

Immigrant Investor Program Raises SEC Broker Registration Issues

September 16, 2014

The Immigrant Investor Program (also known as EB-5) was created in 1990 to stimulate the U.S. economy by allowing foreign investors to qualify for U.S. residency by investing in new commercial enterprises that create jobs for U.S. workers. Because of the recent growth in the program and the fact that offers to invest in such enterprises are likely securities offerings, the SEC has taken an interest in the application of the Federal securities laws to the EB-5 program. One such area receiving SEC attention is whether a "finder," who is typically used to help facilitate the foreign investment, is required to be registered as a broker under the securities laws. A broker is defined as someone engaged in the business of effecting securities transactions for the accounts of others. The Exchange Act of 1934 requires a person acting as a broker to register with the SEC. **Although there is not a precise litmus test for the exact activities that qualify as a broker, a finder who solicits investors or receives transaction-based compensation, among other activities, would likely be required to register with the SEC.** An individual may be exempt from broker registration depending on, for example, where the activity necessitating registration takes place and the individual's compensation arrangements. The SEC does not have jurisdiction over any activity occurring exclusively outside of the U.S. Moreover, certain employees of the commercial enterprise who do not receive transaction-based compensation may be able to avoid registration. Finally, some courts have carved out a limited exception for individuals whose only activity is to pass along contact information of potential purchasers of securities. A finder engaging in broker activity without first registering with the SEC could lead to rescission rights of the foreign investor, including damages under state and federal law, as well as the loss of the securities exemption needed to engage in the initial offering without registering the securities. For these reasons, the SEC has publicly urged EB-5 participants engaging finders to seek counsel on how the broker registration requirements and other securities laws and exemptions apply to the EB-5 program.

Related Practices

Securities Litigation and Enforcement

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.