

SEC Charges EB-5 Brokers For Not Registering

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Multiple firms involved in the solicitation of investment capital for the Immigrant Investor Program (also known as "EB-5") have recently been charged by the SEC with acting as unregistered brokers. Neither *In re Ireeco, LLC*, nor *SEC v. Luca Int'l Group, LLC*, the first cases of this type, comes as a complete surprise (see "Immigrant Investor Program Raises SEC Broker Registration Issues" in the Summer 2014 *Expect Focus*). The EB-5 program allows foreign investors to qualify for U.S. residency by investing in new commercial enterprises that create U.S. jobs. Because these investments frequently take the form of securities, firms that receive fees for facilitating the transactions may be required to register as brokers under the Securities Exchange Act of 1934. In a recent press release, the SEC stated that it will "vigorously enforce compliance" with the broker registration requirements in the EB-5 area. Moreover, **FINRA's 2015 Regulatory and Examination Priorities Letter raised concerns about the adequacy of the due diligence and suitability analysis performed by some FINRA members that are involved in EB-5 private placement offerings.** Given the increased attention from the SEC and FINRA, firms operating as EB-5 brokers should carefully examine the state of their compliance with all applicable federal securities law requirements.

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