



SEC &  
USCIS  
TAKE  
ACTION  
TO STOP  
EB-5 VISA  
FRAUD



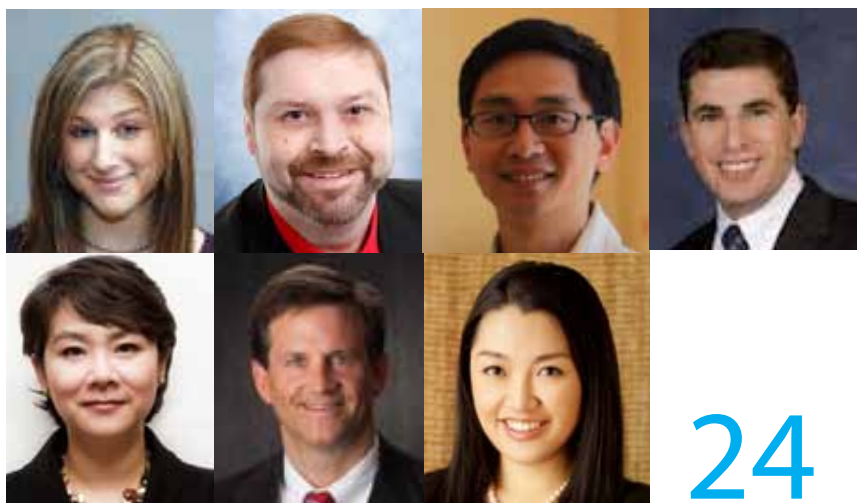
- 3 EDITOR LETTER
- 23 Events
- 38 Letter to Editor  
Great Wall in Immigration falls a bit every month to CEO size agent comp. packages
- 39 Industry Roundup

## FEATURES

- 4 SEC & USCIS Take Action  
Organizations stop scheme committing fraud.
- 18 Risks of Paying Fees to Illegal Finders for EB-5 Issuers: Neogenix  
Recent bankruptcy reminds of need for use of registered broker-dealers.
- 24 We Asked!  
What's on your EB-5 Wishlist for 2013?
- 29 ILW.com Sued for Contract Breach  
A complaint was filed mid-January
- 32 NASAA Top Investor Threats of 2012  
EB-5 Investment-for-Visa Scams



18



24



Forbes

New Posts



John Wasik, Contributor

I write about investments, financial planning and personal ecology

+ Follow (33)

Follow 140

PERSONAL FINANCE | 8/21/2012 @ 3:37PM | 2,075 views

## How A New Generation Of Con Artists Gets Inside Your Wallet

+ Comment Now + Follow Comments

When it comes to fleecing people, con artists have a number of pipelines: Mail, phone, Internet/social media and affinity groups.

They can operate most smoothly when people trust them and are motivated by greed. Since we're hard-wired for both of these traits, with a bit of skepticism saves most people from being bamboozled.

Lately though, changes in technology and financial services have given the even more room to operate. Every year, the North American Securities

32

**USADVISORS.ORG**

EB5Info.com is the source for news and information on the USCIS EB-5 Visa Immigrant Investor program and is powered by USAAdvisors, a Registered Investment Advisory Firm, that performs independent Risk Analysis and Due Diligence on EB-5 Visa Regional Center projects to help clients make educated decisions based on facts related to the EB-5 Visa investment.

**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

EB5Info.com  
EB-5 Newsletters  
EB-5 News



by MICHAEL GIBSON  
Managing Director

**The past few years have**

seen a tremendous amount of growth and interest in the EB-5 Visa Immigrant Investor Program, not only from foreign nationals wishing to obtain a green card, but from U.S. public and private entities wishing to finance their ventures with the foreign capital.

As with any nascent industry, there will be issues and challenges that lay ahead and as the EB-5 program covers development, economics, valuation, risk, immigration and securities fields those issues will be addressed and discussed by a large number of professionals and service providers from a wide range of practices.

To that end, we are hoping that you, the reader, will find the articles in these newsletters to be informative and thought-provoking concerning the many challenges that investors face in making their EB-5 investment decisions, the issuers as they go to market to raise the capital they are looking for, and the attorneys and other service providers that aid them in putting together the studies, offering documents and marketing material in a way that conforms with U.S. securities and immigration laws, regulation and guidance.

Best wishes,  
*Michael Gibson*  
Managing Director, USAAdvisors.org

by KRIS STELL  
Editor-in-Chief

**Our goal is to try and**

engage our readers as much as possible through the use of interesting articles, newsletters, surveys and special reports to highlight the EB-5 Immigrant Visa Program. Therefore, we hope that you find the contributions in this issue of EB5Info.com to be illuminating and please do let us know how we

are doing, what articles you would like to see in the future, what you felt about the articles' content and if you have any questions for the EB-5 community.

*Kris Stell*  
Editor-in-Chief, USAAdvisors.org





# SEC & USCIS Take Action to Stop EB-5 Visa Scheme Committing Fraud

In a coordinated action unprecedented in our industry's history, the SEC and USCIS have coordinated to stop the activities of Anshoo Sethi and the EB-5 designated Intercontinental Regional Center Trust of Chicago (IRCTC) from continuing to misappropriate funds from overseas immigrant investors in connection with the "A Chicago Convention Center LLC" offering that he and Chinese migration agents were heavily promoting to investors.



## SEC Action

The SEC alleges that Sethi, through the EB-5 visa Regional Center offering, used fraud and misrepresentation to sell more than \$145 million in securities and collect over \$11 million dollars in fees from over 250 investors and although Chinese agents were not named in the SEC action, their involvement was instrumental in the scheme and deception.

The complaint alleges that Sethi and his associates orchestrated a scheme to dupe and defraud investors over a period of 18 months by violating securities laws, making false claims, committing fraud and materially misrepresenting unsupported claims to collect millions of dollars in fees for his own personal account.

The SEC states "the fraud described is ongoing and likely to continue" and has taken this step to protect the interests of current and future investors. The agency is seeking an emergency ex parte relief to "enjoin violations of the anti-fraud provisions of federal securities laws, freeze assets, secure a preliminary injunction and other equitable relief." As of today, several Chinese agencies continue to promote this project to investors on their websites:

- Worldway – [www.worldwayhk.com/zt/zjg/zjg.html](http://www.worldwayhk.com/zt/zjg/zjg.html)
- ACC Tenet – [www.acctenet.com/main/article/detail/id/237](http://www.acctenet.com/main/article/detail/id/237)
- Goldlink – [www.can-goldlink.com/zhuant/chicago/](http://www.can-goldlink.com/zhuant/chicago/)
- Visa 160 – [www.visa160.com/usaall/zhijiage/](http://www.visa160.com/usaall/zhijiage/)
- Golden Reach – [www.jintengvisa.com/show.php?contentid=1112](http://www.jintengvisa.com/show.php?contentid=1112)
- SEETO Go Abroad – [www.xintong.com.cn/chicago/](http://www.xintong.com.cn/chicago/)
- IMMI – [www.immi.com.cn/contents/5/3511.html](http://www.immi.com.cn/contents/5/3511.html)
- JUST INFO – [www.visadviser.com/cn/Project\\_29.html](http://www.visadviser.com/cn/Project_29.html)
- Gasheng – [www.gasheng.com/news/usa2012111901a.shtm](http://www.gasheng.com/news/usa2012111901a.shtm)

## The Lies

Among the allegations that Sethi promoted to investors are the following:

- All necessary construction permits had been obtained to construct a convention center, five upscale and luxury hotels, restaurants, shopping facilities, bars and entertainment facilities

used as developer equity

- Investor funds would be 100% protected and returned in the event that their applications for residency were denied
- Investment from Qatar for \$370 Million was pledged as an additional capital contribution to the capital stack and to cover development costs

### ANSHOO R. SETHI CEO - CHIEF EXECUTIVE OFFICER



Mr. Anshoo R. Sethi has over fifteen years of experience in real estate development and management, specifically in the lodging arena.

In the development and operation of such ventures, Mr. Sethi has acquired formidable proficiency in global finance, specifically in the management and acquisition of working and institutional capital, respectively. He is intimately acquainted with the business of hotel development, as his family has been working in this arena for over thirty years. Mr. Sethi is recognized as an innovator, creating strategies in all aspects of the pre- and post-real estate development process.

Given Mr. Sethi's insight into and proven results in real estate and lodging innovation, he has been able to grow his family's business exponentially. It is the goal of Mr. Sethi and his associated businesses to develop large-scale hotels that are truly pioneering industry leaders in their design, environmental sustainability, and profitability.

- Franchise agreements with Indigo and Staybridge Suites (Intercontinental Hotel Group), Element by Westin (Starwood) Hyatt Place & Hyatt Summerfield Suites (Hyatt) were in place and in good standing
- These agreements would offer investors a "Hotel Brand Advantage" ensuring high volume through their brand name recognition, reservation systems and loyalty programs
- Land with a market value of \$177 million was being

- Construction would begin in the summer of 2012 and occupancy of the first tower in early spring 2014
- That Sethi, who is 29, had over 15 years of experience in real estate development and managing lodging properties
- The project developer Upgrowth LLC had over 35 years of experience in developing hotel and lodging properties
- The ACCC project would create over 8,000 jobs

## Huge Chicago EB-5 Multi-Hotel Project Under Scrutiny by Investors

Posted by Michael Gibson on Tue, Nov 29, 2011 @ 01:20 AM



1

0

2



Tweet



+1



Share

Several Chinese agents and investors are calling into question the claims being made by a new EB-5 Visa Regional Center, The Intercontinental Regional Center Trust of Chicago.

Many are calling this project the *new Atlantic Yards* due to the extremely large size of the offering (\$249.5 million) and the claims being made by its promoters and migration agents in China. The agents need to heavily promote issues of this magnitude in order to raise such an exceptionally large offering (most EB-5 visa project offerings are under \$50 million) in a very short period of time.

In order to raise this much capital from an extremely large number of investors (499), the migration agencies in China and elsewhere often make exaggerated claims to meet their quota. If successful, they can earn well over \$100,000 - \$150,000+ for each investor (\$45,000 from the subscription fee plus a percentage of the loan collected by the General Partners).

The Chinese investors are not aware that these agents are collecting such large fees. It is not disclosed to them, and most foreign investors believe that these migration agents are paid only a very small amount (\$5,000) and are working on investors' behalf.

### The Principals and the Deal (Part 1)



Loop Capital



## The Truth

All of the following is easily obtainable with a minimal amount of effort and due diligence and it will show that none of the claims made by Sethi can be supported by research and market based analysis.

We reported our research in a report in 2011 and despite that and subsequent coverage of our concerns as reported in the *Chicago Tribune*, EB-5 service providers, consultants, attorneys and Chinese migration agents could not get in line fast enough to collect fees and commissions as hundreds of investors were duped.

Financial consultants who have reviewed the convention center project on behalf of potential foreign investors said it has appeared troubled from the start.

Michael Gibson, whose Tampa, Fla.-based firm researches the viability of EB-5-financed developments across the U.S., called the project too big and unrealistic. He cited a saturated market for hotels in Chicago and the monumental task of securing the public financing and backing from so many private investors. The project, he said in an interview, is "a mess."

"In order to raise this much capital from an extremely large number of investors (499), the migration agencies in China and elsewhere often make exaggerated claims to meet their quota," Gibson wrote on his blog, eb5info.com.

## Hotel License Agreements – Non-Existent

The letters confirming the license agreements that were handed out by the agents were dated years before and were no longer in place by the time of the offering.

Hotel Agreement Letters (dated) according to the SEC action:

"Although Intercontinental Hotels and Starwood Hotels had previously entered into franchise agreements with Sethi and companies affiliated with him (other than ACCC and IRCTC), these agreements were terminated well before Defendants began circulating their December 2011 Offering Memorandum to potential investors and selling the investments in the fall of 2011. In fact, these franchise agreements were terminated before ACCC was formed in January 2011."

"Starwood Hotels terminated its relationship with Sethi and an entity related to him in 2009—more than two years before the



**Chicago Tribune**  
**NEWS**

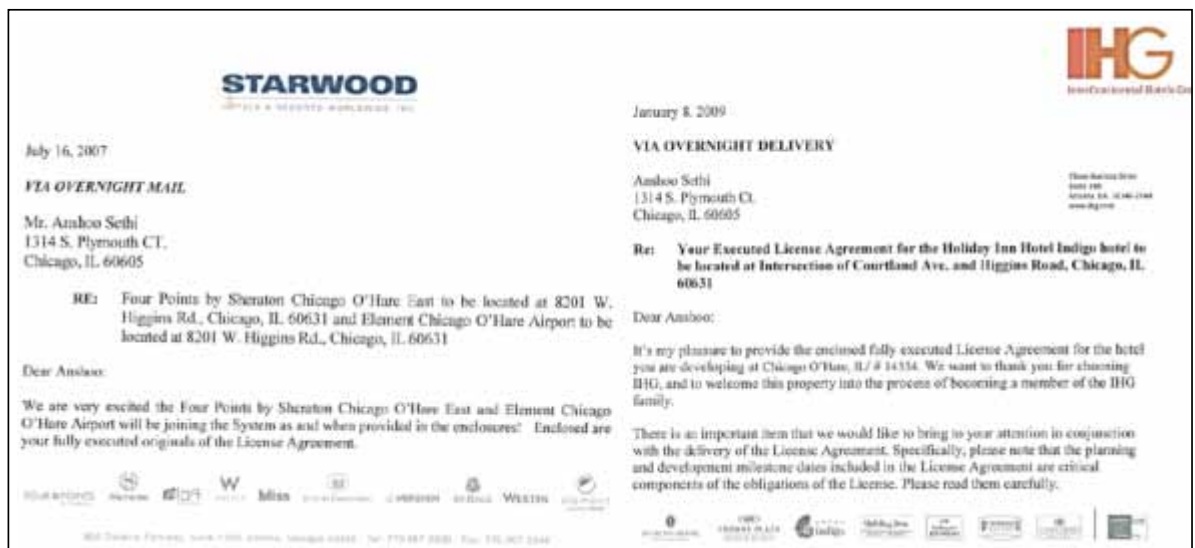
### Hotel proposal illustrates promise and peril of investment program

**Questions surround Chicagoan's quest for 499 investors through visa initiative**

July 15, 2012 | By Antonio Olivo, Chicago Tribune reporter

SHANGHAI — — Anshoo Sethi flew in from Chicago in search of Chinese money, leaving behind the worn hotel his family owns near O'Hare International Airport to sell a much grander vision of life in America.

