securities, whether in an EB-5 of-



“Some (companies) only required a few bits of evident to support assertions made to investors, others had to go back to square one because their corporate governance was a mess and the companies were not authorized to offer the securities they wanted to.”

fering or in other unregistered offerings. We have seen a number of companies in various stages of readiness to conduct a securities offering. Some only required a few bits of evidence to support assertions made to investors, others had to go all the way back to square one because their corporate governance was a mess and the companies were not authorized to offer the securities they wanted to. What is important for EB-5 investors to know is that the background and credentials of the company officers have had no connection to the readiness of the company to offer securities,” explained Andrew Stephenson of CrowdCheck.

“One company in particular stands out. This company wanted to sell stock to finance its business of producing a consumer electronics device. In the company’s offering materials, it represented that all of its securities were authorized by its board of directors and that it had a manufacturing agreement in place with a major electronics manufacturer. As it turns out, the board had not properly authorized the securities offering and the manufacturing agreement was not in place – merely in discussions that later fell apart. CrowdCheck caught these issues during our due diligence. Had the company proceeded with these issues, not only would it have committed securities fraud by misrepresenting a material fact, but investors would have been able to rescind the transaction at-will, causing immediate capitalization issues that the company may not have been able to recover from.

“These concerns are especially significant in the EB-5 context. Misrepresentations or flawed authorizations can leave the securities issuer without operating capital, leading to project failure. A failed project will not create the required number of jobs and the investor will not receive a permanent visa,” said Stephenson.

Another company is Impact DataSource, Austin, TX, an economic research, consulting and analysis firm with over 19 years of experience in regional economic impact

analysis that understands the unique economic analysis requirements of the EB-5 approval process. The firm works with regional centers, project applicants and immigration attorneys to demonstrate the economic impact of projects seeking foreign investment. Impact DataSource also assists in the pre-planning stages of project development to determine if the project is likely to meet the 10 jobs per investor requirement and to investigate high unemployment areas and assist in obtaining TEA certification letters.



"As EB-5 economists, Impact DataSource sees a few different issues pop up related to economic studies and targeted employment areas. On more than one occasion, we've worked with developers seeking EB-5 funding that have been using a non-EB-5 economic study for planning purposes. They seek our help in producing an EB-5 compliant job study and find out that allowable EB-5 job creation estimates are much lower than the earlier non-EB-5 economic study indicated," said Paul Scheuren, an economist and principal at Impact DataSource.

"In some cases, the projects are not viable without the previously expected higher EB-5 investment and the other work related to the offering is money and time wasted. Economic impact studies are performed for a variety of reasons but rarely are they reviewed the way USCIS assesses them. In addition, the USCIS requires very specific estimation practices for construction and other elements that are not standard in the rest of the economic impact modeling world.

"Another issue we see regularly relates to clients that need a targeted employment area (TEA) designation for their project but move forward with their project before confirming or securing the designation. Targeted employment areas are becoming more difficult to establish as the economy improves and as some states tighten certification standards.

Developers can save time and money by obtaining their TEA designation in advance, understanding their offering must be prepared and submitted before the TEA designation expires.

Fraud is Afoot

Founded in 1999, Fundadministration is a leading global hedge fund administrator with offices in New York and clients around the world. The company's cutting-edge technology and highly skilled staff provide

"Making a solo, unannounced visit to the principal, I found an office that was a shell of its former self... I advised my client to look elsewhere for investment opportunities as the principal's entire operation had clearly been set up only to impress us and secure his investment."

a comprehensive suite of administrative products. Their services are fully automated, flexible and



provide a cost-effective level of reliability that meet the specific needs of their clients' sophisticated investors.

This true story was submitted by Denise Depaola, CPA and CEO of Fund Administration. Actual names have been withheld. You can't make this stuff up.

"As the administrator to a large, multi-manager hedge fund, I was asked by my client, the fund's investment manager, to accompany him on a due diligence visit to meet a money manager with the intent of allocating to their trading program. We travelled to Florida to meet with the principal of the firm with which my client planned to invest and, upon our arrival, we were greeted at the airport by a stretch limousine and taken to their offices. We were surprised to find approximately 50 employees in this office and a myriad of trading screens and technology that would easily rival the trading room of a mid-sized bank.

"The principal, with whom we intended to meet, was late. When he eventually arrived, over an hour late, he explained that he had been up all night working on a \$12,000 discrepancy within one of his accounts. Immediately I thought it odd that the principal of a firm this size would personally be involved in searching for a \$12,000 discrepancy; his firm had in excess of 50 employees engaged in what appeared to be trading as well as operational duties. It was also unusual that the principal would use such a minimal discrepancy as an excuse to be late for a meeting in which my client was planning to invest a minimum of \$10 million dollars with his firm.

"During the visit we were treated to a lavish lunch at the principal's golf club and we concluded the

meeting by requesting additional documentation. On the flight back, sensing something appeared not quite right, I strongly suggested my client wait several weeks before finalizing the investment. We never received the requested documentation and I decided to make a solo, unannounced visit to the principal. Upon visiting the same location, I found an office that was a shell of its former self; only two employees were present and clearly their only function was to answer the telephone. I advised my client to look elsewhere for investment opportunities as the principal's entire operation had clearly been set up only to impress us and secure his investment. Several months later it was learned that this principal had been arrested for fraud."

