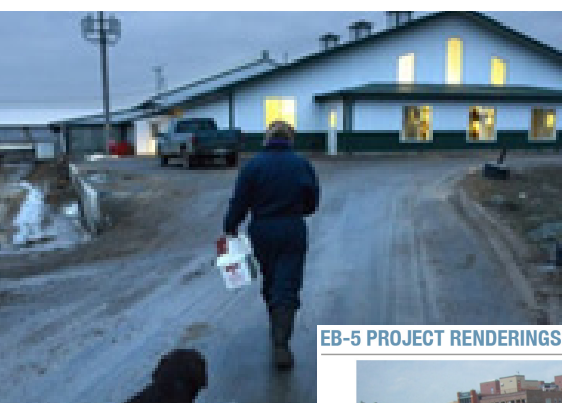
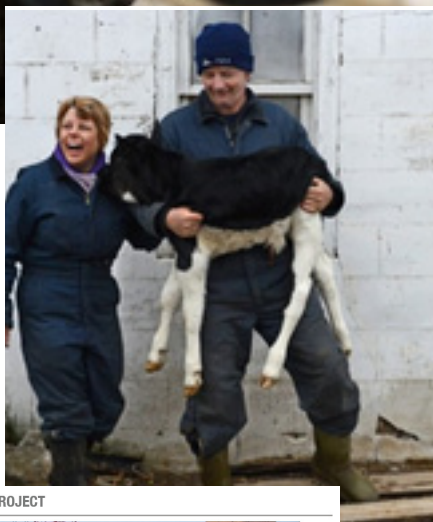


The Source for Information on the U.S. EB-5 Visa Program

EB5info.com
MARCH 2013



EB-5 PROJECT RENDERINGS: PROJECT



EB-5 PROJECT ANALYSIS: RENE & JUDITH DEKKER
Prepared by Michael Gibson | USAdvisors.org | 239.465.4160 | www.usadvisors.org



FOREIGN CITIZENS MAKING BIG U.S. INVESTMENTS



FOCUS

EB5M.com to Launch

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April 21-23 in Hawaii



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION

Plaintiff,

v.

A CHICAGO CONVENTION CENTER,
LLC, ANSHOO SETHI, and
INTERCONTINENTAL REGIONAL
CENTER TRUST OF CHICAGO, LLC

Defendants.

Civil Action No. 13-cv-982

Honorable Judge Amy J. St. Eve

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
OPPOSITION TO DONG MEI XU'S MOTION TO INTERVENE**

Plaintiff Securities and Exchange Commission ("SEC") respectfully submits its
Opposition to Dong Mei Xu's ("Xu's") Motion to Intervene (Dkt. #20, filed February 19, 2013).

INTRODUCTION

Xu's motion to intervene in this civil enforcement action should be denied. The SEC
commenced this civil enforcement action to protect investors from potentially millions of dollars
of losses as a result of Defendants' fraudulent scheme to sell securities to foreign investors.

USADVISORS.ORG

EB5Info.com is the source for news and information on the USCIS EB-5 Visa Immigrant Investor program and is powered by USAdvisors, 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.

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EB5Info.com
EB-5 Newsletters
EB-5 News



by MICHAEL GIBSON
Managing Director

**We were pleasantly**

surprised when we saw our old clients, Rene and Judith Dekker featured in the *Washington Post* and thought that was a good way to start our March newsletter off. The Dekkers were referred to us by Clara Mager of Butzel Long in Detroit and we feel that the *Post* could not have featured a nicer, more deserving family to showcase all of the positive that the EB-5 program has to give, not only to the foreign nationals seeking a better life for their family, but for the developers utilizing

foreign capital to create desperately needed U.S. jobs. There are still a number of problems and issues in the industry, but it is good to see when the program does accomplish the goals that Congress intended when they created the investor visa class.

Best wishes,
Michael Gibson
Managing Director
USAdvisors.org

by KRIS STELL
Editor-in-Chief

**In this month's issue of**

EB-5 News, we focus on best practices and due diligence. These articles cover common sense approaches to the EB-5 program for investors, regional centers and broker-dealers. On page 12 is an article on the SEC bringing charges against New York-based private equity firm Ranieri Partners, a former senior executive, and an un-registered broker who violated securities laws so you can appreciate the timeliness of this topic.

We also continue our coverage of the latest regarding the

Chicago Convention Center as the SEC is opposing the lawsuit filed by Don Mei Xu last month.

USAdvisors.org, our parent company, in partnership with GATE Global Impact, has launched a web-based platform that will provide independent due diligence and risk analysis on USCIS EB-5 visa investment opportunities. This is covered on page 10.

Kris Stell
Editor-in-Chief
USAdvisors.org

Foreign Citizens Making Big Investments in U.S. in Exchange for Green Cards

by Kevin Sullivan
 excerpted from the
Washington Post,
 March 21, 2013

Sitting in their farmhouse in Ubly, Michigan, Rene and Judith Dekker were tired-eyed from rising before dawn to tend to their 1,200 dairy cows. Their two older kids were packing up for the drive back to college and their 16-year-old had homework. They look like any other family in rural Michigan, but they are Dutch citizens. And they are faces of a fast-growing U.S. visa program in which foreigners can gain permanent residence by investing \$500,000 in a



U.S. project that creates at least 10 jobs.

Through the program, known as EB-5, the Dekkers have a half-million-dollar stake in the Marriott Marquis Hotel rising in the District next to the Washington Convention Center. In return for their investment — and filing a foot-high stack of documents that includes bank and tax

records, criminal background checks and even syphilis tests — they got five shiny new green cards in November. The cards give them temporary residency that will become permanent in two years — so long as the Marriott project succeeds. The Dekkers need it to keep their family together. Although they have lived on their farm since 2000, they had temporary visas that required their children to leave the country upon turning 21. Investing in the Marriott was their way to prevent this from happening.



Photos by The Washington Post

Selling Admission

The EB-5 program is booming in popularity, driven largely by a struggling U.S. economy in which developers are searching for new sources of capital. It is also fueled by rising demand from foreigners looking for access to U.S. schools, safe investment in U.S. projects and — in the

case of China, where most of the investors are from — greater freedom.

The program has broad bipartisan support in Congress, and key senators who are negotiating an overhaul of the immigration system have said they are leaning toward expanding visa programs that provide an immediate boost to the economy.

But others argue that the EB-5 program amounts to buying citizenship, and that it unfairly allows wealthy foreigners to cut the visa line ahead of others who have waited for years.

EB5 Numbers

Since the EB-5 program began in 1992, more than 29,000 people have received visas, foreigners have invested more than \$6.8 billion and 50,000 American jobs have been created, U.S. officials said. Three-quarters of all those visas have been issued since 2008, when the recession hit and developers started having trouble finding capital.

The program also provides cheap financing for U.S. developers. EB-5 investors are offered very small returns on their investment — usually about 1 to 3 percent — rather than the much higher rates developers would have to pay for traditional financing.