Sethi's proposal, to build five environmentally progressive luxury hotels near O'Hare, reflects both the promise and potential problems of the program. Critics say his plan is part of a trend toward mega-projects that are aggressively promoted by Chinese brokers at the expense of smaller developments that could create jobs faster.



**STARWOOD**  
HOTELS & RESORTS WORLDWIDE, INC.

July 16, 2007

VIA OVERNIGHT MAIL

Mr. Anshoo Sethi  
1314 S. Plymouth Ct.  
Chicago, IL 60605

RE: Four Points by Sheraton Chicago O'Hare East to be located at 8201 W. Higgins Rd., Chicago, IL 60631 and Element Chicago O'Hare Airport to be located at 8201 W. Higgins Rd., Chicago, IL 60631

Dear Anshoo:

We are very excited the Four Points by Sheraton Chicago O'Hare East and Element Chicago O'Hare Airport will be joining the System as and when provided in the enclosures. Enclosed are your fully executed originals of the License Agreement.

January 8, 2009

VIA OVERNIGHT DELIVERY

Anshoo Sethi  
1314 S. Plymouth Ct.  
Chicago, IL 60605

Re: Your Executed License Agreement for the Holiday Inn Hotel Indigo hotel to be located at Intersection of Courtland Ave. and Higgins Road, Chicago, IL 60631

Dear Anshoo:

It's my pleasure to provide the enclosed fully-executed License Agreement for the hotel you are developing at Chicago O'Hare, IL / # 14354. We want to thank you for choosing IHG, and to welcome this property into the process of becoming a member of the IHG family.

There is an important item that we would like to bring to your attention in conjunction with the delivery of the License Agreement. Specifically, please note that the planning and development milestone dates included in the License Agreement are critical components of the obligations of the License. Please read them carefully.

Starwood, IHG, Hyatt, Staybridge Suites, Hyatt Place, Indigo, and other hotel brands are shown at the bottom of the document.



Offering Memorandum was circulated to potential investors and well before either ACCC or IRCTC were formed. By September 14, 2009 and November 20, 2009, respectively, Starwood had terminated two licensing agreements that Defendants maintained with Starwood in connection with developing Element by Westin and Four Points by Sheraton hotel properties under the names of Upscale Hospitality, LLC and Upsliding, Inc."

"In subsequent letters, Starwood specifically directed Sethi, Upscale and Upsliding to cease representing that their properties were either one of the aforementioned Starwood brands immediately, including, but not limited to, in oral and written disclosures. Moreover, Starwood sought over \$2.6 million in damages and fees as a result of breaches of the licensing agreements. Defendants did not disclose these material facts to USCIS or in the Offering Memorandum to investors."

"Defendants also submitted to USCIS a letter purporting to be a "comfort letter" from Hyatt Hotels (on Hyatt Hotels' letterhead). Hyatt Hotels has informed the SEC that the letter is not genuine. Rather, Sethi manipulated an electronic version of a form Hyatt Hotels comfort letter (that was unsigned and contained numerous blanks) to generate the letter provided to users."

Further investigation by Antonio Olivio of the *Chicago Tribune* reveals:


(Page 2 of 2)

## Hotel proposal illustrates promise and peril of investment program


### Questions surround Chicagoan's quest for 499 investors through visa initiative


July 15, 2012 | By Antonio Olivo, Chicago Tribune reporter


   Recommend  Tweet  Share  +1


The hotel the Sethi [family](#)  now operates — the Chicago O'Hare Garden Hotel — has been struggling. Last year it was cited by Chicago building inspectors for defective carpeting, a lack of smoke detectors, and holes in the walls and ceilings.

Also last year, Sethi and his father were sued in federal court for \$355,000 by the Wyndham hotel chain for failing to maintain sanitary conditions in the hotel, which Wyndham said violated a franchise agreement. The hotel lost the Wyndham name and now operates independently.

The Sethis were sued by the state of Illinois in 2010 for failing to pay hotel employees \$8,300 in wages and by a money-exchange [company](#)  for bouncing a \$332 paycheck, court records show.

Through a spokeswoman, Ambar Mentor-Truppa, Sethi said all of those legal debts have been paid. Mentor-Truppa said Sethi declined to comment on questions about his [resume](#)  or experience as a developer.

In Shanghai, Sethi said he was unruffled by the criticism of his project, chalking it up to a fiercely [competitive](#)  EB-5 market.

His consultant, Kevin Wright, said: "What you'll find here, especially in [China](#) , they have a whole industry of blogs, where if your project is doing well, you can expect that you're going to get a heavy, heavy amount of people hating on it."

con't next page

Chicago Convention Center EB-5 projects will be recommended

Service | Success Stories | Company Profile

## Chicago Convention Center EB-5 projects will be recommended

March 12, 2012, days Hastings and the Bank of China, Xiamen Branch jointly organized by Xiamen Hua Tian Heng immigration center, "the Chicago Convention Center EB-5 projects will be recommended successfully held in Xiamen. The recommended particularly invited the famous American regional economist Kevin Wright, chairman of the Chicago Interstate regional centers anshoo sethi, David Wang, president of Chicago conference center in China to participate.

In the afternoon, Kevin and his entourage first visited the Ka Wah Tin Hang immigration center, general manager Zhang Chen, deputy general manager Cai Wei Chao, director of operations Shangguan Yu Yang accompanying accompanied.



Recommended meeting Kevin Wright for everyone detailed analysis of the development trends of the Chi, and explain how to choose the EB-5 project. The current U.S. EB-5 immigration policy will 2012, Kevin forecast EB-5 project will not

## CONSTRUCTION PERMITS

The only construction permits granted by the City of Chicago are for a 49x49 tent, a 200 amp service panel, a fence, and to wreck and remove a brick building (see permit 1):

Description: PERMIT EXPIRES ON 01/08/2013 ERECTION STARTS: 11/12/2012, ERECTION ENDS: 11/16/2012. ERECT 49' X 49' TENT FOR EVENT NOVEMBER 15, 2012 PER PLANS

Permit 2 - Description: 200 AMP TEMPORARY SERVICE

Permit 3 - Description: FENCES: 1300FT IN X 6FT 0IN: QTY 1

Permit 4 - Description: WRECK & REMOVE 2 STORY BRICK COMMERCIAL BUILDING

What is so remarkable about the permits is that even though Sethi had been to China marketing this project for over 18 months, made dozens of trips, hosted countless seminars and raised over \$145 million in funding, the only progress he had made on the site was to demolish a building, erect a fence, put up a tent and install a small electrical panel. Remember that he was claiming to be completed with the construction of the first hotel and have it occupied by spring of

**City of Chicago** The City of Chicago's Official Site

**DEPARTMENT OF BUILDINGS** "Where Building a Better Chicago Begins"

**BUILDING PERMIT STATUS**

Application Status  
Open Corrections  
Completed Corrections  
Project Tracking  
Applicant Information  
Back to Permit Search  
Help

**Application Status**  
**8201 W HIGGINS RD**  
Description: PERMIT EXPIRES ON 01/08/2013 ERECTION STARTS: 11/12/2012, ERECTION ENDS: 11/16/2012. ERECT 49' X 49' TENT FOR EVENT NOVEMBER 15, 2012 PER PLANS  
Total Records: 2, displaying all items.

Name	Completed Date	Status
ARCHITECTURAL & FIRE REVIEW	2012-11-08	APPROVED
FINAL DATA REVIEW	2012-11-08	APPROVED

The owners of this address received a permit on Thursday, November 8, 2012  
This data represents the last 18 months of historical permit information and was last updated on Saturday, February 9, 2013. This web site is usually updated every night, however, please allow two (2) business days for permit data to be posted to this web site.

Permit 1

**City of Chicago** The City of Chicago's Official Site

**DEPARTMENT OF BUILDINGS** "Where Building a Better Chicago Begins"

**BUILDING PERMIT STATUS**

Application Status  
Open Corrections  
Completed Corrections  
Project Tracking  
Applicant Information  
Back to Permit Search  
Help

**Application Status**  
**8201 W HIGGINS RD**  
Description: 200 AMP TEMPORARY SERVICE  
Total Records: Nothing found to display.  
The owners of this address received a permit on Monday, December 17, 2012  
This data represents the last 18 months of historical permit information and was last updated on Saturday, February 9, 2013. This web site is usually updated every night, however, please allow two (2) business days for permit data to be posted to this web site.

Permit 2



**City of Chicago** The City of Chicago's Official Site

**DEPARTMENT OF BUILDINGS** "Where Building a Better Chicago Begins"

**BUILDING PERMIT STATUS**

Application Status  
Open Corrections  
Completed Corrections  
Project Tracking  
Applicant Information  
Back to Permit Search  
Help

**Permit 3**

**Application Status**  
8201 W HIGGINS RD  
Description: FENCES: 1300FT IN X 6FT 0IN: QTY 1  
Total Records: Nothing found to display.  
The owners of this address received a permit on  
This data represents the last 18 months of historical permit information and was last updated on Saturday, February 9, 2013. This web site is usually updated every night, however, please allow two (2) business days for permit data to be posted to this web site.

**City of Chicago** The City of Chicago's Official Site

**DEPARTMENT OF BUILDINGS** "Where Building a Better Chicago Begins"

**BUILDING PERMIT STATUS**

Application Status  
Open Corrections  
Completed Corrections  
Project Tracking  
Applicant Information  
Back to Permit Search  
Help

**Permit 4**

**Application Status**  
8201 W HIGGINS RD  
Description: WRECK & REMOVE 2 STORY BRICK COMMERCIAL BUILDING  
Total Records: 2, displaying all items.

Name	Completed Date	Status
FINAL DATA REVIEW	2012-10-30	APPROVED
FINAL DATA REVIEW	2012-11-07	APPROVED

The owners of this address received a permit on Wednesday, November 7, 2012  
This data represents the last 18 months of historical permit information and was last updated on Saturday, February 9, 2013. This web site is usually updated every night, however, please allow two (2) business days for permit data to be posted to this web site.

2014.

In the meantime, dozens if not hundreds of I-526s must have been filed, or in the process of filing, yet it appears that no agent, immigration attorney or EB-5 service provider thought to question the project's ability to be completed on time when all they had done in 18 months of effort was to erect a small tent.

I can understand that the investors' attorneys may not have been aware that the hotel franchise agreements were no longer in place, and could not be bothered to place a phone call to verify such, but to not ask for photos and progress reports from the developers prior to

submitting the I-526 and transfer funds might be considered by some to be a lack of due care for such a large and important investment.

### INFLATED LAND VALUE

In the Chicago Convention Center offering documents and in marketing material handed out to investors (see right and bottom pg. 10), Sethi and the Chinese agents often referred to the land as having a value of \$178 million dollars, which is pretty funny to anyone who has seen valuation reports and inflated claims before and pretty steep for 2.80 acres far from downtown Chicago.

According to reports, the land cost less than \$10 million when purchased in 2008 so to claim an increase in value of nearly 2,000% is a pretty tall tale even by EB-5 standards. For tax purposes, the land was assessed at \$603,960. For comparison, a nearby 20-acre parcel with improvements sold for \$7.7 million in 2011.

CHICAGO CONVENTION CENTER DESCRIPTION AND ANALYSIS OF THE LAND



### INVESTMENT SCENARIO 投资情况说明

Developer Sources of Land Value, Government Loans, and Bridge Loan.  
关于土地价值、政府贷款和过桥贷款的开发商资源

Land Value of \$177,547,465 is appraised by T.R. Mandigo & Co. Feasibility Expert/CPA. and renowned commercial real estate MAI appraiser Integra Realty Resources with over 650 skilled professionals, focused on commercial real estate valuation, appraisal and counseling services, Integra Realty Resources is an industry leader in providing services across all property types.  
土地价值为\$177,547,465, 由 T.R. Mandigo & Co. 可行性专家/CPA 估价。著名商业房地产 MAI 评估商 Integra Realty Resources 有 650 多名专精人才, 以商业房地产评估、估价和咨询服务为业务重点, 是提供房地产各类服务的业内佼佼者。

What the Integra report really says is:

The purpose of this consultation is to provide a price analysis for the land based on allocation of the forecasted stabilized income stream in terms of the relative contributions of the land; improvements; furniture, fixtures and equipment (FF&E); business enterprise; and start-up costs as of the date of stabilized occupancy valuation, January 1, 2018.

The client and intended user is the lender and underwriter (State of Illinois) and the developer RASS Hospitality, LLC. The intended use of this report is for investment underwriting purposes.

Based on the conclusions in this report, and subject to the definitions, assumptions, and limiting conditions expressed herein, the concluded going concern pricing model indicates a price of \$1,190,000,000 and a land price range from \$615,100,000 to \$757,000,000.

