

SEC Sanctions Unregistered EB-5 Investments Broker

June 30, 2016

We previously warned that some individuals involved with arranging EB-5 investments may be required to register as broker-dealers (*see* "Immigrant Investor Program Raises SEC Broker Registration Issues" in the Summer 2014 *Expect Focus* and "SEC Charges EB-5 Brokers for Not Registering" in the Summer 2015 *Expect Focus*). Now, an SEC administrative law judge has ordered Ireeco LLC and its Hong Kong-based parent to disgorge \$3.2 million in referral fees received in connection with EB-5 investments. This is the first sanction the SEC has imposed for failing to register as a broker-dealer in such circumstances. Importantly, the judge declined the SEC Enforcement Division's request to impose civil penalties in addition to the disgorgement, stating that Ireeco had not deliberately or recklessly disregarded a regulatory requirement. The decision emphasized that, until the SEC charged Ireeco last summer, no firm or individual had been charged with failure to register as a broker-dealer in connection with EB-5 investments. The decision also noted:

- Ireeco had not engaged in fraud, deceit, or manipulation;
- There was no evidence that the violations caused harm or injury to any investor; and
- Ireeco is insolvent and therefore unlikely to pay either the disgorgement or any additional civil penalty.

This decision is a clear warning that, going forward, parties who engage in broker activities in connection with EB-5 investments without first registering as broker-dealers are likely to face sanctions beyond mere disgorgement, especially if, unlike Ireeco, they are solvent and able to pay. The decision also warns that, although fraud or harm to investors are not prerequisites to severe sanctions, they will probably be considered exacerbating factors.

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