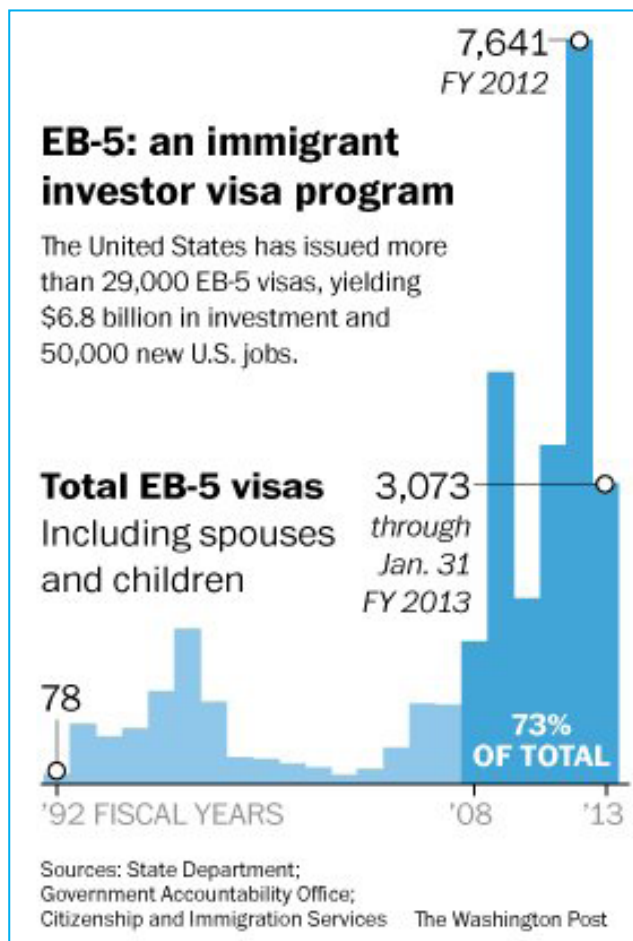
State Department officials said they are on track to issue a record number of visas this year — more than 9,000, close to the annual limit of 10,000 mandated by Congress, out of a total of 140,000 employment-based immigrant visas. More than 70 percent of those are going to Chinese investors, with many also coming from South Korea, Taiwan, India, the United Arab Emirates and Canada.

Alejandro Mayorkas, director of U.S. Citizenship and Immigration Services (USCIS), which oversees the program, said the number of staff members reviewing EB-5 applications has grown from 10 to 50. Mayorkas said he has added economists and business lawyers to review complex applications and hopes to shorten application processing times, which can take more than a year. That would help make the United States more competitive with Canada, Britain, Australia, New Zealand and other countries that have similar programs.

Projects Benefitting

The U.S. hotel industry has been especially enthusiastic: Marriott International has raised \$500 million in EB-5 capital; Hilton Worldwide has raised \$100 million.

"I understand why the government has really pushed



this," said William Fortier, Hilton's senior vice president for development in the Americas. "It's come out of nowhere in the past couple of years as a real help to get things going in this industry."

D.C. Mayor Vincent C. Gray and his predecessor, Adrian Fenty, have eagerly courted EB-5 investors. When Gray traveled to China last summer seeking financing for projects in the District, he received a symbolic check in Shanghai for \$40 million, the amount that 80 Chinese EB-5 investors had invested in City Market at O, a huge



Marriott Marquis Hotel project in Washington DC, an EB-5 funded project the Dekkers invested in.



City Market at O in Washington DC, an EB-5 funded project.

hotel, grocery, retail and restaurant development near the Washington Convention Center.

Richard Lake, a partner in Roadside Development, which is developing the project, said the \$330 million complex eventually will raise about \$95 million from EB-5 investors and create 2,400 jobs.

EB5 Revival

The EB-5 program was so poorly run in the 1990s that it was effectively shut down from 1998 to 2003. A 2005 GAO report found that problems arose when many investors were allowed to give promissory notes instead of cash. U.S. officials said the program also has suffered

from state and local officials skirting the rules to make projects qualify for financing.

As EB-5 has grown, it has sprouted a huge network of recruiters and middlemen, who connect foreign investors who want visas with U.S. developers who want capital. Some have been incompetent or corrupt.

Last month, for example, the Securities and Exchange Commission brought fraud charges

against Anshoo R. Sethi, 29, who ran a regional center in Chicago. The SEC alleged that Sethi bilked 250 mainly Chinese investors out of nearly \$11 million in administrative fees after getting them to put up EB-5 investments in a hotel project that did not have proper building permits. Without a valid project, the SEC said in a statement, Sethi "exploited these investors' dream of earning legal U.S. residence."

'Our hole life is in there'

Rene and Judith Dekker moved from Denmark to central Michigan in 2000, they received a visa called an E2,

EB-5 PROJECT RENDERINGS: PROJECT



EB-5 PROJECT ANALYSIS: RENE & JUDITH DEKKER

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which allows citizens of countries that have commercial treaties with the United States to move here to run a business, provided they make a “substantial” investment and run the business themselves. The E2 visa can be renewed every two years, but it does not offer a path to citizenship. Most significant for the Dekkers, children are covered only until they turn 21; after that, they must leave the country.

The Dekkers sold their farm in Denmark and paid \$250,000 for their farm in Uby. Over the next decade



they slowly built their farm into a 1,000-acre operation that is one of the largest dairies in the area. But in 2011, worried that their teenagers would soon turn 21, they called an immigration lawyer in Detroit. She told them about EB-5 and referred them to a company that advises U.S. firms and foreign investors. That firm gave them a list of development projects that were seeking EB-5 investors. They chose the Marriott Marquis because they said they felt safe investing in a big-name hotel chain in the nation’s capital.

They were then directed to Brunner, of EB5 Capital, who was working with Marriott. Brunner and her staff explained the project and led the Dekkers through the process. On July 7, 2011, they placed \$500,000, which they had borrowed using their farm as collateral, into a government escrow account.

Over the next 18 months, USCIS and State Department officials examined every aspect of their lives, including checking for criminal records in the Netherlands, Denmark and the United States. The Dekkers submitted more than 10 years of tax returns and bank records to prove that their money was earned legally. A doctor gave them and their children drug tests and a Breatherlyzer exam and evaluated their mental health.

In addition to the \$500,000 investment, Dekker said he paid \$84,000 for his lawyer, the advisory company, the



regional center and visa application fees. But, he said, all the expense and aggravation was worth it when the family’s green cards arrived in the mail on Nov. 1. They are provisional for two years. At that point, if the Marriott project has created the promised 10 jobs, their green cards will become permanent. If the project fails, the Dekkers could lose their green cards and their \$500,000. But if it prospers, they could receive their \$500,000 in principal back, plus interest, perhaps in about five or six years, Brunner said.

The arrival of her green card meant Susanne Dekker, 18, could legally get her first job — a minimum-wage position working at a car-rental office at Michigan State University, where she is a freshman.

“I plan on living here for the rest of my life,” she said, noting that she has been here since she was 3. “So it’s important that I actually belong in this country.”

Bart Dekker, who will turn 21 next year, said he is relieved that he can stay in the United States and keep studying animal science at Michigan State, so he can eventually take over the family farm. ■

PROGRAM AND PROJECT OVERVIEW OF A DHS / USCIS EB-5 DESIGNATED REGIONAL CENTER INVESTMENT:

USADVISORS.ORG EB-5
PROJECT ANALYSIS

Marriott Marquis DC

DISCLAIMER LANGUAGE

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PROJECT ANALYSIS: **RENE & JUDITH DEKKER**
led by Michael Gibson | USAdvisors.org | 239.465.4160 | www.usadvisors.org



Vermont Pulls Plug on EB-5 Project an Assisted Living Facility

by Nat Rudarakanchana
excerpted from the
VTDigger,
April 3, 2013



A development company that hoped to build high-end assisted living facilities for retirees in Vermont has lost approval from the state's EB-5 center. The company, DreamLife Retirement Resorts, LLC, with representatives in Quebec, Ontario, Vermont and Florida, hoped to build six well-appointed, 160-apartment unit projects. The plans for the assisted living facilities

include spas, salons, libraries and movie theaters. In February, the company was negotiating purchases of sites selected in Bennington, Rutland and Montpelier, documents show. DreamLife planned construction at two of the sites within the year.

In order to make this a reality, the company, doing business as EB-5 American Dream Fund I, Inc., needed to raise more than \$144 million and attract more than 300 foreign investors who,

foreign investors for two apartment buildings, and in the intervening period, the DreamLife developers have not purchased land or obtained options on properties, nor have they attracted a single foreign investor.