The key words here are "land based on allocation of the forecasted stabilized income stream in terms of the relative contributions of the land; improvements, FF&E..." and "going concern." Sethi and his agents told investors that they were acquiring unimproved raw land for the value of the completed, cash flow producing

assets or a "stabilized project". Here are the figures which more closely reflect the true value of the land at the end of the report:

CHICAGO CONVENTION CENTER		LAND RESIDUAL ANALYSIS	
This capitalization rate range indicates a price range for the land as follows:			
Residual Income Attributable to the Land	Capitalization Rate	Pricing Indication	
\$49,206,898	8.0%	\$615,100,000	
\$49,206,898	6.5%	\$757,000,000	
The resulting pricing range indication for the land is from \$615,100,000 to \$757,000,000.			

## INFLATED DEVELOPMENT COSTS

Along with the inflated land valuations, the investors were also told that the costs to build and develop these hotel rooms would be substantial. According to the SEC action:

"First, the costs of the project are unusually high compared to

hotel industry data. The business plan reports that the hard costs of the project will be \$686,365,381 with an additional \$48,589,790 in soft costs such as design and engineering for a total cost estimate of \$734,955,171. This value represents a cost of \$738,348 per room (key) and \$421.3 per square foot. Defendants claim that the land is worth \$177,547,465, which if included, raises the estimated cost per room to \$917,088."

"However as of January 2012 full-service hotels (a step below luxury hotel) had an average total cost of only \$212,300 per room. Luxury hotels had an average total cost of \$610,500 per room. For a hotel complex with 995 rooms, these values produce a cost estimate ranging from \$211,238,500 to \$607,447,500. Therefore, the projected total cost of the project and the cost per room exceed even the high-end averages."

According to the JN+A and HVS Hotel Cost Estimating guide the figures quoted by the SEC are accurate and conform to industry ranges (see below).

# 2012 HOTEL COST ESTIMATING GUIDE SUMMARY

		Economy	Extended Stay	Midscale with F&B
<b>Guestrooms &amp; Corridors</b>				
Guestroom Only	Softgoods Reno.	\$1,424 to \$2,372 Per Guestroom	\$4,375 to \$8,881 Per Guestroom	\$3,462 to \$7,418 Per Guestroom
Bathroom	Add for Full Reno.	\$7,874 to \$3,269 Per Guestroom	\$8,749 to \$15,178 Per Guestroom	\$3,323 to \$6,855 Per Guestroom
(1) Softgoods Reno.		\$432 to \$605 Per Guestroom	\$1,126 to \$2,207 Per Guestroom	\$1,177 to \$2,433 Per Guestroom
(2) Add for Full Reno.		\$3,811 to \$7,167 Per Guestroom	\$4,288 to \$8,714 Per Guestroom	\$4,748 to \$9,318 Per Guestroom
Guestroom Corridors	(3.4)	\$653 to \$880 Per Guestroom	\$1,673 to \$2,881 Per Guestroom	\$888 to \$2,422 Per Guestroom
<b>Public Spaces</b>				
Lobby	(5) Softgoods Reno.	\$116 to \$24 Per SF (180)	\$7 to \$17 Per SF (1400)	\$4 to \$10 Per SF (2500)
Public Restrooms	Add for Full Reno.	\$84 to \$125 Per SF (180)	\$65 to \$111 Per SF (1400)	\$38 to \$64 Per SF (2500)
Softgoods Reno.		\$4 to \$5 Per SF (80)	\$5 to \$17 Per SF (480)	\$5 to \$17 Per SF (480)
Add for Full Reno.		\$48 to \$78 Per SF (80)	\$60 to \$108 Per SF (480)	\$63 to \$108 Per SF (480)
<b>Food &amp; Beverage Facilities</b>				
Restaurant (Economy American Bar-Grill)	Softgoods Reno.	\$12 to \$25 Per SF (480)	\$21 to \$38 Per SF (1400)	\$21 to \$38 Per SF (1200)
Add for Full Reno.		\$384 to \$82 Per SF (12)	\$368 to \$695 Per SF (76)	\$403 to \$739 Per SF (66)
Bar & Lounge		\$34 to \$60 Per SF (480)	\$47 to \$82 Per SF (1400)	\$45 to \$73 Per SF (1200)
Kitchen		\$1,178 to \$2,014 Per SF (12)	\$871 to \$1,897 Per SF (76)	\$1,242 to \$2,585 Per SF (66)
Softgoods Reno.		N/A	N/A	\$22 to \$40 Per SF (720)
Add for Full Reno.		N/A	N/A	\$487 to \$508 Per SF (64)
(6) Excl. Equipment (Economy Design Party Only)		N/A	N/A	\$1,105 to \$1,944 Per SF (770)
Select Kitchen Equipment		N/A	N/A	\$1,344 to \$2,585 Per SF (66)
		N/A	\$242 to \$474 Per SF (80)	\$26 to \$45 Per SF (1800)
		N/A	\$20 to \$38 Per SF (80)	\$13 to \$18 Per SF (1800)

**JNA**  
**HVS**  
DESIGN

Washington, D.C.

Boston

Denver

Minneapolis

San Diego

Fort Lauderdale

© 2012 JNA+A & HVS Design

7361 Calhoun Place, Suite 310, Rockville, Maryland 20855

www.nahmer.com

www.hvsdesignservices.com

## INFLATED REVENUE PROJECTIONS

According to the SEC complaint:

"Defendants' projections of increased air traffic to O'Hare and room occupancy data in their business plan and an economic analysis they retained are higher than local and industry data. For example, the projected room revenues for 2017 are \$105,077,000, which according to the construction time frame should result in all 995 rooms

being ready for occupancy."

"To achieve those room revenues, all 995 rooms would need to be occupied every day of the year at a price of \$289 per night. This calculation would mean that the occupancy rates and prices would have to be even higher than the optimistic projections used in the economic analysis."

#### EB-5 Investors - Return on Investment

##### EB-5 投资者—投资回报

- 12.75% Equity in Project (A Chicago Convention Center, LLC.), therefore Profit Sharing for Investors in both operations and from disposition of property/  
12.75%的项目股权（芝加哥会议中心公司），因此投资者分享经营和财产处置的收益

- The 499 eb-5 investors share a profit from both sale and 3-years operating profit totaling \$117,992,340.  
499 个 eb-5 投资者分享销售利润和三年的经营利润共计\$117,992,340。

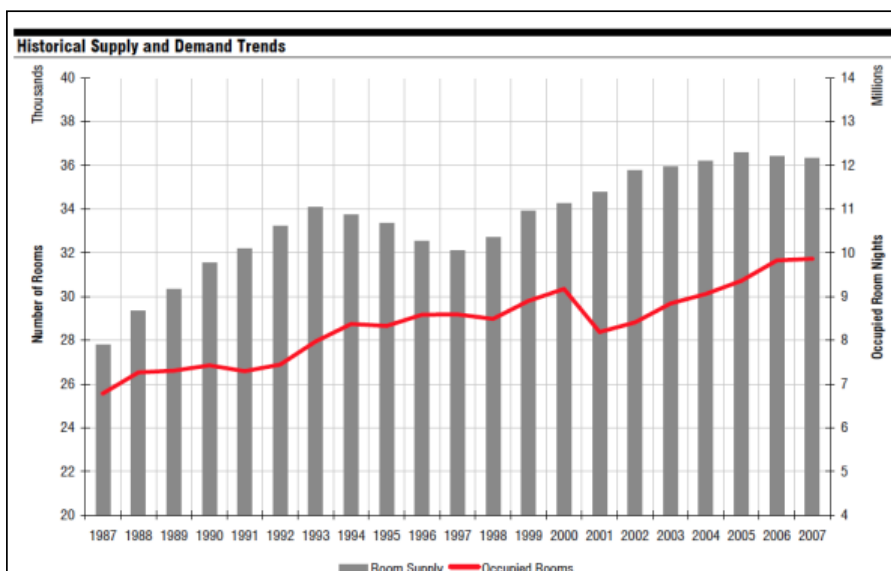
#### EB-5 Investor - 5 Year ROI

##### EB-5 投资者—5 年投资回报（ROI）

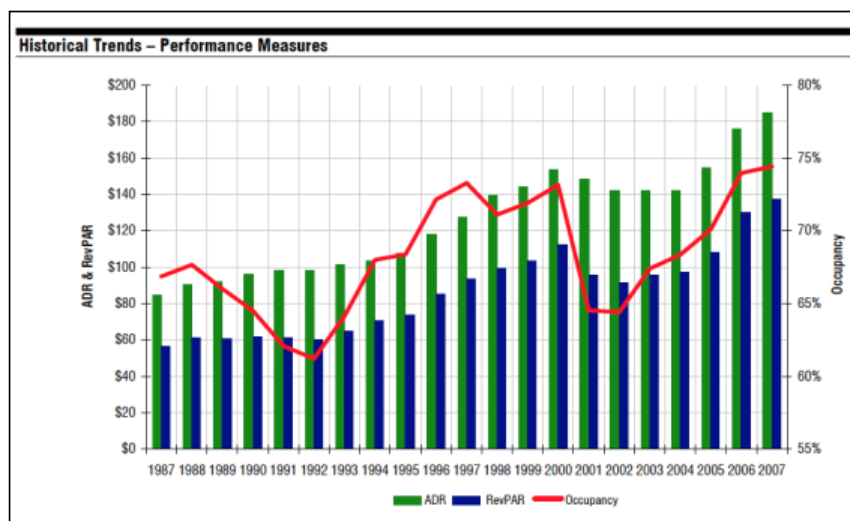
- "1% interest rate received on Loan and Profit sharing from Equity conservatively projects a total 5-year return on investment of \$261,458 or 52.3% over 5-years, equating to 10.5% per yr.  
贷款 1% 的利率和股权利润分享保守估计 5 年投资回报为\$261,458 或 5 年 52.3%，相当于每年 10.5%。

Based on market research, there is no basis for the expectations of those returns. According to studies by HVS and Smith Travel and Research:

"After several years of slow or negative supply changes in Chicago, there has been a significant introduction of new supply in 2008 and 2009, mainly in the upscale segments. Eight new hotels opened in Chicago during 2008. Through the first half of 2009, four hotels have opened with a total of 880 additional rooms."



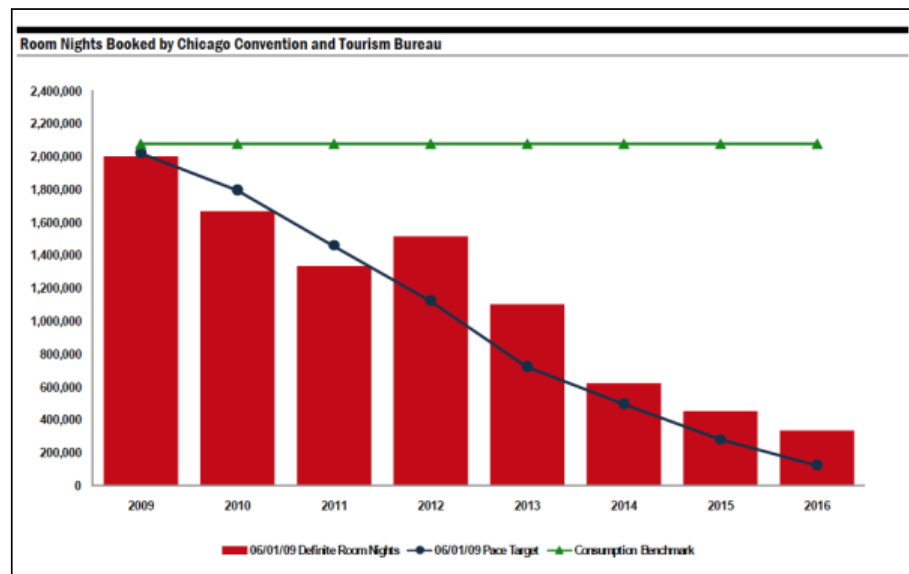
"During the past six years, a total of 17 new hotels have opened or re-opened in Chicago, representing 3,968 hotel rooms. During the same period, eight hotels have closed, representing 521 hotel rooms. Therefore, the net increase in supply was 3,447 rooms between 2003 and 2009."