Joe Whalen, an independent consulting and trainer, submitted this weird story: "I had a client approach me for an assessment of an idea for direct EB-5 investment. He wanted to go into farming in the U.S. because he knew it from back home (in India). The problem with his idea was that he wanted to use that EB-5 "farm" to import H2-A non-immigrant agricultural workers as a back-door way of bringing in adult-kids, siblings, cousins, nieces, nephews, grandchildren, various in-laws, and some close family friends. Essentially, he wanted to import most of his village.

"After biting my tongue to prevent laughter, I explained that that would not be EB-5 compliant because zero spouses, sons or daughters could count (kids of all ages are barred) and that zero non-immigrants could count. Then, I also explained the realities of the U.S. agricultural workforce, namely, that the vast majority are unauthorized aliens that also do not count. The few agricultural concerns that have been used as EB-5 vehicles have not had much success.

"This person saved himself not only the EB-5 expenses but also all the associated pointless non-immigrant petitioning fees. And as he would have been just "the front man" and wanted the H2-A workers to pay their own USCIS and DOS fees, he may have saved his life by checking with a professional first."

For more information on due diligence, visit www.eb5m.com or www.usadvisors.org. ■

Meet The Due Diligence Group

CrowdCheck

• **Sara Hanks**, co-founder and CEO of CrowdCheck, is an attorney with over 30 years of experience in the corporate and securities field. CrowdCheck helps entrepreneurs through the disclosure and due diligence process. Sara's most recent position was General Counsel of the Congressional Oversight Panel, the overseer of the Troubled Asset Relief Program (TARP). At the TARP oversight panel, Sara spent 18 months on Capitol Hill investigating the implementation and consequences of the TARP in depth. She examined the government's intervention in the automotive companies, the execution of the banking "stress tests," the rescue of AIG, and the international aspects of the financial crisis. Years prior, while at the SEC and as Chief of the Office of International Corporate Finance, she led the team drafting regulations that put into place a new generation of rules governing the capital-raising process.



• **Brian R. Knight**, co-founder and vice president for Platform Services at CrowdCheck, has experience as both an attorney and an entrepreneur. Brian has served as an attorney in the private sector and for the federal government. He also started and ran Publius Incorporated, a business focused on improving constituent communications with elected officials. He brings his unique experience with both the legal and entrepreneurial worlds to CrowdCheck, allowing him to effectively address the needs of startups.



Huiwen Leo, director of Investor Services, is a corporate and securities attorney. She began her career at the World Bank, where she focused on private sector development issues including corporate governance, aid effectiveness, privatization and globalization. She then joined the New York office of Clifford Chance, where she advised on capital markets transactions and corporate matters for companies and major investment banks in Asia, Europe and Latin America. When her husband was based in Camp Pendleton and deploying to Iraq, she relocated to the San Diego office of Latham & Watkins, where she worked on everything from start-up financing to multi-million dollar deals. She has worked pro bono on microfinance in Haiti, clean tech in San Diego, and military family and veterans issues.



• **Douglas Piker** is currently a researcher for CrowdCheck. He holds a B.A. in history from the College of William and Mary and a J.D. from the Nashville School of Law. Prior to joining the team at CrowdCheck, he worked as a business affairs coordinator at Broadcast Music Inc. in Nashville, TN. He is a member of the Tennessee Bar and currently resides in Durham, NC.



• **Joe Whalen** is a former government employee who is familiar with the INA. His education is in anthropology with a concentration in archaeology and have both a BA (from SUNY Buffalo) and an MA (from San Francisco State University) in anthropology. He previously worked as an archaeologist for the U.S. Forest Service before becoming an adjudicator with INS which became USCIS. Today, he is an independent consultant who provides highly-individualized training serving regional center principals and their counsel.



Fund Administration

• **Denise DePaola**, CPA, chief executive officer, has over 20 years of experience in public accounting and the alternative investment/financial services arena, with a particular emphasis on fund administration and business development. As CEO of Fund Administration, she is responsible for the strategic direction of the firm. Her strategic thinking and industry knowledge has been instrumental in providing ongoing advice to fund principals regarding front, middle and back office solutions. She is recognized as an industry expert that continually re-evaluates her strategic initiatives during these ever-changing market conditions.



• **Nick Neri**, director of business development, is responsible for the planning and execution of the company's marketing and development strategies. His duties include creative direction, new business management, corporate and product development, and relationship management. He works with fund advisors and hedge fund clients in developing and implementing a variety of

portfolio, trading and operational solutions: from point-of-contact assistance through system integration and technology support. He diligently matches their business requirements with Fund Administration servicing capabilities; negotiates fees, and ensuring an effective transfer to the fund servicing team. Using his 20 years of sales experience, Nick has been instrumental in establishing additional business.



Impact Data Source

• **Jerry Walker** is an economist and one of Impact Data-Source's principals. Over the past 18 years, he has conducted economic and fiscal impact analyses and cost-benefit studies of a variety of firms, facilities, projects and activities. He has also developed several economic impact analysis computer programs for clients to do their own economic impact analyses of firms, projects, activities and organizations. Jerry has a background in government accounting and auditing having reviewed federal programs operated by states, local governments, universities, local education agencies, and nonprofit organizations.



• **Paul Scheuren** is an economist and one of Impact Data-Source's principals. He honed his research skills at Clemson University where he completed several in-depth statistical research projects including a research paper concerning internal U.S. migration. Prior to joining Impact Data-Source, Paul worked as a compensation analyst at the Texas Association of School Boards where he supported compensation consulting projects and helped streamline data analysis for a statewide salary survey.



• **Michael Kester** is an Impact DataSource economist. His diverse consulting background in healthcare and compensation combined with his advanced analytical skills make him a key member of the Impact Data-Source team.