Cancellation

Officials with the Vermont Agency of Commerce and Community Development cancelled the agreement with American Dream on March 27 because of "material misrepresentations." Three of the four individuals who represent the company cited themselves as attorneys for the project; none of the men identified are licensed to practice law in Florida, where the law firm cited in the agreement, USMS Team, is registered. In addition, American Dream listed a DreamLife construction team on its website that state officials determined were not notified that they had been identified as contractors for the project. Several said they did not have contracts with the company.

American Dream has 14 days to respond to the state's notice of cancella-



Lawrence Miller, secretary of the Agency of Commerce and Community Development, speaks at a press conference with Gov. Peter Shumlin. File photo by Taylor Dobbs

under a federal program known as EB-5, receive green cards in exchange for cash investments. Nearly three years have passed since American Dream first received permission from the Vermont EB-5 Regional Center to seek

tion. Phil Mooney, the managing director of DreamLife and a former CEO and president of the nonprofit Immigration Consultants of Canada Regulatory Council, told VTDigger the company would resolve the issue with the state in a few days. As of April 3, there was no update from the company.

"We can refute and justify everything," Mooney said. "We have 14 days to provide a remedy, and we believe we can absolutely do that. Not even in 14 days, in just one or two. We disagree completely with the letter and are busy preparing a response which will see us continue as an EB-5 project under the [Vermont] Regional Center."

Past Trouble

Last spring, state officials became aware that a key participant in the project recently stepped down from a leadership role in the company. Richard Parenteau, the founder of DreamLife, who state officials say is now a "background investor," was convicted of perjury in Quebec last summer, according to court documents, after a decade-long dispute over a will. State officials say as a result of the conviction, Parenteau, a former Rock Forest (Quebec) chief of police, is no longer able to cross the border for meetings in Vermont. Parenteau has also been accused of violating labor rules in Quebec, according to court documents.

No Reinstatement Likely

Lawrence Miller, the current secretary of the Vermont Agency of Commerce and Community Development, cancelled the agreement with American Dream in September and then reinstated the memorandum of understanding (MOU) in November after he and other state officials were assured that Mooney would lead the company and that a new escrow account had been secured. The state's latest decision to cancel its agreement with American Dream, based on the aforementioned "material misrepresentations," comes on the heels of accusations that the company may have violated Securities and Exchange Commission rules with regard to marketing to investors.

Agency Secretary Miller said it's unlikely the state will reinstate the American Dream MOU. In the cancellation letter, he wrote: "Based on the nature and significance of the examples of material breach, we do not foresee American Dream Life Fund I being able to cure them or remedy the broken trust."

State officials say the Vermont EB-5 Center, which so

far has a 100 percent success rate, must maintain its stellar reputation in order to continue to attract investors. ■

See full *VTDigger* article [here](#).



EB-5 and the State

Vermont has a long history with the federal program. Former Gov. Howard Dean, a Democrat, was a proponent of EB-5, and in 1997 helped to develop Vermont's program. The center was authorized by the U.S. Citizenship and Immigration Service in 2007 and was approved for EB-5 visa investments in 2009.

Vermont's center is unique because it is the only state-run EB-5 program in the country that certifies and approves businesses, and it currently maintains 14 different projects. Most centers are for-profit and are directly tied to individual projects, state officials say.

American Dream was one of the state's first projects. It sought approval in July 2009 and entered into an agreement with the state a year later. In all, the state has 14 projects, including seven associated with Jay Peak and Stenger's megaproposal, Sugarbush Resort, Trapp Family Lodge, DR Power Equipment and Country Home Products.

EB5M.com to Launch

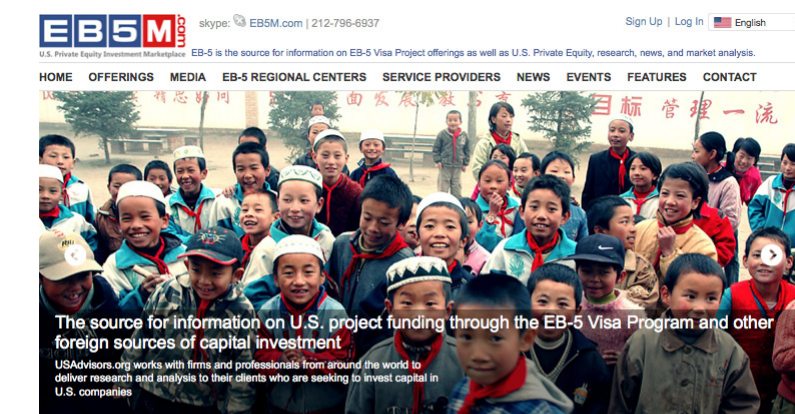
New platform, EB5M.com, focused on the USCIS EB-5 Immigrant Investor visa program, launches

GATE Global Impact and USAAdvisors.org just launched a new platform – EB5M.com – focused on the USCIS EB5 Immigrant Investor visa program. EB5M.com will be the source for information on EB-5 Visa Regional Center Project offerings as well as direct U.S. private equity, research, news, and market analysis.

The EB-5 visa program allows foreign investors (and their spouses and unmarried children under 21) who make an investment in a commercial enterprise in the United States and who plan to create or preserve 10 permanent full-time jobs for qualified United States workers eligible for a green card. The EB5M.com platform will provide a centralized marketplace for sourcing investment opportunities and corresponding research.

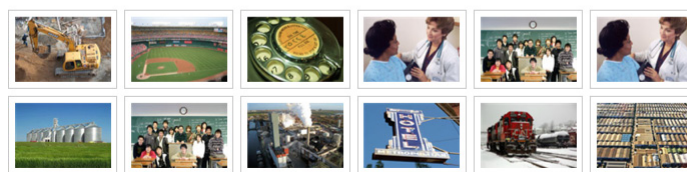
What EB5M Offers

"The key problem in the EB-5 industry has been for investors and attorneys to verify the claims being made by the U.S. developers and assess the risks involved with the project's ability to create the required number of eligible jobs and the probabilities that capital will be returned at term. We have brought together a team of professionals who will provide due diligence and risk analysis to independently assess the developer's ability to both cre-



EB-5 Investor Visa Projects: Regional Center Investments (Indirect)

✓ Verified Projects



ate jobs in accordance with USCIS specifications as well as determine the feasibility of the job creating enterprise to create sufficient asset value to return capital to all of the investors and lenders within a reasonable period of time. EB5M.com will facilitate the ability for economists, credit and equity analysts, risk and securities due diligence experts to be able to disseminate this crucial information to investors, their advisors and counsel," said Michael Gibson, Managing Director, USAAdvisors.org.

Meeting Market Demand

The mission of GATE Global Impact is to fulfill the increasing global demand for market infrastructure that enables capital to

identify and transact in investments that provide a sustainable social and/or environmental benefit, job creation and financial return.

"EB5M.com is a source for both funding and job creation in the U.S., ultimately delivering good, which is the main goal and mission of GATE Impact. This is a disruptive change to the way EB-5 projects have been marketed, incorporating innovation and securities best practices to the EB-5 marketplace, offering transparency to investors, issuers and regulators alike. Having the EB5M.com platform will allow U.S. developers to distribute project offering information to qualified investors globally without having to travel overseas or negotiate with offshore agents facilitating the raise of off-

shore capital and lowering investor acquisition costs in a way that is compliant with U.S. federal and state securities laws and regulations," said Vincent Molinari, CEO, GATE.

GATE has created a centralized electronic marketplace to facilitate the transactions of impact-focused investment products and has developed a utility that provides efficiency, transparency, liquidity and education that enables the transaction processes in a variety of markets. All EB5M security transactions will be conducted by GATE US member FINRA/SIPC.

GATE provides an end-to-end solution inclusive of information, performance metrics, settlement and clearance. These markets include private equity, private debt, micro-finance and environmental credits. GATE Global Impact ultimately believes they will have a positive influence by providing investors and entrepreneurs a regulatory compliant marketplace to interact allowing for future job creation and stimulate economic growth.