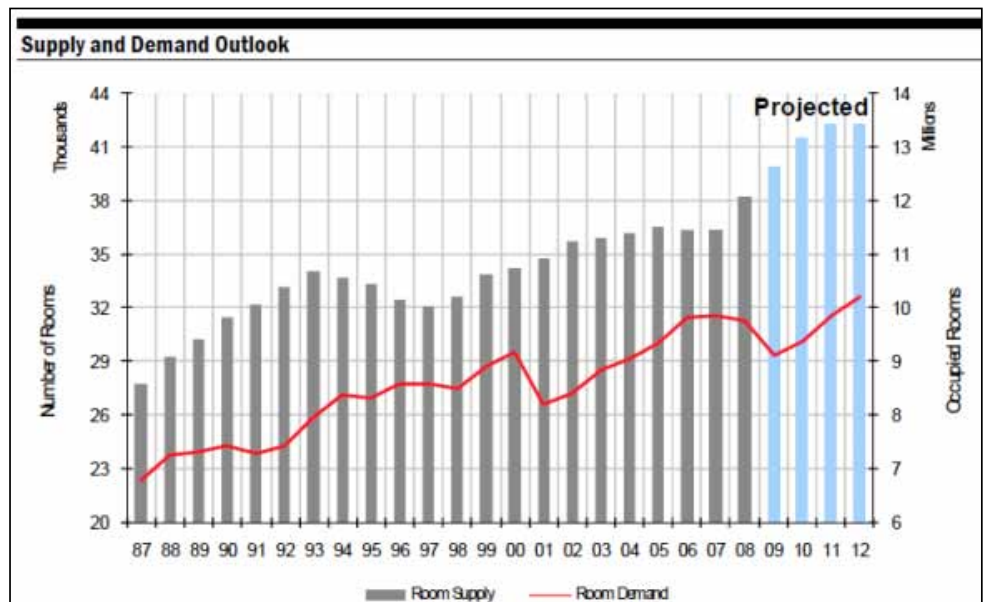
con't next page



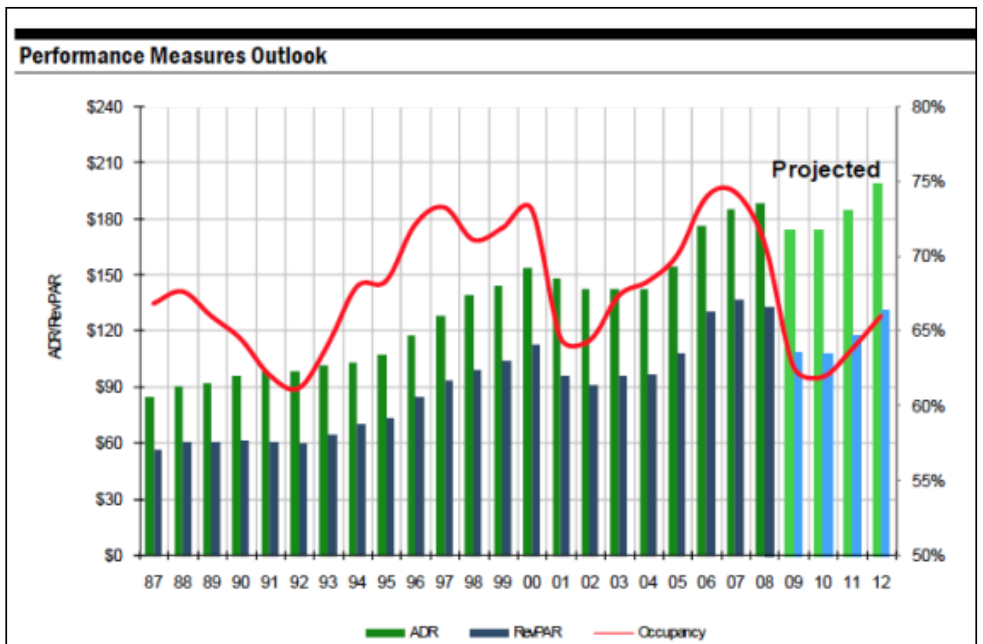
"Nine new or renovated hotels have opened or are under construction and scheduled to open between 2009 and 2012. However, there a number of projects that had once planned to open in 2011 and 2012 that have recently been stalled. Taking a longer view, the average change in supply from year-end 2004 through year-end 2012 is forecast to be approximately 2.0 percent annually, which matches the longer-term historical average of 2.0 percent."



"An evaluation of near-term projects indicates that hotel room supply in the city will increase from 38,256 rooms at the end of 2008 to approximately 42,343 by the end of 2012. During the same period, we project demand will increase from about 9.1 million room nights in 2009 to approximately 10.2 million room nights in 2012."



"After a peak in occupancy in 2007, continued supply growth and significant drops in demand in 2008 and 2009 are projected to lead to lower occupancies through 2010. In 2011 growth in demand is projected to outpace growth in supply. In 2012, ADR is projected to surpass the ADR peak of 2007. Occupancy of 66 percent in 2012, however, is projected to finish below 2007's occupancy of 74 percent. Therefore, RevPAR is expected to top \$131 in 2012, slightly below its previous peak of \$137 set in 2007."



*"RevPAR is expected to decrease more than 18 percent in 2009, as occupancies and rates both decline. In 2010, RevPAR is projected to experience a slight decline of one percent, as rates flatten, and occupancy falls one percent, due to an influx of supply increases in RevPar are projected in 2011 and 2012 as average daily rates increase and occupancies rebound."*

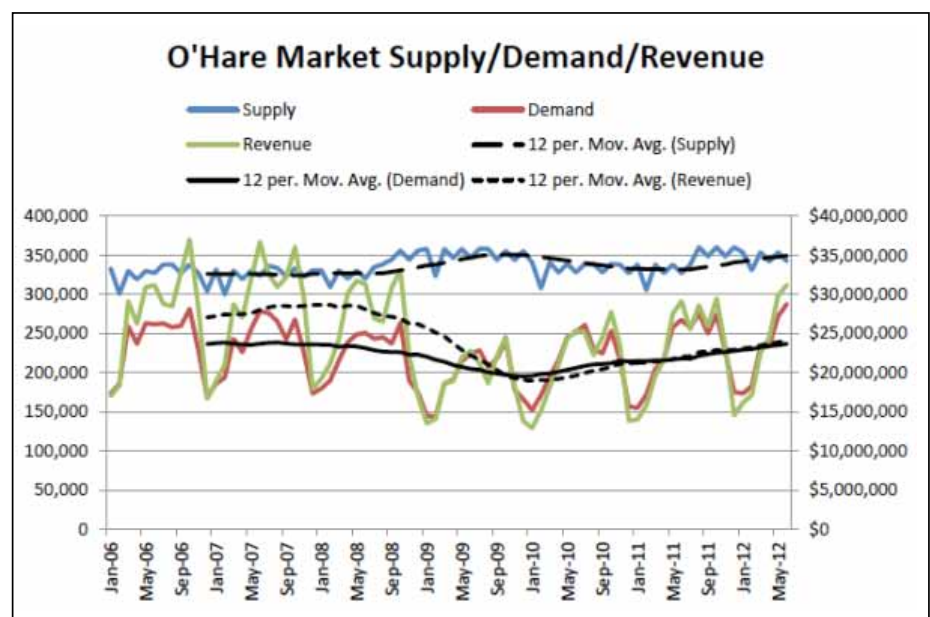
Even if the developers were to complete all 995 rooms and become operational in record time, it is unlikely that they would be able to collect anywhere close to the projected revenue based on current market room rates and occupancy levels (see right).

Even accounting for inflation, ADR and RevPAR increases, the developers would conservatively have to build three to four times the number of rooms to achieve their target of \$105 million in revenue for 2017.

Research from TR Mandingo suggests barriers to entry, continued oversupply of inventory, low demand and difficulty for operators to increase RevPar and ADRs:

*"The drop in both occupancy and rate that the suburban markets have seen when compared to the highs achieved in 2007 is going to take longer to come back up, as the many overflow days they traditionally counted on are essentially gone."*

*"We anticipate that 2012 will see the O'Hare market increase by 4 percent in ADR within the next year, and around another 2.5% in occupancy, or around \$105 and 68%, although this will still put it well below its historic highs."*



con't next page

"The suppression of rate increases is exacerbated by the increasingly competitive corporate and leisure meetings market where new products and a more aggressive marketing program by all the area properties has led to rate compression during all but the very peak spring and fall convention seasons."

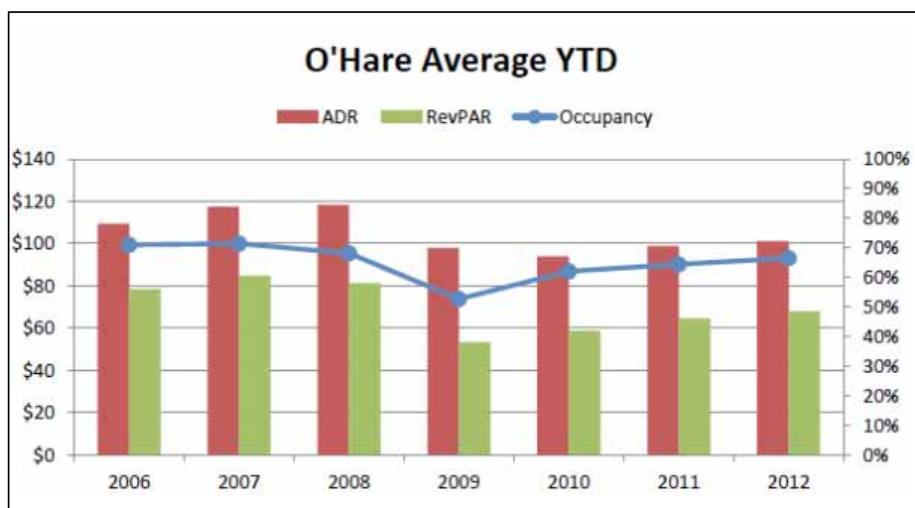
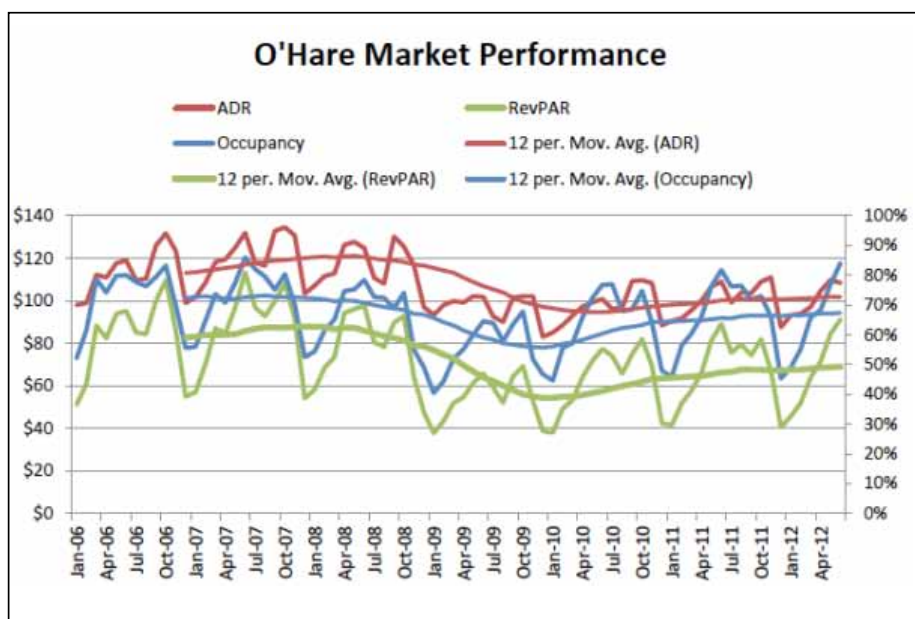
"The impact of these rates will gradually offset by more aggressive pricing strategies in the commercial sector and peak meeting periods. The slower rate recovery is also attributed to the lead time for booking larger groups at the large convention hotels, where group rates were negotiated during the dog days of the recession. It will take another year to burn off the pre-committed lower rate positioning in place during the lowest part of this recessionary cycle."

"Other factors influencing rate discounting include the extensive corporate contract discounts employed by either existing agreements with the market's franchises or aggressive pricing from the operators in the market area. Marketing and sales for most hotels in the group of significant hotel operations within the defined market are fairly aggressive due to the abundance of competition in the market."

## GARBAGE IN, GARBAGE OUT: THE INFLATED JOBS REPORT

Perhaps the most important conclusion from the exaggerated claims being made by Sethi was that these were the numbers that were incorporated into the Economic Impact Analysis (EIA) or "Jobs Report" which was shown to investors and submitted by immigration attorneys in their clients I-526 submissions.

According to the SEC action:  
"To the extent that the con-



## JOB CREATION — 创造就业



### USCIS- RIMS II - JOB CREATION

Type	Direct	Indirect	Induced	Total
Construction Jobs	0	3,247.0		3,247
Hotel Jobs		2,392		2,392
Restaurant Jobs		1,245		1,245
Convention Center Jobs		1,318		1,318
Parking Garage Jobs		291		291
<b>USCIS- RIMS II - JOB CREATION</b>				<b>8,493</b>

<b>Total eb-5 Jobs Required</b>	<b>4,990</b>
<b>Exceeding the eb-5 I-526 Job Creation Requirement by</b>	<b>73%</b>



struction cost and revenue projections are both inflated, that will dramatically impact the estimated job creation figures. As job creation is the key to EB-5 investors potentially receiving permanent residency, this fact would be material to both investors considering the offering and to USCIS in their evaluation of the project as a viable EB-5 enterprise for which investor funds should be released from escrow."

It is common to see inflated projections in these reports, they are used extensively by the Chinese agents in their marketing material, but the production of such nonsense by the economists who release this when it is used to commit fraud and cause harm to investors should have consequences.

Based on the inflated inputs (right), none of which were reasonable when considering the experience of the developers, the progress towards completion, market valuation, lack of any additional sources of capital (the \$340 million investment from Qatar was a hoax as was the commitment from the Illinois Finance Authority), or expected revenue, yet all were used without question when constructing the EIA to produce the jobs count widely circulated to investors and their attorneys.

**Video: Chicago Convention Center - U.S. investment immigration platinum-le**  
Information Channel > News List > Financial Information

**经济效益**  
我们有 2 个独立的创造就业机会报告已得到中国大使馆认证, 确保了EB-5 投资者在 I-820 审批程序中达到职位 创造的有关要求

Wright Johnson 公司的 Kevin Wright 先生和 Evans Carroll & Associates 公司的 Michael Evans 先生都是非常著名的 EB-5 经济学家, 共同完成了近 100 个经美国移民局批准的移民申请

EVANS, CARROLL, & ASSOCIATES  
EB-5 ECONOMIC ANALYSIS

U.S. DEPARTMENT OF  
HOMELAND SECURITY

WRIGHT JOHNSON  
professional auditors and analysts

气候变化公约  
美国国土安全部

**芝加哥会议中心项目**  
A CHICAGO CONVENTION CENTER

EB-5 投资款 仅占总投资额的 25.5%

17.3 个 就业数

美国政府投资 4.8 亿美元 占总投资额的 55%

世界首个 0 碳排放 LEED 铂金认证

2 个独立的 创造经济与就业的报告 通过中国大使馆认证 确保获得 永久绿卡

美国政府全程参与设计、审批、监督并投入巨资, 确保工程如期完成

EB-5 投资移民项目的典范 不可多得!

