



June 13, 2013

# Executive Summary

## USCIS EB-5 Engagement with the Securities and Exchange Commission (SEC)

### Overview

On April 3, 2013, U.S. Citizenship and Immigration Services (USCIS) hosted a stakeholder teleconference featuring staff from the Securities and Exchange Commission (SEC) to discuss the [EB-5 Immigrant Investor](#) program. During the engagement, subject matter experts from the SEC's divisions of Corporation Finance, Trading and Markets, Investment Management, and Enforcement discussed securities law compliance in the context of EB-5 regional centers and investments. The SEC provided an overview of registration requirements under the various federal securities laws. These include, but are not limited to: an obligation under certain circumstances to register the securities for offer or sale under the Securities Act of 1933 (Securities Act); the broker registration of persons effecting transactions in securities under the Securities Exchange Act of 1934 (Securities Exchange Act); the registration of persons or entities offering investment advice under the Investment Advisers Act of 1940 (Investment Advisers Act); or the registration of persons or entities that offer investment products to the public under the Investment Company Act of 1940 (Investment Company Act). Throughout the engagement, the SEC also indicated that it largely focuses on the anti-fraud provisions within the law. General information provided during the call is outlined below as well as useful resources for additional guidance.

### Corporation Finance

The SEC stated that the definition of a "security" is broad and that EB-5 investments likely include the offering of securities that would require either registration or exemption from the registration requirements under the Securities Act. The SEC stressed that, while there are registration exemptions that may be available to the EB-5 community, all anti-fraud provisions still remain applicable to even those exempt offerings. The links below provide additional information on the registration requirements, exemptions, and regulations under the Securities Act:

- Securities Act registration requirements and exemptions:  
<http://www.sec.gov/info/smallbus/qasbsec.htm>
- Offshore securities offerings, including under Regulation S:  
<http://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#IVB>

In addition, the SEC noted that while the JOBS Act requires the SEC to eliminate the prohibition on the use of general solicitation in certain limited instances, these rule changes are not yet in effect and therefore the prohibitions are still in force.

## Trading and Markets

The SEC provided guidance on the definition of a broker-dealer, as well as the types of activities that trigger the broker-dealer registration requirements (including soliciting or advertising investments and receipt of transaction-based compensation). The SEC highlighted the serious consequences of failure to register as a broker-dealer including civil and criminal liability, bars on future involvement in the securities industry, and possible rescission of the securities sold through the unregistered broker. Additional information regarding the broker-dealer registration requirements and their limited exemptions can be found in the broker-dealer registration guide: <http://www.sec.gov/divisions/marketreg/bdguide.htm>.

## Investment Management

EB-5 regional centers and associated entities, as well as their respective principals, may be subject to the requirements of the Investment Advisers Act and Investment Company Act. The SEC indicated that some individuals or entities may not have to register as either an Investment Adviser or as an Investment Company under these acts if they qualify for certain limited exemptions. To learn more about these acts and their respective registration requirements and exemptions, please visit:

- Investment Advisers Act: [http://www.sec.gov/about/offices/oia/oia\\_investman/rplaze-042012.pdf](http://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf)
- Investment Company Act: <http://www.sec.gov/divisions/investment/invcoreg121504.htm>

## Enforcement

The Division of Enforcement emphasized that an EB-5 project may likely include securities offerings that are subject to the various securities laws. As an example of its enforcement action, the SEC referenced a recent complaint it filed in U.S. District Court in the Northern District of Illinois in February 2013 alleging that an individual and companies participating in the EB-5 program engaged in fraud. USCIS worked closely with the SEC in its investigation of that case.

## Stakeholder Questions

At the end of the teleconference, USCIS invited stakeholders to ask questions of the SEC representatives. In addition to responding to these questions, the SEC encouraged participants to retain competent securities counsel to review its website at <http://www.sec.gov/> for additional information regarding the various federal securities acts, relevant exemptions thereunder, as well as information regarding the SEC's interpretation of the securities laws.