CrowdCheck will provide due diligence services for EB5M. The CrowdCheck Report that will appear on EB5M will provide investors and attorneys with reassurance about the legitimacy of a project and the people behind it, and the assertions made by the project's developers.

About GATE Global Impact

GATE Global Impact provides market infrastructure and related services for the emerging impact investment industry -- public and private investments with a sustainable



social and/or environmental component that also generate a healthy rate of financial return. www.gateimpact.com (212.896.3983)

GATE US is a New York-based broker-dealer member FINRA/SIPC. www.gateus.com

About USAdvisors.org

USAdvisors.org is a registered investment advisory firm that conducts due diligence and risk analysis and is the source for news



and information about EB-5 Immigrant Investor Visa project offerings that produces investment analysis reports for foreign nationals and has developed an approach to quantitatively assess the risks involved with the investment decision. www.EB5Info.com/ (239-465-4160)

About EB5M.com

EB5M.com is a marketplace platform designed to give investors, attorneys, financial advisors, broker dealers and foreign agents detailed



information on USCIS EB-5 projects, both Regional Center limited partnership offerings and direct investments. The platform will offer detailed project and job creation information, risk ratings and comparative project evaluation reports from independent sources to qualified investors, their counsel and advisors. www.eb5m.com (212-796-6937)

About CrowdCheck

CrowdCheck exists to help protect investors and intermediaries in on-line offerings. CrowdCheck provides investor protection by performing due diligence investigations and presenting all the information inves-



tors need to avoid fraud and make informed investment decisions.

For additional information, please visit www.EB5M.com or call 212-796-6937. ■

“ We have brought together a team of professionals who will provide due diligence and risk analysis to independently assess the developer's ability to both create jobs in accordance with USCIS specifications as well as determine the feasibility...”

SEC Charges Firm, Executive and Consultant for Improperly Soliciting Investments

On March 11, 2013, the Securities and Exchange Commission announced charges against New York-based private equity firm Ranieri Partners, a former senior executive, and an unregistered broker who violated securities laws when soliciting more than \$500 million in capital commitments for private funds managed by the firm.

The federal securities laws require that an individual who solicits investments in return for transaction-based compensation be registered as a broker. An SEC investigation found that William M. Stephens of Hinsdale, Ill., solicited investors as a hired consultant for Ranieri Partners and was paid fees by the firm, but never registered as a broker. Stephens' longtime friend Donald W. Phillips, a senior managing director who headed up capital raising efforts for Ranieri Partners, was responsible for overseeing Stephens' activities as a purported "finder" who would merely make initial introductions to potential investors. But Stephens' role went far beyond that of a finder. He consistently communicated with prospective investors and their advisors and provided them with key investment documentation that he received from Ranieri Partners.

The Charges

Ranieri Partners, Phillips, and Stephens agreed to settle the SEC's charges.

"Registered brokers are subject to SEC oversight and examinations in order to monitor their conduct and protect the interests of investors," said Merri Jo Gillette, director of the SEC's Chicago Regional Office. "Investors in Ranieri Partners' funds were denied these protections because Stephens acted outside the boundaries of the law, and Phillips and the firm ignored the essence of his activities."

According to the SEC's orders instituting settled administrative and cease-and-desist proceedings, Stephens engaged in the business of effecting transactions in



securities in several ways despite not being registered as a broker or affiliated with a registered broker-dealer. Stephens sent private placement memoranda, subscription documents, and due diligence materials to potential investors, and urged at least one investor to consider adjusting portfolio allocations to accommodate an

investment with Ranieri Partners. Stephens provided potential investors with his analysis of the strategy and performance track record for Ranieri Partners' funds, and also provided confidential information identifying other investors and their capital commit-

"In settling the SEC's charges, Ranieri Partners agreed to pay a penalty of \$375,000, Phillips agreed to pay a penalty of \$75,000 and Stephens agreed to be barred from the securities division."

ments. The SEC charged Stephens with violating Section 15(a) of the Securities Exchange Act, which requires people acting as brokers to be registered with the SEC.

The SEC's order against Phillips and Ranieri Partners found that Phillips, who lives in Barrington, Ill., aided and abetted Stephens' violations by providing Stephens with key fund documents and information while ignoring red flags indicating that Stephens had gone well beyond the limited role of a finder and was actively soliciting investments. The order found that Ranieri Partners caused Stephens' violations.

The Settlement

In settling the SEC's charges, Ranieri Partners agreed to pay a penalty of \$375,000, Phillips agreed to pay a penalty of \$75,000, and Stephens agreed to be barred from

the securities industry. The SEC's orders require each of them to cease-and-desist from further violations of Section 15(a). The SEC also suspended Phillips from acting in a supervisory capacity at an investment adviser or broker-dealer for nine months. Ranieri Partners, Phillips and Stephens consented to the entry of the SEC's orders without admitting or denying the findings.

The SEC's investigation was conducted by Jason Howard, Steven Klawans and John Sikora, Jr., in the Chicago

Regional Office with assistance from examiners John Brodersen and Eric Donofrio.

Industry Reaction

We contacted Attorney Jennifer Moseley on her thoughts regarding the similarities and applicability of



Jennifer Moseley

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69091 / March 8, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3563 / March 8, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15234

In the Matter of

Ranieri Partners LLC and Donald W. Phillips,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Donald W. Phillips ("Phillips" or "Respondent Phillips"), pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and that cease-and-desist proceedings be, and hereby are, instituted against Ranieri Partners LLC ("Ranieri Partners" or "Respondent Ranieri Partners") pursuant to Section 21C of the Exchange Act.

II.

In anticipation of the institution of these proceedings, the Respondents have submitted Offers of Settlement (the "Offers"), which the Commission has determined to accept. Solely for the purpose of these proceedings, and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

this action to EB-5. Moseley represents regional centers with their formation, structure and securities offering matters, as well as companies seeking investment, in connection with the EB-5 visa regional center program under the USCIS rules and regulations.

"It's important to note that Ranieri Partners hired Stephens as an independent "consultant." In the EB-5 context, there are some who seem to think that entering into arrangements as or with a "consultant" means that they are presumed to not be broker-dealers. This is far from the case. Whether someone is a broker-dealer depends on the activities of the finder, and not on the title or name given to the finder. The SEC will evaluate the facts and circumstances to determine whether someone, regardless of whether they were hired as a consultant, should've been registered as a broker-dealer.

"Stephens considered himself a "finder" who merely made initial introductions to potential investors. However, Stephens distributed offering documents directly to the potential investors and communicated with them and their advisors. Many EB-5 "middle men" do exactly this – they have conversations with potential investors or the agents and forward documents directly to them, as opposed to the regional center or issuer distributing the documents. The SEC specifically noted that this went "far beyond that of a finder." In other words, Stephens should've been registered with the SEC.

Future Implications

"It is important to note that the SEC brought charges against the firm (Ranieri Partners) and a principal of the firm (Phillips) because they paid an unregistered broker, on the charge that they aided and abetted the unregistered broker-dealer's violations of securities laws. In other words, if a regional center/issuer pays an unregistered party that should've been registered, the regional center/issuer is in violation of securities laws, and the SEC can pursue both civil and criminal penalties. In addition, such a violation of securities laws gives the investors a right to rescind. Therefore, each EB-5 investor can demand that a regional center/issuer give them their money back if a regional center/issuer has paid an unregistered finder. If rescission claims are brought, not only does this create material, adverse consequences for that particular project, but future potential investors will be concerned about the regional center and unwilling to take the risk of putting their money there.