咨询热线 400-610-6008

芝加哥会议中心 CHICAGO CONVENTION CENTER

伊利诺伊州政府 SEAL OF THE STATE OF ILLINOIS

芝加哥市政府 CITY OF CHICAGO

中国区代理 GOLDLINK 美加金联移民

全国免费咨询热线 400-610-6008

工作日一统畅通 010-65264178

24 小时移民热线 13671039588

在线评估 在线咨询

**项目概况**

Chicago conference center building project by the city of Chicago, Illinois, USA, Loop Capital Markets asset management companies and developers to work together, which the government invested more than 55%. The center will be built in the City of Chicago, and is located in the world's second busiest Chicago O'Hare International Airport, the only LEED Platinum certified "zero carbon emissions, no allergens top building, become the first to implement the Kyoto protocol large-scale green projects. Chicago conference center covers an area of nearly three acres. Ground segment for ABC three towers storey were 17 floors, 19 floors, 14 floors, the underground part 8 layer, Layer 4 conference center and 4 layers fully automatic parking. The total construction area of nearly 200,000 square meters. Including the use of a large conference center area of over 24,000

con't next page

For attorneys who submit these reports in their client's petitions without questioning any of the premises or conclusions contained within should also raise questions regarding due care. One does not have to be an expert in impact analysis to see that the premises on which these job creation projections were works of fantasy.

In light of the below, which is readily accessible to anyone with an internet connection, and considering the seriousness of a petition for U.S. residency and a substantial investment by the foreign national, it should be reasonable for those in a fiduciary role to ask questions regarding the claims made by promoters before loss and harm



世贤通 内地港澳三地资质权威移民机构  
WORLDWAY www.worldwayhk.com

24hr 贵宾咨询: 400-0909-899

## A Chicago Convention Center

### 美国投资移民 芝加哥会议中心项目

WTU Home | immigrants | immigrants Singapore | immigrate to Canada | settle in Hong Kong

Contact Us

**芝加哥会议中心项目概况**

Total investment: \$ 913 million U.S. government: the total investment amount of 55% of project developers: land plus cash invested approximately a total investment of 19.5% EB-5 financing the proportion: about a total investment of 25.5% EB-5 financing amount: \$ 250 million EB-5 investment places: 499

世贤通总裁与伊利诺伊州州长及区域中心主席共同出席

comes to their clients.

I understand why many Chinese migration agents don't care about the well-being of their clients as this project offered some of the highest commissions in the industry, so any concerns that they had regarding a successful outcome were overcome by their greed, in this case, commissions of over \$125,000 per investor were what was promised. Since agents don't report these commissions to investors, and the subsequent conflict of interest, most will naturally promote projects that give them the most financial return regardless of

the consequences to their clients.

What I don't understand is why U.S. firms, public officials and EB-5 visa service providers choose to engage with developers and projects in which they do no due diligence, or why immigration attorneys continue to file petitions with little regard for questioning the premises on which the job creation or return of capital will be made. Having unsophisticated clients sign waivers may not be sufficient defense in the cases where a small amount of due care could be seen by many to be reasonable and appropriate.

亚美欧集团直营站 | 亚美欧主站 | 亚美欧华南站 | 亚美欧华东站 | 亚美欧华北站 | 亚美欧美国站 | 亚美欧香港站 | 亚美欧新加坡站 | 亚美欧加拿大站 | 亚美欧澳洲站 | 亚美欧教育代理: (蒙大拿大学大学城项目 | 唐人鱼船厂改建项目 | TDI电信园区项目 | SLS酒店及赌场 | 芝加哥会议中心 | 宝石大厦项目二期 | 更多EB-5项目)

咨询热线: 4006-788-122

**芝加哥会议中心**  
A CHICAGO CONVENTION CENTER

5家酒店品牌的力量  
世界上首个实现零碳LEED白金认证的综合建筑

历经2年筹备，史上EB-5最安全项目!!

芝加哥会议中心

芝加哥会议中心——一个落实京都议定书的中心，是世界上世界上首个实现零碳LEED白金认证的综合建筑。特殊的政府合作关系，政府将对EB-5项目的投资超过55%，同时政府部门作为合作伙伴投资EB-5项目，因此该EB-5项目... [详细]

最新动态: 项目已盛大动工，进入开业倒计时

了解更多信息，请致电 4006-788-122



The law states that the EB-5 visa investment must be "at risk" but in my opinion there is a substantial difference between making an investment into an enterprise which may fail due to systemic and / or non-systemic risks and changes in market conditions vs. one in which there is no credible or sustainable plan to create sufficient jobs to remove conditions or value to exit and repay investors their full principal invested.

My opinion is that if service providers and immigration attorneys aid in fostering criminal activity by supporting fraud with services and filing petitions in these investments when a reasonable doubt exists regarding the issuers ability to create jobs or return principal then why should they escape restoring investors losses when they litigate for relief?

Foreign investors are looking to U.S. professionals to give them guidance on where to place their families' future by making sound investments to secure the green card and hopefully this action will highlight the need for our industry to begin to examine more closely the projects and issuers ability to create value and jobs to satisfy the promises made in the offering documents.

I would like to thank the officials at the SEC: Charles Felker, Adam Eisner, Mika Donlon, Patrick Bryan and those at USCIS for their speed and urgency in bringing this action and for helping to stop fraud and watching out for the interests of the foreign national investors who put their faith and families' futures in the hands of attorneys and other professionals in our industry, well done. ■

- Chicago Investment Advantages (prepared by Chinese agents)
- Job Creation Summary
- Comfort Letter - IFA
- Chicago Convention Center PPM (Mandarin)
- USCIS Letter of Designation
- Loop Capital Letter
- HVS Market Outlook





## The Case of

Neogenix Oncology Inc. should be of interest to EB-5 visa Regional Centers, developers, attorneys, accountants and other service providers and financial institutions who represent and counsel the issuers of securities in the exempt EB-5 Reg D & S offerings. In July 2012, the clinical stage biotech company filed for Chapter 11 bankruptcy due to an investigation by the U.S. Securities & Exchange Commission (SEC) into the company's capital fund raising activities that uncovered payments by Neogenix to unregistered persons. The liability for rescission associated from payments to these unlicensed finders resulted in the company's inability to present audited financial statements that left them unable to continue raising funds.

While this case covers the issuer of common stock to shareholders in a private company, it is illustrative of issues that should be of concern to all entities who raise capital in advising who they should engage with to assist in those efforts and

# Risks of Paying Fees to Illegal Finders for EB-5 Issuers: Neogenix

## LEGAL ALERT

### Recent Bankruptcy Reminds Companies of Need for Use of Registered Broker-Dealers in Capital Raising Efforts

who they should not, as well as the burden for non-compliance associated for all who are involved in the offering and capital raise including the issuer's attorneys, accountants and other advisors.

This is an excerpt from a letter presented to its shareholders on Feb. 6, 2012:

*"As we have previously disclosed, in October 2011, the Securities and Exchange Commission (SEC) began an inquiry into the legality of the company's payment of a substantial amount of finder's fees to parties who assisted the company in selling its common stock but who were not registered or otherwise licensed to sell securities. The company had previously discontinued the practice of engaging unlicensed finders on a compensated basis."*

*"Since that SEC inquiry was initiated, the Neogenix board and management have been actively addressing the significant issues that have resulted from this SEC*

*inquiry and the company's prior payment of finder's fees to unlicensed parties. Those issues include addressing the potential right that some of our shareholders may have under federal*

*and state laws to rescind their purchases of our shares that were facilitated by these unlicensed finders."*

*"With input from professional advisers, the board and management proposed to our auditors an accounting treatment of any potential rescission rights as a "contingent liability" whose probability and amount is not certain. Our external auditors did not accept the company's proposed accounting treatment for these potential liabilities. With the cooperation of our external auditors, we have now sought guidance from the SEC's Office of Chief Accountant (OCA) on the proper accounting treatment of these contingent rescission rights...As a result of the pending SEC inquiry, the significant potential rescission liability and the inability to present audited financial statements, we have been unable to raise funds."*

## The Filing

In October 2011, Neogenix Oncology, Inc. (the "Company") received an inquiry from the Securities and Exchange Commission requesting the Company to voluntarily provide information regard-



ing payments made by it to third parties in connection with the sale of its common stock. The Securities and Exchange Commission has not provided the Company with notice asserting that any violations of the securities laws have occurred. The Company intends to fully cooperate with the inquiry by the Securities and Exchange Commission.

As the Company has disclosed in prior filings with the Securities and Exchange Commission, the Company has made payments to third parties who have acted as finders in connection with the sale of shares of our common stock.

Following the receipt of the inquiry letter, the Company began an internal investigation to collect information regarding these third party payments made in connection with the sale of shares of its common stock. The Company is also attempting to determine whether those third parties were required to be licensed as broker-dealers to provide those services in any of the states in which investors resided and whether they had such licenses, and if any federal or state securities laws may have been violated as a result of any such actions.

"While the Company's investigation is ongoing, its preliminary assessment is that finder's fees were made to some persons whom the Company has not been able to confirm were registered as broker-dealers or otherwise licensed under applicable state law and who may have been required to be so registered or licensed, and that at least some investors who purchased shares of common

stock in transactions in which finder's fees were paid may therefore have the right to rescind their purchases of shares, depending on applicable federal and state laws and subject to applicable defenses, if any."

If that is the case, and depending upon the number of shares that may be subject to such rescission rights, then the Company may determine that certain of its previously issued financial statements should no longer be relied upon and that a restatement of certain of such financial statements may be required (to reclassify some of the Company's outstanding equity as indebtedness), and may result in the Company's independent registered public accounting firm expressing doubt regarding the Company's ability to continue as a going concern in future reports accompanying its audited financial statements. The Company has not yet made any such determination.

## Retribution

To make matters worse, the unregistered "finder" that the company paid the most to, turned around and instigated so much unrest among the shareholders that Neogenix had to issue a public letter to it's shareholders on Sep. 12, 2012 explaining their actions and to institute some damage control. This was similar to an incident that occurred last year in the EB-5 industry in which the unregistered broker/agent published a letter denouncing the actions and reputation of the project it had raised millions of dollars for. *(con't next page)*

## Biotechnology

### Company Overview of Neogenix Oncology, Inc.

January 31, 2013 1:49 AM ET

Snapshot

People

Overview

Board Members

Committees

#### Executive Profile

### John Squire

Member of Business Advisory Board, Neogenix Oncology, Inc.

Age

Total Calculated Compensation

--

--

This person is connected to **1** Board Members in **1** different organizations across **1** different industries.

See Board Relationships

#### Background

John Squire served as Senior Analyst of Value Line. Mr. Squire began his investment career as an oil analyst at Arnold Bernhard & Co. (Value Line investment Survey & Mutual Funds) the largest pure research firm on Wall Street. Mr. Squire serves as Member of Business Advisory Board of Neogenix Oncology, Inc.

First, the correspondence you are receiving likely comes from a small group of shareholders, most of whom I believe to be simply misinformed, largely based on statements by John Squire and a few people who have worked with him. Mr. Squire was our primary unlicensed finder, and he received more than \$2 million and a large number of stock options in finder's fees, until the Company stopped paying such fees in mid-2011. For a long period of time, Mr. Squire has circulated statements that are outright false, terribly misleading, and/or downright insulting and malicious about Neogenix, its business, and its people.

**"Mr. Squire had been our primary unlicensed, compensated finder. The SEC had just made an ominous inquiry directed at the Company's past use of and relationship with unlicensed, compensated finders for fundraising. The Company's officers, in consultation with its legal advisors, determined that it would be inappropriate to go ahead and meet with Mr. Squire about fundraising at this time..."**

I do not know the source of his apparent disregard of the truth and animus toward those of us who have worked tirelessly to preserve and enhance Neogenix's business – whether it results from the fact that we stopped paying finder's fees or from some other source. But I urge you to take into account the ultimate source of these statements before giving them any credence.

## Securities Professionals Perspective

To get a professional perspective from someone who has raised capital and advises clients on what this might mean for issuers, or those that counsel and consult for them, I would recommend reading and watching John Slater of CapMatters.com articles and video. This insight should provide useful guidance to those involved in the capital raise process for our industry based on the lessons learned from this SEC investigation.

John points out in his article that the SEC may now be relying on lawyers and accountants to bear responsibility and assume the potential liability for their actions when they realize that securities laws may have been violated by their clients. It is interesting to note that it was the auditors in the Neogenix case that refused to certify the audited statements which led to the notice for late filing and the subsequent investigation by the SEC.

**"The bottom line is that both public and private companies that engage unregistered finders should view this as fair warning that the practice could pose serious financial risks. For companies that have paid such finders in the past, this could prove to be a field day for the plaintiff's lawyers."**

"This could impact the market value of many micro-cap companies that have participated in such practices and may limit their ability to raise capital in the future. As a result we would expect that many accounting and

legal firms will require a disclosure of such risks in 2012 audited financial statements and regulatory findings. For some this could have implications for the market value of their traded equity or even, as in the Neogenix case, their survival."

"Going forward we would anticipate that transaction attorneys and CPAs will add finder's fees to their growing list of compliance obligations. For many years, the IRS has used legal and accounting certifications as a lever to force such professionals to assure compliance with various aspects of the tax laws. Failure to do so, or in some cases to report violations to the authorities, can result in fines or even in suspension of professional licenses."