"The reason registration is required is because (a) evaluating securities investments requires knowledge of the area, and registered broker-dealers have to pass an examination showing they are qualified to solicit,

sell or otherwise deal in securities; and (b) it allows the SEC and FINRA to oversee and monitor the behavior of registered firms and people to ensure protection of the investor. Unregistered so-called "finders" are often not qualified to participate in EB-5 securities transactions and are not answering to anyone so there is a greater risk of unscrupulous behavior.

"EB-5 securities can be susceptible to these issues because (a) many people don't think they are effectuating securities transactions, even though they are, because it happens in an immigration context; and (b) the agents who participate in EB-5 are not brokers or investment advisers and are motivated to send investors to the highest bidder for their fees. This means no one is doing the due diligence on the investor's behalf, although the

"Particularly in light of the recent SEC claim against the Chicago regional center, these SEC charges against Phillips, Ranieri Partners and Stephens should be a wake-up call that investors are going to be more wary of dealing with regional centers who are not paying close attention to applicable securities laws."

investor may think that, because these middle men are getting paid, somebody is actually sifting through the information for them and providing them with information they need. The regional center/issuer must have a written agreement in place between it and any third parties acting on its behalf in order to ensure that the regional center is monitoring, to the extent possible, the activities of such parties. After all, it is the issuer's responsibility under securities laws. ■

Jennifer Mercier Moseley is a partner with attorneys Burr Forman in the Birmingham, AL office. Jennifer assists public and private companies with stock and asset purchases, stock-for-stock combinations, cash out mergers and tender and exchange offers.



SEC Opposes Chicago Center Lawsuit



The SEC has opposed the motion to intervene made by Dong Mei Xu.

Last issue we reported on the motion filed on behalf of investors of the EB-5 Chicago Center Project. The one investor named was Dong Mei Xu, but the motion includes the other investors that were subscribed to the IRCTC Chicago Convention Center project promoted by Anshoo Sethi that was recently the subject of an SEC (Securities and Exchange Commission) action. The SEC has opposed the motion to intervene.

History

On February 6, 2013, the SEC filed its complaint against Sethi and was granted a temporary restraining and asset freeze order against the defendants, and a hearing on the SEC's motion for preliminary injunction for was set for February 20. On February 19, Xu filed a motion to intervene. On February 20, the court granted the SEC's motion for a preliminary injunction and asset freeze and also ordered responses to Xu's motion to intervene be filed by March 6.

SEC's Motion

The motion states: "Xu's

motion to intervene in this civil enforcement action should be denied. The SEC commenced this civil enforcement action to protect investors from potentially millions of dollars of losses as a result of defendants' fraudulent scheme to sell securities to foreign investors. Using the lure of gaining a pathway to U.S. citizenship through the federal EB-5 Immigrant Investor Pilot Program and using false and misleading information concerning a purported investment opportunity, defendants convinced Xu and over 250 other Chinese investors to wire a minimum of \$500,000 apiece to a U.S.-based escrow account. Xu seeks to intervene in this civil enforcement action because, according to Xu, the SEC "does not adequately represent Xu's and the investors' most pressing interest," i.e., "keeping Xu and the investors on track to gain U.S. citizenship." Xu contends that this "interest" is only served by preventing the return of assets invested in defendants' scheme so that he and other investors can invest those assets in some other EB-5 venture."

"Xu contends that "the SEC's requested relief – the recovery and return of fraudulently obtained money – does not adequately represent Xu's and the investors' most pressing interest." That interest is "keeping Xu and the investors on track to gain

U.S. citizenship." According to Xu, "the SEC's requested relief would foreclose (or severely delay) Xu's and the investors pursuit of U.S. citizenship through the EB-5 program." Therefore, Xu claims that he and other investors "do not want the court to return their investment; they want that investment to remain with the escrow agent or an alternative escrow agent" in order allow Xu and other investors to "invest the funds in a legitimate EB-5 program venture."

"However, Section 21(g) of the Securities Exchange Act of 1934 prohibits Xu's interference in the SEC's civil enforcement action. Courts have uniformly denied motions to intervene in SEC enforcement actions where, as here, a would-be intervenor seeks to recover from the very defendants the SEC is suing."

The SEC states that Xu cannot demonstrate that the SEC fails to adequately protect his interests and that there is no conflict between his interests and those of the SEC. ■

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION		
UNITED STATES SECURITIES AND EXCHANGE COMMISSION)	
Plaintiff,)	Civil Action No. 13-cv-982
v.)	
A CHICAGO CONVENTION CENTER, LLC, ANSHOO SETHI, and INTERCONTINENTAL REGIONAL CENTER TRUST OF CHICAGO, LLC)	Honorable Judge Amy J. St. Eve
Defendants.)	
<p>PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO DONG MEI XU'S MOTION TO INTERVENE</p> <p>Plaintiff Securities and Exchange Commission ("SEC") respectfully submits its Opposition to Dong Mei Xu's ("Xu's") Motion to Intervene (Dkt. #20, filed February 19, 2013).</p>		

Protecting the Integrity of the EB-5 Investment Market

Hotel Lawyers on EB-5 Issues

By Jim Butler and the Global Hospitality Group®
Hotel Lawyers, Authors of www.HotelLawBlog.com
12 March 2013

Last month, the EB-5 investment community was shocked by the SEC enforcement action against the Intercontinental Regional Center Trust of Chicago, alleging that the sale of \$145 million of EB-5 investments intended to be used to fund a huge convention center and hotel complex near Chicago O'Hare Airport, was a complete fraud.

This is an event that has the potential to threaten the integrity of the EB-5 investment market, which over the past two years has gained acceptance among mainstream hotel developers as an important source of alternative financing.

My partners, Catherine Holmes and Victor Shum, together with Angelique Brunner, a well-known EB-5 regional center operator, have offered their views on how the EB-5 investment market can be protected through prudent efforts on the part of regional center owners and developers.

Protecting the integrity of the EB-5 Investment Market Through the Adoption and Use of Due Diligence Best Practices

by Catherine Holmes, Victor Shum and Angelique Brunner

EB-5 stakeholders must act to protect the integrity of the EB-5 investment market in the wake of the SEC fraud complaint against the International Regional Center Trust of Chicago, LLC. The EB-5 immigrant investor program provides an important source of capital for investment in job-creating businesses in the United States, but in order to protect the market for these investments, the EB-5 community must demonstrate its commitment to the protection of EB-5 investors from fraudulent operators. The recent action by the Securities and Exchange Commission against the Intercontinental Regional Center Trust of Chicago, LLC, and its operator, Anshoo Sethi, have caused investors to question how many other EB-5 investments are being offered by unscrupulous operators making fraudulent statements in their offering documents and presentations. The best EB-5 regional centers already have estab-



lished practices that are based on the same standards as are used in U.S. securities offerings and are designed to prevent fraud by project developers using EB-5 financing. Those regional centers who have not already adopted these practices should make this a priority in order to assure EB-5 investors that the EB-5 investment market is based on the same principles of good faith and fair dealing as are the foundation of the U.S. securities markets. We would recommend that every regional center review its due diligence practices with counsel to verify their compliance with best practices.

U.S. securities markets have benefited from laws and regulations requiring issuers and underwriters to use reasonable due diligence to verify the accuracy of statements made in their offering documents, and similar practices should be used by all regional centers for every EB-5 project they promote. Individual investors in the U.S. securities markets rely on issuers and underwriters of U.S. securities offerings to make accurate statements

of fact and reasonable projections of future business. U.S. securities laws put the legal burden on issuers and underwriters to demonstrate that the statements made in securities offering documents are true and not misleading, and if they cannot meet that burden, issuers and underwriters may be held liable for damages caused by any material misrepresentations. These standards of accountability provide investors with assurance that issuers and underwriters will use their best efforts to verify statements of fact and determine the reasonableness of projections used by an issuer in a securities offering. In order to promote the integrity of the EB-5 investment market, we believe that all regional centers should adopt similar practices as are used in U.S. securities markets with respect to the preparation and use of offering documents. Regional centers should advise potential EB-5 investors of the practices they use to protect investors, so that investors can evaluate the strength of the EB-5 projects they invest in using information that has been verified by the regional centers.

Importance of Regional Centers

Regional centers are the “gatekeepers” to the EB-5 investment market, and they should be responsible for maintaining the integrity of the market. Regional centers have received the approval of the USCIS to sponsor EB-5 investment offerings, and over 95% of all EB-5 investment offerings are made through regional centers. There are typically no U.S. securities brokers involved in EB-5 offerings, because most EB-5 investments are sold to persons residing outside the U.S. under Securities and Exchange Commission Regulation S through foreign marketing or emigration agents. It is generally not feasible for foreign investors or agents to do their own due diligence investigations on EB-5 investment offerings for a number of reasons, including language differences, geographic distance, and differences in customs and methods of doing business between the United States and countries where EB-5 investors reside. Regional centers, on the other hand, are in a position to assess the truth of statements made by an issuer of EB-5 investments and the reasonable basis for the issuer’s business plan. In the case that the regional center is the issuer and author of such documents, then the regional center bears the

burden to offer proof to the market of its statements and projections. Regional centers generally participate in the preparation of offering documents for EB-5 investments, and review business plans of issuers. In addition, no EB-5 investment offering that includes indirect jobs as part of the job creation model can go forward without sponsorship of a regional center. Therefore, regional centers are the appropriate parties to be responsible for assuring that the projects they sponsor are being sold using truthful offering documents and reasonable business plans. Best practice is for the regional center to oversee or author the business plan and offering documents. In the case of overseeing the production of such documents the regional center would be responsible for checking the facts of all statements made in these documents.

Regional centers are not guarantors of EB-5 investments, but they should follow appropriate standards in sponsoring EB-5 investment offerings. Regional centers are not, and should not, be guarantors of every EB-5 offering they sponsor, because every EB-5 investment must be at risk in order to qualify investors for issuance of EB-5 visas, and because every commercial business by its nature has some risks that are appropriately undertaken by the investors in the business. However, every regional center should have a reasonable basis for determining that the material facts stated in the offering documents for every EB-5 offering they sponsor are true and not misleading, and that if EB-5 investors contribute their capital to a project, that project has a reasonable chance of being completed in accordance with its business plan described in the offering documents.

Best Practices

Regional centers should adopt due diligence practices similar to those used by issuers and underwriters in U.S. securities offerings. The underwriting standards applied by regional centers for project selection should not be



Map of Regional Centers in the U.S.

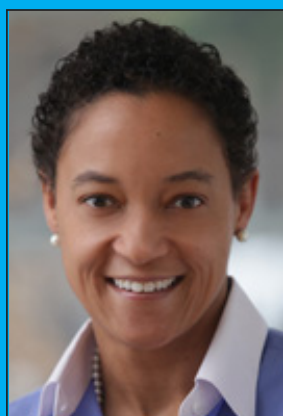
Catherine Holmes is a transaction and finance partner with JMBM's Global Hospitality Group® and Chinese Investment Group™ and specializes in resort and hotel purchase and sale transactions, resort and urban mixed-use financing and development, hotel management and franchise agreements, and hospitality asset workouts.



Victor Shum is a corporate and securities partner in JMBM's Global Hospitality Group® and Chinese Investment Group™. He has advised clients on EB-5 matters since 1999 and assists hotel developers on EB-5 financing as well as public and private securities, mergers and acquisitions, cross-border issues, and other strategic business transactions, including real estate transactions and intellectual property and technology licensing matters.



Angelique Brunner is president of EB5 Capital and an owner of the DC Regional Center. She has sourced and structured EB-5 projects since 2006 and proudly has a 100% approval rate on both the I-526 petition and I-829 petition. She focuses on hotel developments throughout the country and is a member of Marriott's Owner Diversity Program. She also serves on the Best Practices and Legislative committees for IIUSA, the national EB-5 trade association. Ms. Brunner has over 15 years of experience in finance and has placed over \$3 billion dollars of debt and equity into public and private projects.



dissimilar to those applied by banks or other funding sources. While every funding source assesses risk differently there are general principles of risk analysis that are applied based on the risk of investment. For example, a private equity investor will typically be willing to accept higher risks than a bank, as consideration for the higher rate of return expected by the private equity investor. EB-5 regional centers may price their funds independent of their place in the capital stack (independent of risk) but the standards of underwriting and evaluation should be similar to the institutional capital they are replacing. If the regional center is replacing bank debt, the due diligence standards used by the regional center should be similar to those used by a bank. If the regional center is replacing private equity, the due diligence standards should be similar to those used by a private equity provider. This is not to say that the cost of the capital should be the same as the capital being replaced, but that the level of due diligence applied by regional centers should be no less than any other financial investor in a project.

About Due Diligence

Due diligence means verifying factual statements in offering documents and determining that there are no other facts that should be stated so that the offering documents are not misleading. Verifying factual statements in an offering circular does not mean relying on questionnaires or conversations with project owners, it means asking for and obtaining documented evidence of factual statements, and having experts review projections used to determine project costs and future operating revenues and expenses in light of conditions in the specific industry in which the business will be conducted.

The methods for verifying factual statements in an offering circular are generally as follows: **(a)** to verify that a project developer has experience in the relevant business, ask for details of the background and experience of each of the key managers of the developer, including the names of their employers, dates of their employment, and details of the projects they have been involved with in the same industry as the project; **(b)** to verify that an issuer has one or more contracts that are material to the business, such as a hotel franchise agreement for a hotel project, ask for executed copies of all material contracts, and talk to the hotel franchisor to verify that the contract is in effect; **(c)** to verify that an issuer has received or will receive necessary government approvals for project plans, require the issuer to provide copies of the approved plans with evidence of approval from the appropriate governmental authorities; **(d)** to verify the value of contributed land, ask for copies of recent appraisals, or request your own appraisal from a third party of your selection, and require updated appraisals if they are

more than 12 months old or the market conditions have otherwise changed after the original appraisal was done; (e) to verify statements made about market conditions in a specific industry, ask for copies of the data that supports those statements; (f) to verify a project budget and timeline for construction of a project, hire a construction consultant familiar with type of construction being undertaken to review and provide comments on the project budget and timeline, and (g) to verify projections of future revenues and expenses, hire an expert consultant in the industry to review and provide comments on the projections. This is the same process as an underwriter of a U.S. securities offering, or a bank or commercial lender would undertake to conduct its own due diligence on a securities issuer or a borrower of a commercial loan, and which is typically paid for by the developer. Verification will often require engaging an impartial third party expert.

Have Documentation

Regional centers should document their due diligence process, the evidence they received to support factual statements and the analysis they used to determine the support for the issuer's project costs and projections of future revenues and expenses. In order to be effective, due diligence reviews must be documented in writing. There are various methods of documenting due diligence that could be used. One of those is to create an annotated copy of the private placement memorandum or other offering document, with footnotes that indicate the documents that verify every factual statement. Another method is to create a fact sheet that lists all material facts stated in the offering circular in one column, alongside another column that states the evidence that verified the statement. When an investor or marketing agent asks what due diligence was done to verify the facts stated and business plan presented, the regional center can provide a copy of the due diligence document to show the work it has done to support its due diligence. Proof of facts should be readily available in the regional center's due diligence files. While most centers will not allow such confidential information to travel or be emailed, the best centers will allow any investor or consultant to visit their offices and review the full due diligence files on any investment.

Regional centers should require the project developer to certify that the offering documents contain no misstatements before the offering documents are distributed. As part of any due diligence process related to an EB-5 offering, a regional center should require one or more senior officers of the project developer to certify that the EB-5 offering documents contain no material misstatements or omissions. The regional center might

ask for other third parties critical to a project to verify certain portions of an offering circular for which those third parties will be responsible. In this way, the regional center can document that it has involved the project developer and other important third parties in the due diligence process, and used reasonable efforts to assure that they have disclosed all material facts in the offering documents.