## CAPITAL MATTERS

www.capmatters.com

Funding Business Growth in an Age of Scarcity

### Microcap Risk – Finders Fee Payment To Unregistered Broker Leads To Chapter XI

Posted by John Slater on December 2, 2012

Click on Image Below to Watch Video



#### Capital Matters

www.capmatters.com

Special Alert:

Risks from Payment of Illegal Finders Fee

Host:  
John Slater  
john.slater@focusbankers.com  
901-684-1274

FOCUS

www.focusbankers.com

Contributor:

Seeking Alpha

Global Economic Intersection



December 2012 Capital Matters Newsletter  
12 & 12

Presented by:  
John Slater  
Focus Investment Banking  
<http://www.focusbankers.com>  
<http://www.capmatters.com>  
901.684.1274



## Securities Attorney Perspective

Another take on the case comes from securities attorney Alexander Davie who writes the Strictly Business Law Blog. He has written a detailed three-part series describing the implications for firms who pay unregistered finders from a securities attorney's point of view:

**"Under such laws, just about any arrangement in which someone is paid a contingent or variable fee to raise capital for a company is prohibited, unless that person is registered as a broker-dealer or is a registered representative of a broker-dealer."**

**"Unfortunately, often there is very little a company can do once securities laws have been violated. Once this occurs, government agencies, such as the SEC or state securities commissioners, have the ability to open an investigation and seek penalties against the company for its violations."**

**"In addition, investors who purchased the company's securities**

**in transactions that violated securities laws often have what are called "rescission rights" — that is, they can undo the deal and require that the company (and sometimes its officers and directors) return the money that was invested plus interest. This creates significant contingent liabilities that can deter future investors from investing in the company."**

What makes this case so interesting is that so very

## Neogenix Oncology: A Good Case Study on Securities Law (Non)Compliance by a High Growth Company – Part 1: How It All Happened

*Written by Alexander J. Davie § October 5th, 2012 § 1 comment § permalink*

**I**N THE PAST, I HAVE WRITTEN ABOUT THE **IMPORTANCE OF** entrepreneurs and startups complying with federal and state securities laws when raising capital for their businesses. The consequences for failing to do so can be significant. The business owner risks civil and potentially criminal charges. In addition, he could also face potential lawsuits from disgruntled investors. But one consequence that is frequently overlooked is the possibility that the mere presence of securities law violations can deter future investors, choking off needed infusions of capital. No one wants to invest in a company that has potential fines and lawsuits waiting in the wings.

### WHERE AM I?

You are currently browsing entries tagged with **Neogenix Oncology** at Strictly Business.



### ABOUT THE EDITOR

Alexander J. Davie is an attorney based in the Nashville, TN area. His practice focuses on corporate, finance, and real estate transactions. He works mainly with emerging companies, venture funds, entrepreneurs, and startups. His firm's website can be found at [www.riggsdavie.com](http://www.riggsdavie.com).

## Neogenix Oncology: A Good Case Study on Securities Law (Non)Compliance by a High Growth Company – Part 2: What Neogenix Did

*Written by Alexander J. Davie § October 24th, 2012 § 0 comments § permalink*

**I**N MY PREVIOUS POST, I DESCRIBED **THE EVENTS LEADING UP TO** the Chapter 11 bankruptcy and supervised asset sale of Neogenix Oncology. To recap, Neogenix's use of unregistered "finders" in some of its earlier rounds of financing called into question the company's compliance with federal and state securities laws. After the SEC commenced an investigation, Neogenix's accountants concluded that potential investor rescission rights could give rise to large contingent liabilities on the company's balance sheet. This uncertainty led to Neogenix being unable to raise further funds, necessitating the company's bankruptcy filing. In this post, I'll explore how exactly Neogenix violated securities laws and the lessons this case study provides to startups and other growth stage companies.

few publicly-traded companies engage in the services of unregistered finders to help them raise capital because the potential for rescission, civil and criminal liability is so great, but in the EB-5 industry it is almost entirely operated and funded (to the best of our knowledge) by unregistered persons offering their capital raising and Regional Center management services as consultants in exchange for receiving success-based fee compensation.

Almost none of these EB-5 “experts”, finders or consultants are registered to accept success-based commissions or fees. Compounding the problems for the issuer and their professional counsel are that these fee-based service contracts are usually not disclosed in the operating documents, subscription agreements or to investors or their immigration attorneys. In China, investors do not even know that the migration agents promoting the EB-5 projects are paid compensation by the centers even though this compensation arrangement can reach over \$150,000 per investor when the front- and back-end fees are included in the compensation agreement. For attorneys who both represent the investors and accept the fees and other compensation (filing contracts) from the issuers, the problems become much difficult due to the conflict of interest and dual representation issues.

The failure to disclose this material information to

investors will most likely be seized upon by regulators and litigators and could be problematic for centers and issuers in the EB-5 visa community, their counsel, accountants and other service providers who continue to pay unregistered persons. Even disclosing this information does not appear to insulate the issuers or practitioners from liability or rescission should there be evidence that U.S. securities laws were violated.

The Neogenix case appears to put not only the issuers, but the professionals who assist them in the capital raise process, on the hook for violating securities laws and the potential repayment of capital to the investors if rescission is invoked by the investors or prompted by regulatory action. ■

docs/Neogenix\_Shareholder\_letter\_2-6-12\_final(1).pdf

docs/Neogenix TerryLetter9-12-12.pdf

docs/Neogenix shareholderletter10-1-12.pdf

docs/Neogenix.pdf

You can watch John Slater’s video on the Neogenix case here:

<http://proclaim.netbriefings.com/flv/focusbankers/anry9/focusbankeanry9100158/?axd=%7Buserid%7D>



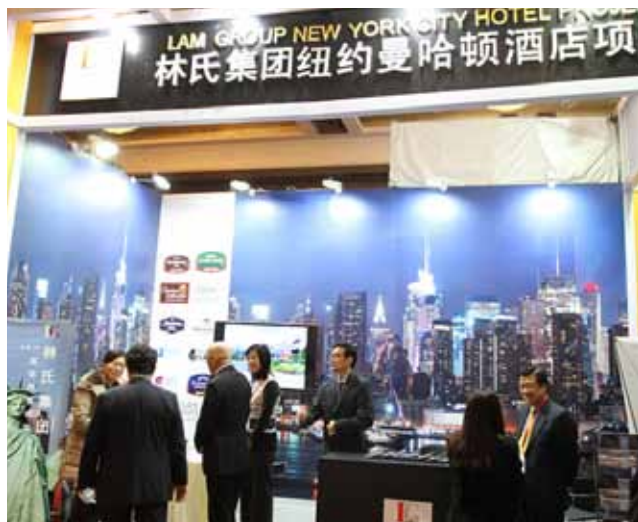
## CAPITAL MATTERS

Funding Business Growth in an Age of Scarcity



## 2013 EB-5 Business & Investment Exploratory (Beijing) Trade Mission

Beijing, China • June 20-28, 2013



After organizing the successful 17-member Shanghai EB-5 trade mission in November 2012, the Artisan Business Group, Inc. is planning the 2013 Beijing EB-5 Business and Investment Exploratory Trade Mission for June. The main activities of the trade mission will include attending an emigration trade show, meetings with leading emigration agencies, meeting with

potential EB-5 investors; "The Evening of Beijing hosted by the Chairman Club by Brian B. Su" with emigration agents, EB-5 investors, and local business executives and other planned activities and business functions across the city. Very limited space, call Tyler McKay at 217-899-6661 or email [info@ArtisanBusiness-Group.com](mailto:info@ArtisanBusiness-Group.com) to reserve a spot. ■

## Invest in America 2013 Summit & Exhibition

Shanghai, China • March 15-18, 2013



The Invest in America 2013 (Shanghai) Summit & Exhibition - Immigration and Investment Opportunities will be the 3rd annual USA-themed investment conference and exhibition in China. The event will attract large crowds of investors and business executives eager to learn more about investment and business opportunities. It is scheduled for March 15-18, 2013, and will take place in Shanghai, the Peoples' Republic of China and will include over 20 breakout sessions and more than 60 exhibition booths.

The 2013 summit will be extended to a four-day event and be held in conjunction with the Shanghai Spring Real Estate Expo in the Shanghai Exhibition Center. This expo has been running for 15 years, boasting a vast exhibition space and 40,000 visitors.

The event encourages and welcomes U.S. EB-5 regional centers, investment project developers, real estate brokerage firms, franchises, PE and VC companies, financial services, attorneys, CPAs, international trade agencies, government officials and colleges to participate in exhibitions and presentations. The four-day exhibition

will take place at the five-star facility with a large exhibition venue and excellent amenities. In addition to individual booth space in the exhibition hall, exhibitors will have opportunities to present project seminars, workshops, and private meetings with potential investors and partners.

Visit [www.investamerica2013.org/](http://www.investamerica2013.org/) for more information. ■



2012 Shanghai EB-5 Trade Mission





# We Asked!

## What's your EB-5 Wishlist for 2013?

**F**or the better portion of 2012, USCIS has repeatedly stated at EB-5 stakeholder events that their target processing times for all EB-5 related form types would be four months. Current processing times for these applications range 8-10 months. Making the process extremely lengthy both for companies seeking access to EB-5 capital, as well as investors intent on starting their lives in the U.S. In 2013, my hope is that processing times become workable.

**2) Issuance of New EB-5 Policy Guidance.** In November of 2011, USCIS Director Mayorkas announced and USCIS released draft guidance that was supposed to streamline all EB-5 guidance in a central memo-

randum. The public was given an opportunity to comment and a second iteration of the memorandum was issued for comment in January of 2012. I urge USCIS to publish the new guidance to give both the USCIS adjudicators, as well as the public, reliable and binding guidance as to what criteria EB-5 related applications must meet for approval. Not only will this give assurance to the public and provide a more workable framework for applications, but it will eliminate the all to prevalent Requests for Evidence, Notices of Intent to Deny and denials based on constantly changing policies of adjudicators.

**3) Reconsideration of Premium Processing for EB-5 Regional Center**

“Faster processing times for EB-5 related petitions across the board.”



KATE KALMYKOV  
Attorney

Applicants. The adjudication of I-924 applications for regional center designation, amendments of regional center designations for geography or industry code and exemplar I-526 (project pre-approval) is taking at least 9-10 months. Introducing Premium Processing for I-924 applications, a process by which applicants pay an additional fee to have their applications adjudicated within a two week timeframe, would allow many projects that are relying on EB-5 funds to move forward at a reasonable pace in line with business needs. USCIS Director Mayorkas initially announced his intention to introduce this program in June of 2011 to I-924 applications but then scrapped the idea earlier this year citing unexplained concerns related to ‘fraud.’

4) Clear Guidance on Requirements for Job Impact Studies. In the past year, the USCIS has introduced new restrictive interpretations related to what jobs qualify for EB-5 purposes particularly for projects that generate tenant

jobs. However, they have failed to provide clear guidance on what qualifies as EB-5 eligible and what does not, repeatedly at stakeholder events that cases will be adjudicated on a case-by-case basis. Constant changes and reinterpretations of what constitutes “EB-5 eligible jobs” leads to uncertainty in the EB-5 world: both for the developer or organization seeking funding to create new, U.S. jobs, as well as the foreign investor and his dependent family members who are using the program to obtain U.S. permanent residency.

5) Streamlined Adjudication of I-924 Amendment Filings That Takes into Consideration the Realities of Business. As readers of this blog know, USCIS designated regional centers are approved for specific industries, geographic areas and economic models. Changes to initial designations in any of these areas is permitted but an amendment request must be filed with the USCIS and approved before investors may begin to subscribe to a particular project outside of the scope of the regional center’s initial designation. USCIS must streamline the process for amendments and reduce wait times to receive these approvals. Currently, requests for an amendment to an existing center are taking longer to adjudicate than even applications for initial regional center designation.

*Kalmykov comments originally published by [www.eb5investors.com](http://www.eb5investors.com).*

“I would like to see premium processing of Dummy (or “ememplar”) I-526s filed as I-924 amendments.”



JOSEPH WHALEN  
Independent Consultant

Such dummies would be for review of shared “specific project” documents (business plan, economic analysis, and transactional documents) but exclude individual financial documents. Dummies would provide Provisional Approval of a specific project with the caveat that success will be the key issue in an I-829 (even with material changes).”

con’t next page

“In addition to the usual wish items such as fast processing times and better communication...”



JULIA PARK  
Attorney

I would like to see revamped efforts to salvage the exemplar I-526 process. Somewhere along the way, with so many issues (TEA, tenant-occupancy, guest expenditures, etc.) I think everyone kind of gave up on making the exemplar I-526s work. But if we can create a workable system where the business portion of the I-526 is submitted only once and only the individual fund source documents are submitted, the efficiency gains would be enormous for everyone. This makes sense for the USCIS as well, since this will allow a division of labor among the adjudicators: a smaller group of people can review the business documents, and then they can train a larger group of adjudicators to review the fund documents. We can build flexibility into the system as well by introducing a uniform amendment procedure for the already submitted business documents so that the USCIS can keep track of changes and I-526s can be turned around more quickly.”

“Greater self-policing of regional centers and issuers...”