Regional centers affiliated with EB-5 investment issuers should consider a third party due diligence report. Since the purpose of due diligence is to demonstrate an independent review of the factual statements in an offering document and an independent analysis of the issuer's business plan, a regional center that is affiliated with the issuer will not be able to provide an independent review without bringing in a third party. We believe that it is important for the integrity of the EB-5 market that regional centers do bring in third parties to verify the statements made in offering

documents the regional centers prepare on their own behalf. The regional center could speed the process by preparing its own due diligence document that provides the supporting documentation and providing those

documents to the third party reviewer. The third party reviewer can then certify that it reviewed the materials and documents provided by the regional center and verified the accuracy of the statements made in the offering documents, using the same standards as regional centers which sponsor offerings for third party developers.

A regional center that acts as an administrator of EB-5 regulatory compliance but does not sponsor a specific offering should require the project sponsor to perform the same due diligence that the regional center would otherwise perform. From time to time, a regional center may agree to act as administrator for an offering in which the regional center is not itself involved as either project sponsor or in marketing the EB-5 offering. In that case, the regional center should require that the project sponsor conduct the same due diligence that the regional center would otherwise perform for a project that it sponsored on its own behalf, and provide a copy of a third party due diligence report that is obtained by the project sponsor.

“Regional centers should require the project developer to certify that the offering documents contain no misstatements before the offering documents are distributed.”

Con't on page 19

EB-5 Stakeholder Meeting Held in March

Remarks by Lincoln Stone

USCIS Ombudsman EB-5 Program Stakeholder Meeting
Washington, DC - March 5, 2013



Stakeholders require adjudication standards that are transparent and reasonable, leading to predictable outcomes. Such adjudication standards promote fairness and due process, and are critical to a regulatory environment that is essential to risk taking

by stakeholders in the private sector. As an obvious example, USCIS needs to implement a relevant and reliable project pre-approval process. The process would be relevant if it is timely, consistent with commercial requirements. The process would be reliable if the pre-approval is accorded deference and not easily disturbed by a later determination that there has been change of circumstances and/or legal deficiency.

Having practiced in the EB-5 space for 20 years, I am of the view that USCIS has not yet implemented suitable policies and adjudication standards that are true to the EB-5 statutory formula for attracting investment and promoting job creation. Appropriate policies and adjudication standards would consist of –

1 Transparent adjudication standards that are rooted in statutory law and are commercially reasonable,

2 Policies that recognize the private sector requires predictability and freedom from excessive government intrusion in order to engage in risk-taking commercial ventures, and

3 Oversight processes that are directed at weeding out bad actors with the aid of sister federal agencies as appropriate.

Adjudication standards and EB-5 program processes need to be reality tested: Are the standards and processes commercially feasible? Policy makers and program managers must inquire whether the requirements the agency imposes are sensible in light of commercial realities. If not, there is scant chance that the EB-5 program would realize its investment attraction and job creation objectives. In striving to give life to the statutory language, USCIS must be guided by the letter of statutory language and then must interpret that in light of standard business practices. ■

Lincoln Stone of Stone & Grzegorek LLP U.S. Immigration Law Firm in Los Angeles, CA is recognized by the State Bar of California Board of Legal Specialization as a Certified Specialist in Immigration and Nationality Law. He served for five years as chair of AILA's EB5 Investor Visa Committee, and is the Chair of AILA's EB5 Investor Visa Conference. He also serves on the AILA task force for immigrant entrepreneurs.



From: PublicAffairs, CIS Ombudsman [mailto:CIS Ombudsman.PublicAffairs@HQ.DHS.GOV]

Sent: Monday, January 28, 2013 10:29 AM

To: Undisclosed recipients:

Subject: CIS Ombudsman EB-5 Stakeholder Meeting March 5, 2013

The EB-5 Program Immigrant Investor Program

Tuesday, March 5, 2013

1:30 pm to 4:00 pm (Eastern)

Washington, D.C.

Citizenship and Immigration Services Ombudsman Maria Odom will convene an EB-5 Immigrant Investor Program stakeholder meeting in Washington, D.C. on **Tuesday, March 5, 2013** from **1:30 pm to 4:00 pm (Eastern)**.

USCIS has been working to reform the EB-5 program and plans to soon establish a new EB-5 adjudication unit in Washington, D.C. As the Ombudsman's Office continues to track progress with the EB-5 program, this is an ideal time for stakeholders to discuss ongoing issues with policies, procedures, and other matters.

Hotel Lawyers can't from page 17

Regional centers' due diligence obligations extend through the completion of the offering. It may take several months to receive subscriptions for an EB-5 offering, during which time it is possible that facts may change. For example, a construction project using EB-5 may be started before all of the EB-5 financing is raised, and changes may occur in the construction budget. In addition, there may be changes in financing status of a project, or other changes that may be deemed material that should be disclosed to investors. Regional centers should regularly communicate with project developers to ask about material changes in the project that may require further disclosure in the offering documents.

Building Credibility

Regional centers that implement appropriate due diligence practices will realize multiple benefits. Regional centers that conduct a thorough due diligence review will identify early in the process the weaknesses of a project. Some of those weaknesses may be corrected with early intervention, before a more serious problem develops that could jeopardize the successful comple-

tion of the project. Regional centers that perform and document their due diligence will be considered more reliable by non-U.S. investors and marketing agents, which could translate in greater market acceptance for their offerings than other regional centers which do not demonstrate adequate due diligence practices. A regional center which prepares strong documentation of its due diligence investigation will also have evidence available in the event something does go wrong with a project that was not related to misrepresentations in the offering documents, which the regional center can use to defend itself in the event of any claims brought by investors or other third parties related to the project. Most importantly, adoption of due diligence standards by regional centers will strengthen the integrity of the entire EB-5 market, which is necessary to assure that this market remains an important financing source for U.S. job-creating businesses.

We believe that all regional centers can and should follow the due diligence best practices outlined above, for the protection of all participants in the EB-5 market. ■

Use of Broker-Dealers in EB-5 Offerings

by Steven Felsenstein

From time-to time, the U.S. Securities and Exchange Commission decides to remind everyone about what is necessary to comply with a provision of the securities laws. A recent example of this occurred last week when the SEC announced a settlement (in the Matter of Ranieri Partners, LLC and Donald W. Phillips; File No. 15243; March 8, 2013) involving a cease and desist order and fines totaling almost a half a million dollars. In the simplest terms, the allegation in the SEC complaint is that an individual engaged in securities sales activities that require registration as, or association with, a registered broker-dealer without complying with those registration requirements, and that the principals of a private fund group for which that individual solicited investors permitted that violation and failed to supervise the individual.

These charges do not stake out new ground. Both the SEC and state securities administrators have consistently maintained that such registration, or association with a registrant, is required. They have always asserted a broad interpretation of the definitions of a “broker” or a “dealer.” The significance of this complaint and settlement is not that it establishes new law – the significance is that the SEC, by bringing this case, is refocusing attention in an area where it believes that there has been a failure of compliance with these requirements. This arises currently in two segments of the securities industry.

Private Funds Issue

One area is the sale of securities of “private funds.” These entities are exempt from registration under the Investment Company Act of 1940, but the sale of the interests in private funds generally involves the sale of securities. The registration of advisers to such funds that was enacted as part of the Dodd-Frank Act has enabled the SEC to obtain information regarding such funds at a level not previously seen, and as a result the SEC is now focusing on the fact that the offer and sale of securities of such funds has been conducted in many instances by unregistered people and entities. This can be particu-

larly troubling when the individuals are barred from or restricted as to their participation in securities activities, and then proceed without registration and supervision.