JOR LAW  
Esquire

There are so many things I wish for in EB-5 that I can't list them all, but here are ten of them:

- 1) Legislative reform or USCIS rules that bring clarity to various aspects of the EB-5 program, for example:
  - a) Definition of “policy making”
  - b) Absolute certainty that LLC members having the rights of limited liability company members will satisfy control requirements. In fact, allowing passive investors regardless of entity type would be ideal.
  - c) Better understanding of “at-risk”. For example, an issuer who claims to “guarantee” return of capital to investors although the guarantee, by itself, actually provides no greater security to an investor than the same issuer simply having a contractual obligation to return funds to investors after I-829 approval. However, under the current regime, this same at-risk investment by the investor is generally deemed to be not “at-risk”.
- 2) JOBS Act rules finalized and promulgated
- 3) Greater involvement in the EB-5 industry by registered

investment advisers that can help analyze risk of investments. Ideally, better access to a variety of deals so that investment decisions are made from a diverse pool of investment options.

4) Greater appreciation by EB-5 investors of alternative investments, including riskier investments. Also, greater understanding by EB-5 investors that a real estate deal may actually be riskier than a startup, high-tech deal depending on how each deal is structured and put together.

5) Expedited processing options  
6) Consistent adjudication and honoring past adjudications, including exemplars that don't undergo material changes. This is not to say that USCIS cannot change their rules or practices, but such changes should generally not affect applications that have already been adjudicated favorably.

7) Clarity on what collaboration is going on between USCIS and SEC, and specifically, what sort of cases are USCIS referring to SEC for scrutiny (they said in a stakeholder's meeting that they had been referring cases to the SEC but didn't provide any guidance beyond that).  
8) More corporate attorneys on staff at USCIS so that they better understand corporate documents, including why certain language is drafted the way it is, and practicalities of business language.

9) Greater self-policing of regional centers and issuers in EB-5, perhaps under the guidance and direction of industry associations such as IIUSA.  
10) As more scandals break out in EB-5, for authorities, politicians, investors, and the general public not to overreact. Increased enforcement in the industry to make it better is crucial, and it is a shame that bad people do bad things in EB-5. However, people should also appreciate that bad actors should not overshadow the many good people and good projects that utilize EB-5 to better the US economy.



“ USCIS resolves whatever issues are holding back hoards of EB-5 adjudications...”



ROBERT DIVINE  
Attorney

USCIS resolves whatever issues are holding back hoards of EB-5 adjudications (mainly tenant occupancy) and finishes long held adjudications.

- USCIS finishes its EB-5 policy memo process and sets clear adjudication standards on the issues that are unresolved so stakeholders can plan their transactions and applications and adjudicators can actually adjudicate them.
- Congress makes the regional center program permanent and adds to EB-5 visa numbers, probably by ceasing to count derivative family members.
- USCIS quickly completes the move of EB-5 adjudications from California to DC and staffs the program adequately with well-prepared adjudicators who can use clear, published policies to make quick decisions that allow EB-5 to be used in good projects that can't wait for all the uncertainty and delay the current process imposes.
- USCIS develops a method of providing pre-filing consulta-

tions for major developments, as do other agencies regulating large developments, to streamline critical planning.

- The SEC, having gotten its mind around prevalent EB-5 practices, gives clear guidance to the community about what it will and will not tolerate.
- More FINRA-registered broker-dealers become comfortable and proficient with EB-5 offerings and enter the space with reasonable fees and practices.
- The few promoters who have intentionally misled EB-5 investors and swindled and squandered their money and sabotaged their status experience personal liability and jail time.

“ 1. USCIS speed up EB-5 processing time.

2. SEC enforcement against non-compliance practitioners.”



YI SONG  
Esquire

“ USCIS would advise what oversight responsibilities, if any, a regional center cannot outsource to a project or unrelated entity. ”



JOHN TISHLER  
Attorney

USCIS would put out a statement saying that EB-5 programs are subject to the U.S. securities laws, and that USCIS will be asking I-924 applicants to advise as to the intended registration or exemption relied upon for offer and sale of securities, broker-dealers, investment advisor act, investment company act, and state equivalents, and will issue RFEs where the availability of the exemption is not clear. There could be a similar statement made on I-526 petition that would reflect whether the applicant/investor was advised of the intended registration/exemption.

- USCIS would provide more guidance on when EB-5 money may be used to pay off bridge loans.

(con't next page)

“ USCIS would revisit the logistics of the December 2009 EB-5 material change memorandum from a technical perspective. ”



DAWN LAURIE  
Attorney

**1** ) USCIS would allow Regional Center entities to enter G-28s (Notice of Entry of Appearance) alongside the investor on an I-526 petition. This would streamline filings, minimize USCIS resources, and recognize the fact that many of the Requests for Evidence (RFE) arise out of project related issues. This would also ensure regional centers, including those that enter into services agreements with unrelated projects, take an active role in overall compliance.

**2** ) USCIS would revisit the logistics of the December 2009 EB-5 material change memorandum from a technical perspective. Specifically, I wish for the expedited processing of I-485s for individuals that have an approved 2nd I-526 petition.

**3** ) As long as I am wishing, would the USCIS consider implementing a process to

allow for holding I-829 petitions in abeyance where there is a question of the timeliness of job creation (by the “new/amended” project) due to perceived material change, rather than denying the petition outright? This should be a workable solution as the USCIS has held I-751 petitions in abeyance where the petitioner and spouse are separated but not yet divorced.

**4** ) Wishing for some vehicle that would allow the USCIS to assist investors caught in the “material change” issue, the ability to maintain their original adjustment/admission date for purposes of naturalization, provided their I-829 (Removal of Conditions on Residency) was first approved.

**5** ) The USCIS would timely publish the I-924A annual statistics. Publicizing this information on an annual basis would add more transparency to the overall process. ■

“ The issue of primary concern is the safety of capital. If there’s data out there, it would be most helpful.”



SUNEETA DEWAAN  
Esquire

Immigration Law Publishers, ILW.com, and its directors, Sam Udani and Shrikant Rangnekar, are being sued for breach of contract fraudulent inducement, fraudulent misrepresentation, and unjust enrichment by leading Chinese migration agencies, a consulting firm, and investment advisor

# ILW.com Sued for Contract Breach

Immigration law publishers, ILW.com and its directors, Sam Udani and Shrikant Rangnekar, are being sued for breach of contract fraudulent inducement, fraudulent misrepresentation, and unjust enrichment.



史林坎特

## ILW.com公司

ILW公司主要是以ILW.com网址存在的公司，主要业务包括在网站上提供移民方面最新、最权威的信息，同时也包括移民书籍的商业出版...

company. The Chinese Migration Groups in the suit are Aoji Star International Education Consulting (Beijing) Co., Ltd. and Swift Overseas (Hong Kong) Consultation Ltd. The other plaintiff include the EB-5 business plan consulting firm Strategic Element. Mr. Philip Cohen is the president of the company. The plaintiffs also include the highly respected registered investment advisor firm Usadvisors.org. Mr. Michael Gibson is the managing

director of the firm and the owner of well-known EB-5 website: EB5info.com.

The complaint was filed with the Federal Court at Southern District New York last week. The Manhattan-based law firm of Mona Shah & Associates represents all Plaintiffs.

## THE PLAINTIFFS

Aoji Star International Education Consulting (Beijing) Co., Ltd. is one of the largest registered migration agencies in People's Republic of China. The agency has 29 branch offices throughout China. In 2012, Aoji was voted No. 1 at

the "Sohu Going Abroad" Chinese media channel for the "Top Global Migration Service Expert Team." The general manager of Aoji also serves as the vice president of the largest, independent self-regulatory organization for migration agencies in China.

Swift Overseas is a Hong Kong incorporated company with branch offices in mainland China. Swift is in the business of marketing investment projects to the registered migration agencies, providing training to migration consultants, and organizing investment conferences and seminars.

Strategic Element is an EB-5 business



AO 440 (Rev. 12/09) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Southern District of New York

Swift Overseas (Hong Kong) Consult Ltd. and Mona  
Shah, P.C. and Aoji Star Int'l Education Consulting

*Plaintiff*

v.

American Immigration, LLC or ILW.com  
Mr. Sam Udani, Mr. Shrikant Rangnekar, individually

*Defendant*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* American Immigration, LLC or ILW.com  
Mr. Sam Udani (individually)  
Mr. Shrikant Rangnekar (individually)

149 Madison Ave, Room 210  
New York, NY 10016

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Ms. Mehreen Shah, Esq.

Mona Shah & Associates  
299 Broadway, Suite 1005  
New York, NY 10007

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK

CLERK OF COURT



*Signature of Clerk or Deputy Clerk*

Date: JAN 17 2013

plan consulting firm, which provides marketing studies for entrepreneurs, EB-51 regional center founders, project owners, and developers in the financial and EB-5 community. Strategic Element has worked with ILW on several occasions, including the production of *THE EB-5 BOOK* 2012-2013 Edition.

US Advisors is a registered investment advisory firm. The firm provides financial analysis services for EB-5 Regional Center projects and comparative analysis reports for foreign national investors, on a variety of matters including, job creation methodologies, strategic planning, management, risk factors, and risk mitigation. US Advisors co-organized an EB-5 seminar with ILW.com in Orlando, FL in March 2012.

## COMPLAINT FILED

The recently filed complaint states that, at a recent exhibition held at the Grand Hyatt in Beijing on December 2012, Aoji and Swift partnered with ILW for the purposes of marketing the event. The complaint states that the event was organized and paid for by the Chinese entities. ILW marketed the event utilizing their highly trafficked website - ILW.com. The Chinese promoters complain that during the promotion, ILW represented the event as one of their own. As a result, ILW managed to persuade the participants to wire money directly to ILW rather than to the actual conference organizers. Many of ILW's solicitations were exaggerated and blatantly false –The promoters repeatedly asked defendants to cease the misrepresentation in their solicitations as news had filtered back to China and was causing unease. ILW failed to comply with their requests.

ILW are also accused of illegally withholding conference revenues. The Chinese promoters complain that they were forced to pay all the expenses from their pockets. In addition, the Complaint states that, although ILW have no business contacts in China and have never participated in an overseas conference in Asia as it relates to EB-5 Program in Asia, they nevertheless continue to advertise that they have the ability to promote EB-5 projects overseas.

How far overseas exhibitions and conferences are effective is often questionable. In a country such as China, direct investors are usually very difficult to obtain as there is a system of registered migration brokers with the Administration Office of the Exit and Entry. To become a registered migration broker is an expensive process, often costing upwards of \$400,000. There are approximately 260 registered migration brokers in Mainland China. Without doubt, there is a need for regional centers or EB-5 project owners to seek the attention of the migration brokers. Expos have the potential to provide exposure to EB-5 projects in the Chinese market, provided that they are frequented by the migration agents, marketing materials are adequately circulated, along with key media presence.

In the complaint, Plaintiff, US Advisors states that it co-organized an EB-5 seminar in Orlando, Florida with ILW in February 2012. US Advisors states that the firm

chose to bear all internal expenses of the seminar (website building, travel, hotel expenses, etc.) and accuses ILW for failing to forward payments from revenues generated from the event or to pay other seminar related expenses.

Plaintiff Strategic Element states that it entered an agreement with ILW as author and editor of the EB-5 Book published by the latter. The Agreement states that that ILW would not use materials created and developed by Strategic Element towards entrepreneurs, founders, and the financial community. Strategic Element accuses ILW of directly contravening said agreement when ILW organized seminars and included prohibited material in its events, which directly conflicted with the specific market Strategic Element targeted.

In addition, Strategic Element states that ILW sold its materials at the seminars and failed to pay any proceeds of the sale. Based on the same agreement, which includes US Advisors and Strategic Element, it is alleged that ILW failed to compensate both parties with proceeds from number of ILW-organized seminars or the book's sales.

## RELIEF SOUGHT

In addition to compensatory damages, the Plaintiffs have requested compensatory damages, punitive damages, injunctive relief, etc. against ILW given its repeated acts of circumventing legally-binding contractual agreements and other fraudulent conduct in their business dealings. It is hoped that the judge's ruling on this case will ultimately protect integrity of the EB-5 program and the players within. ■



# NASAA 2012 Top Investor Threats:

## EB-5 Investment-for-Visa Scams

**T**he North American Securities Administrators Association (NASAA) has released its list of the top 10 financial products and practices “that threaten to trap unwary investors.” This list was compiled by the association’s securities regulators in their Enforcement Section. NASAA was organized in 1919 and is described as the oldest international organization devoted to investor protection.

First reported on their website and later by *Forbes*, the list includes the following:

### New Threats:

- Crowdfunding and Internet Offers
- Inappropriate Advice or Practices from Investment Advisers
- Scam Artists Using Self-Directed IRAs to Mask Fraud
- EB-5 Investment-for-Visa Schemes

### Persistent Threats:

- Gold and Precious Metals
- Risky Oil and Gas Drilling Programs
- Promissory Notes
- Real Estate Investment Schemes

**New Posts**

**John Wasik**, Contributor  
 I write about investments, financial planning and personal ecology  
[+ Follow](#) (33) [Follow](#) 140

PERSONAL FINANCE | 8/21/2012 @ 3:37PM | 2,075 views

## How A New Generation Of Con Artists Gets Inside Your Wallet

[+ Comment Now](#) [+ Follow Comments](#)

When it comes to fleecing people, con artists have a number of pipelines: Mail, phone, Internet/social media and affinity groups.

They can operate most smoothly when people trust them and are motivated by greed. Since we’re hard-wired for both of these traits, only a dollop of skepticism saves most people from being bamboozled.

Lately though, changes in technology and financial services have given them even more room to operate. Every year, the North American Securities Administrators Association (NASAA), a group of state regulators, publishes a [list of scams](#) that watchdogs from [Boston](#) to [British Columbia](#) see developing. These observations serve a early-warning systems for the rest of us. Here’s what we should be paying attention to:

- Regulation D Rule 506 Private Offerings
- Unlicensed Salesman Giving Liquidation Recommendations

The 2012 JOBS Act features prominently in much of the descriptions as concern over the deregulation of the financial markets could invite in more unscrupulous operators

and promoters to dupe unwary individuals into investing in risky, illiquid assets.