EB-5 Program Investments

The second area, of particular interest here, is a special sub-set of private funds and securities offerings involving investments in securities offered in connection with an EB-5 program. There is a significant concern that the means used to make the offers and sales of the securities involved in the program does not comply with federal (or state) securities laws. These programs generally require the offer and sale of securities, and far too often those compensated in connection with these transactions do not appear to be properly licensed or associated.

The message is clear – if you intend to offer or sell securities and receive compensation for your efforts, you must register as a broker-dealer or become associated with a registered firm. I expect that this case may be intended as a reminder, a “shot across the bow,” and that future cases will be likely, and are likely to seek stronger penalties. ■

Steven Felsenstein advises investment companies registered under the Investment Company Act of 1940, investment advisers registered under the Investment Advisers Act, and other administrators and service providers involved in the industry. Steven also represents broker-dealers and transfer agents registered under the Securities Exchange Act of 1934, and issuers of securities under the Securities Act of 1933. Steven represents clients in connection with administrative proceedings conducted by the SEC and FINRA, and participates in related actions.



In the News

Why is the U.S. Government Selling Green Cards?

by John Vogel
published by *US News*,
Feb. 22, 2013

ACCORDING TO A RECENT

story in the *New York Times*, “about six million people who have followed the rules and have been approved are waiting for green cards to be issued.” However, if you are from a wealthy family and have \$500,000 to invest, you can skip to the head of the line. At a time when Congress seems unable to agree about anything, this program, known as EB-5, was reauthorized in September 2012 in the House of Representatives by a vote of 412-3.

Both the EB-5 program and the process by which it evolved raise at least four troubling questions.

Question No. 1: Is the United States actually selling green cards?

Question No. 2: Is it in the best interest of the United States to give priority to wealthy foreigners?

Question No. 3: Are these prudent investments?

Question No. 4: Are there good alternative uses for the EB-5 money?

Here for the full article.



SEC Seeking to Modify Asset Freeze in Chicago Convention Center Project

THE U.S. SECURITIES AND

Exchange Commission (SEC) is seeking to modify the court’s asset freeze order to direct the escrow agent, Suntrust Bank, to return the escrowed funds to the investors who invested in the Chicago Convention Center. Approximately \$159 million from foreign investors was raised through false and misleading information concerning both the purported investment opportunity — an investment to construct the “World’s First Zero Carbon Emission Platinum LEED certified” hotel and conference center — and the prospect of gaining legal residency in the United States based on that investment. Through its motion, the SEC seeks to reverse some of the effects of defendants’ fraudulent scheme by promptly returning to investors over \$147 million that they invested in the scheme.

After conferring with representatives of SunTrust and representatives of various investors, counsel for the SEC has concluded that the most efficient and expeditious means of returning investors’ money is to simply reverse each investor’s original wire of funds to SunTrust.

The motion states that there appears to be near unanimous support for this approach. Before filing this motion, counsel for the

SEC shared a draft proposed order with proposed intervenors’ counsel and defendants’ counsel. Neither expressed any objection to the SEC’s proposed relief. Once an order is entered, SunTrust estimates that investor funds could be returned in a maximum of 60 days. As a result, investors will have the flexibility



to quickly re-invest their funds in another EB-5 venture if they so choose. Thus, under the SEC’s proposal, not only will investors recover 100% of their capital investment in Defendants’ scheme, investors will recover their investment in a manner that is entirely consistent with the bargain they struck. ■

As the world tries to absorb the significance of the Chicago

Convention Center, everybody and his brother has an idea. Yet the simple truth is there are lessons to be learned and actions to be taken immediately. These include:

Mr. Sethi: If an investor asks you to release his capital contribution, do so, but ask for a full release if nothing else to avoid more legal cost. Meanwhile, save what's left of your life and money (don't be deluded into thinking you can win, the SEC will take everything). Plead to a light verdict ASAP, serve the time, its only for half the sentence, and start another career outside of immigration. You're young and America loves contrition and repentance.

Investors: 1) Ask Sethi for the immediate release of your capital account; and if he doesn't; 2) ask Congress to have USCIS immediately issue a Notice of Intent to Deny. Do not respond to the NOID and upon its expiration and receipt of an I-797 Notice of Denial, go the escrow agent to get the release of your money. Both are your "get out of jail free" card, and you don't need a lawyer to make such a request.

Do the Right Thing

Lessons to be learned from CCC

Agents: Help your clients with the above and either refund or apply any fees paid by Sethi to your fee for a substitute project and a new petition refiling fee. Meanwhile, do yourself a favor, regardless of the commission, do some diligence to protect your client, much less yourself.

USCIS: If this wasn't enough to issue NOID's on your own, do so yesterday. Don't accidentally cause investor/petitioners to mistakenly hire lawyers (other than those that will work pro bono, ie "for free") to spend precious time and money chasing a blackhole of Sethi.

SEC: Thank you! This could have been much worst with investors losing their capital accounts. What they'll otherwise lose is inconsequential to the embarrassment of not doing their own diligence. BTW, Sethi may have been the big headline, but he ain't the only questionable apple in the barrel.

Lawyers: Turn off the sirens and flashing lights. You'll spend precious time and money of 250+ souls who have already been harmed. No need to run up the billable hours chasing a few dollars from those that are neither traceable or collectible.

【美国投资移民项目】芝加哥会议中心酒店

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Regional Centers: You can't regulate sin or penance. You're responsible for your own behavior as well as that of your project's sponsors; and oh yes, even your own neighbors. Don't be afraid to admit that this was NOT immigration fraud, it was securities fraud. Diligence is the only prescription to guard a redo. Meanwhile, be defensive and weed out the bad seeds. The fruits of your labors will prove far more fragrant and tasty while the taste of crow will never pass your lips.

Aged out petitioners: sorry dude, the law is clear, M&D took a risk. They bet on the wrong horse because they didn't read the stats. Hopefully your Daddy is rich and your Momma is good looking - such that they can afford to spot you the cash to refile on your own. The consequence is that the dream is still possible. But the lesson remains the same, short cuts usually fall into that age old category: "if it's too good to be true, it's not!"

And to all a good night and a good flight! ■

The writer of this letter asked to remain anonymous.

2013 AREAA Global Summit

The Asian Real Estate Association of America (AREAA) 2013 Global Summit will be held April 21-23 in Honolulu, Hawaii.

At the summit, you'll hear best practices for working with international buyers, build your understanding of global investment strategies, and learn from experts whose experience will help you market your business to investors in Asia and around the world. Explore emerging markets, hot new content on both residential and commercial real estate trends, and the latest distressed asset investment strategies. This year's Global Summit will include the current state of global housing markets and insider secrets on how to develop business relationships with international clients including an exclusive pre-conference session focused on the EB5 Visa Program and the CIPS designation.

Breakout sessions include topics such as "Leading Cities Around the World," "Global Technology Trends," "Building a Brokerage of the Future," and "How to Reach the Global Consumer." Click here for list. For a list of summit speakers, click here.



Asian Real Estate Association of America

Yamaguchi Luncheon Speaker

The Keynote Luncheon speaker will be Roy Yamaguchi with limited tickets available at \$95 per person. Reserve your ticket to this event by clicking here.

Roy Yamaguchi is notable for being the host of the cooking show Hawaii Cooks and appearing as Iron Chef Asian in the first American incarnation of the Japanese

television show Iron Chef, Iron Chef USA. Yamaguchi also owns the famous Roy's Hawaiian fusion restaurants across the country. Soon after the original Roy's opened in Honolulu, Food & Wine Magazine dubbed it the "crown jewel of Honolulu's East-West eateries," and it was named one of Condé Nast Traveler's "Top 50." Gourmet acknowledged Yamaguchi as "the father of modern East-West cooking" while the New York Times described him as "the Wolfgang Puck of the Pacific." ■