In the U.S., NASAA acts as the voice of state securities agencies responsible for investor protection and efficient capital formation and their mission is seen as protecting investors who purchase securities or obtain investment advice.





## NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

The concern is that relaxed rules and registration exemptions proposed under the Jobs Act to promote raising capital with Crowdfunding and other Internet solicitation platforms will encourage more investment into projects where the risks are not clearly outlined, or worse, where there is material misrepresentation of the safety of the investment to unwary investors.

"Many states are reporting a recent increase in active investigations or recent enforcement actions involving Internet fraud and JOBS Act-triggered activity is likely to elongate that trend."

The next item was Inappropriate Advice or Practices from Investment Advisers and that should be of interest to the many "EB-5 Consultants" who offer to expedite the process of raising capital for their Center clients by putting up websites and hosting seminars offering advice in return for receiving success based compensation and "finders" fees. These unregistered brokers freely give investment advice in return for compensation from the Centers which they represent.

While this activity is illegal it is common practice in the industry

due to the lack of enforcement action by regulators, but that could change due to the increased scrutiny being given to the industry and



practices by those that the Regional Centers employ to raise capital for them.

*A con artist will use every trick in the book to take advantage of unsuspecting investors, including exploiting well-intended laws, in order to fatten their wallets."*

*– NASAA Past-President Jack E. Herstein*

Against regulated, registered firms actions by state agencies have doubled focusing both on compliance and advice being given.

### EB-5 Investment-for-Visa schemes

This is the first time that the EB-5 Immigrant Investor program has made the list of top-investor-threats but not without good cause. NASAA lists the following reasons why the program made the watch list:

### 2012 NASAA Top Investor Threats

The following list of the Top 10 financial products and practices that threaten to trap unwary investors was compiled by the securities regulators in NASAA's Enforcement Section.

EB-5 Investment-for-Visa Schemes.

The Immigrant Investor Program, also known as EB-5, is an immigration program linked to job-creation that is growing in popularity, but investors must beware of promoters who falsely claim that an investment in their venture is safer or guaranteed due to an influx of foreign cash. The EB-5 immigration category is a 20-year-old program that grants a U.S. visa to foreign nationals who

invest a minimum of \$500,000 into a new commercial enterprise (The equivalent Canadian Immigrant Investor Program (IIP), requires a C\$800,000 investment). This job-creation effort has attracted inves-

tors from around the world, and as with any investment approach, increased interest has been accompanied with new challenges. All investments with an EB-5 component are subject to traditional securities laws, and investors need to be alert to the foreign-funding feature.

***"INVESTORS MUST BEWARE OF PROMOTERS WHO FALSELY CLAIM THAT AN INVESTMENT IN THEIR VENTURE IS SAFER OR GUARANTEED DUE TO AN INFLUX OF FOREIGN CASH. UNSCRUPULOUS PROMOTERS MAY SEEK TO PROP UP THE PLAUSIBILITY OF THEIR SCHEME BY HIGHLIGHTING A CONNECTION WITH A FEDERAL JOBS PROGRAM."***

They continue by reminding the reader that "all investments with an EB-5 component are subject to traditional securities laws," something that is overlooked by many in the industry, in particular immigration attorneys who continue to give investment advice to their clients on which EB-5 project to select based on subjective criteria in return for compensation and lucrative contracts for legal work.

Unscrupulous promoters may seek to prop up the plausibility of their scheme by highlighting a connection with a federal jobs program. Similarly, investors may be intrigued by the prospect of big funding from investors in China or other foreign countries with traditional or growing economic power. In a recent

case, the developer of a failed artificial sweetener factory planned for a small Missouri town sought Chinese investors through the EB-5 program, and made that a key component in pitching and then selling the underlying government bonds issued for the project. While the existence of Chinese funding may



### American EB-5 Forum (美国投资移民论坛)

[Discussions](#) [Members](#) [Promotions](#) [Jobs](#) [Search](#) [More...](#)



Follow Mayer

Last minute deal can earn you \$ 125,000.00

It's simple.

1. Be prepared to wire out \$ 75,000.00 US to a US bank account ASAP.
2. Be prepared to wire out an additional \$ 2,425,000.00 million in cash to an escrow account in Hong Kong within a few days thereafter.

The \$ 2,425,000.00 stays in escrow till about the end of January.

The deal closes, you make a fee of 5% which is \$ 125,000.00.

### EB5 Regional Investment Center

[Discussions](#) [Members](#) [Promotions](#) [Jobs](#) [Search](#) [More...](#)



John Martin  
Unfollow

Looking for five (5) Direct \$1MM investors... very generous commissions paid to finders.

Contact us for more details: [john@shepherdcapitalfunding.com](mailto:john@shepherdcapitalfunding.com)

9 days ago

[Like](#)

[Comment](#)

[Follow](#)

[Flag](#)

[More ▾](#)

### EB5 Regional Investment Center

[Discussions](#) [Members](#) [Promotions](#) [Jobs](#) [Search](#) [More...](#)



Follow Shane

Show me your approved EB5 Project and redacted EB5 Greencard approvals, and I'll show you as many as 50 referrals that already have \$530000 in escrow. I want 25k for each one. I get 15-20 leads/week.

Email me for details. Obviously I won't get my money until the greencard is approved. I'll arrange to move the money over to you. This arrangement may only be good for a month or two because I am waiting for another project to get approved that I have a greater personal interest in but until then, if my people want to go somewhere else I'll refer them. I also have access to 15-20 additional leads per week but these are leads, not money in the bank like these 50 are. I can no longer send them to the project they are currently involved with. [shanebow@gmail.com](mailto:shanebow@gmail.com)

have seemed promising to the city issuing the bonds and the investors who bought them, the developer defaulted on the first bond payment, leaving the city and investors out millions of dollars. Investors considering any enterprise with an EB-5 or IIP feature should make sure to obtain full information on every component of the venture, including all funding sources and the background of all promoters.

Many EB-5 Regional Centers and project developers continue to rely on U.S. immigration attorneys to promote projects to their clients and are given success based fees and other forms of compensation in return but these unregistered promoters may find little protection afforded to them in the event of regulatory action or investor litigation should their actions and recommendations cause loss or harm to their immigrant clients, and will most likely find little protection in the disclaimers they produce.

They conclude with these remarks:

***"INVESTORS CONSIDERING ANY ENTERPRISE WITH AN EB-5 OR IIP FEATURE SHOULD MAKE SURE TO OBTAIN FULL INFORMATION ON EVERY COMPONENT OF THE VENTURE, INCLUDING ALL FUNDING SOURCES AND THE BACKGROUND OF ALL PROMOTERS."***

In recent months we have seen a number of promoters on EB-5 discussion boards such as LinkedIn promoting investments and offering large commissions in return

for investors found (see graphic 4 and 5) or seeking commissions in return for investors delivered (see graphic 6).

The remainder of the list produced two topics of interest to the EB-5 community:

#### **Real Estate Investment Schemes**

The report noted that real estate fraud ranked as the third most common product leading to investigation and enforcement actions. It mentions that even with legitimate real estate investments, there are substantial risks involved and with non-legitimate scam artists the risks rise even more dramatically.

"While legitimate real estate investments can be an important component of a diversified portfolio, investors should be aware that

**"While legitimate real estate investments can be an important component of a diversified portfolio, investors should be aware that schemes related to buying, renovating, flipping or pooling distressed properties also are popular with con artists."**



schemes related to buying, renovating, flipping or pooling distressed properties also are popular with con artists."

#### **Regulation D Rule 506 Private Offerings**

Reg. D offerings used to be the exemption of choice by EB-5 Regional Centers until they realized that if they filed the accompanying Form D they would be required to disclose payments made to unregistered agents and then most switched to the less clear guidelines afforded to them under the S exemption.

"In the most recent survey of state securities regulators, fraudulent private placement offerings were ranked as the most common product or scheme leading to investigations and enforcement actions."

The report goes on to say that companies use the Reg. D offerings to raise capital for legitimate purposes, these investments are highly illiquid, lack transparency, have little regulatory oversight and not suitable for many individual investors. The concern is with the removal of the 502(c) ban on general solicitation, more abuse of the lax regulatory environment will result in greater losses by investors.







**I**n China today, immigration agents know that after Spring Festival there will really be a New Year to think about. A new crop of 60+ EB5 projects are on their way to Chinese EB5 investors. EB5 agents are even now commenting about the sheer size and efforts needed to analyze (or most likely not) this huge volume of work. They wait with both happy anticipation and worry if their new million dollar player will perform as promised or push them out of business with some tricky financial deal they don't see coming.

Why? Happy anticipation; it looks like this:

**Agents:**

- To developers and RCs, buying the market is the new phrase in EB5, (or is it just a knock off of the old P&G model of buying brand identity and shelf space with cash?)

- Developers have secured astonishing capital resources to pay agents outside of administrative fees – where does this money come from? Oh, the investors are paid 1% a year.

- Agents are getting dizzy. Common project incentive packages as of this January are a 40,000.00 base and 1-3% back-end payment on capital raises for the period of the project per investor. On a 30mm EB5 raise (average size these days) this is up to, yes, 115,000 per investor, at 60 investors, a lot of cash for former travel agents and student visa consultants.

# The Great Wall in immigration falls a bit every month to CEO size agent comp. packages



**Developers:**

- Money still gets the attention and action of agents.
- Weak projects grow in Herculean strength and resolve as back-end payments increase, oh well, the damn thing can always be refinanced, maybe.
- The fallout of investors from dead and dying projects (now at least 8) are dropping fatigued investors into the new investor baskets like pennies from heaven.

**The flip side:**

**Agents:**

- Wonder which project is a walking time bomb ready to go off at any moment. We can name more than 20 of them that fail the smell test, let alone serious analysis.
- The daily parade through agent offices by developers, RCs, state officials, bankers continues all day long, every day of the week.
- Agents don't know what to do. They have neither time nor inclina-

tion to hire experienced financial analysts, hey, that costs money.

- Tenant-occupancy nightmares are over, right? Or will they keep rearing their ugly (and economically absurd) head in future 526 RFEs (consult USCIS crystal ball).

- To backstop wobbling EB5 projects and spread risks in face of mounting RFEs, agents are diversifying into the EU where governments in need of cash are liberalizing immigration policies of cash in exchange for green cards (Italy, Greece, Albania and Bulgaria (yes, true), to name a few. We hear preferred spread of projects is 70% EU work, 30% EB5. How will new projects fare with this reduction in EB5 work?

#### **Developers:**

- 50+ new projects in the market and growing, there is competition at every level of the agent market.

- Instead of anticipated quick and easy raises, developers are being forced out of the race as limited capital pushes against the reality of a saturated market.

- You want attention? Be prepared to pay for it.
- Job creation – well who needs to prove that out, a well-paid economist will turn the trick for you.
- The agent contract sworn in solemn brotherhood

over Mao-tai and Gambei's are pushed to the back drawer as newer projects with more agent compensation come into the market

What is the right and wrong of this? My view is this – nothing. It is as natural as the sun, moon and stars. The EB5 program is cycling through a painfully blunt maturing process. This is American capitalism as it's most aggressive and best creative cycle. Blossoming and dying in months in an unregulated marketplace the dream goes on. But money talks. Those with deep resources and a canny sense of profit distribution buy the market. Those without deep pockets or a creative plan struggle and hope for the best. Or mostly go home empty-handed.

The EB5 market comes to life again in late March as happy holidayers return to work, pay their bills, take a look at their new real estate kingdoms and worry about the future (taxes). Why invest 550,000 in a very dicey investment scheme? Maybe immigration is better delayed for next year, or next year, or....

They – like you, need to choose partners very carefully, do the homework and understand the drift in values we are seeing every few months. There is no reset or second chance. You need to get it right the first time. ■

#### INDUSTRY ROUNDUP

**T**he body of RFEs and comments regarding job creation for projects that move employment from one site to another site in a similar business or neighborhood has created a backwash of concern in the China immigration market. Agents are now scrutinizing projects for job creation duplicity and the simplest projects – most targeted to hotels, offices and retail operations – are refused because they seem to or might violate this unwritten USCIS standard for removal of a conditional green card. [Here for more.](#)

**M**exican Citizens Attracted to the EB-5 Visa – An increasing number of wealthy Mexican citizens have moved to the USA using the

popular EB-5 visa to get permanent resident status (green cards) for themselves, their spouse and their unmarried children under 21. The United States citizenship and Immigration service (USCIS) has approved well over 200 of these EB-5 regional centers, although it needs to be said that the track record of these centers varies considerably. [Here for more.](#)

**C**arlsson, et al v. U.S. Citizenship and Immigration Services – In her October 3, 2012, minutes order denying the plaintiffs' requested Temporary Restraining Order and Injunction, Judge Christina A. Snyder wrote, among other things: "...As noted, the agency found three principal deficiencies: (1) insuffi-

cient evidence plaintiffs' capital had been placed at risk; (2) an insufficient comprehensive business plan; and (3) a lack of analysis based on a reasonable methodology for determining job creation." [Here for more.](#)

I had a problem with USCIS tossing out the label "Tenant-Occupancy Methodology" without defining it. The recent (Dec. 20, 2012) memo sent via e-mail on Dec. 28, 2012, helps clear some of the confusion created by the earlier May 2012 memo. USCIS has made some progress on terminology. It is now the time for the EB-5 Stakeholder Community to take ownership of one of its mistakes and stop talking about anything being "pre-approved." [Here for more.](#)