U.S. Security Law Compliance for EB-5 Offerings

Background and Guidelines for EB-5 Professionals

Carofin's
EB-5 Series
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Carofin has prepared this material so that participants in EB-5 financings (EB-5 Regional Centers, immigration attorneys, project sponsors, and potential EB-5 investors) can better understand and comply with U.S. securities laws when determining whether they should engage a FINRA-registered broker-dealer to support their EB-5 financing.

BACKGROUND

The U.S. EB-5 program (**"EB-5"**) has been in effect since 1992, and, as a result of this important program, billions of dollars of investments have been made in companies and projects throughout America by non-U.S. persons.

However, many professionals in the EB-5 community have questioned whether EB-5 financings must fully conform to the regulatory requirements for selling securities in the U.S.

Some have argued that standard securities laws and regulations are not applicable because:

- EB-5 transactions are part of an immigration program, not just a financing;
- EB-5 investments are sold primarily to non-U.S. persons outside the U.S. and, therefore, outside U.S. regulatory jurisdiction; and
- EB-5 program management is conducted by the United States Citizenship and Immigration Services (**"USCIS"**), so the SEC doesn't have jurisdiction in the manner that they would for the same transaction outside the program.

Based upon recent EB-5 legislation by the U.S. Congress and numerous EB-5-related enforcement actions by the Securities and Exchange Commission (**"SEC"**) and the Financial Industry Regulatory Authority (**"FINRA"**), this viewpoint is clearly incorrect.

EB-5 financings involve the issuance of securities that are subject to the same regulatory requirements, both federal and state, as all other securities offerings in the U.S. [1] There is no special treatment for the securities offered through EB-5 financings.

[1] United States Securities and Exchange Commission v. Feng. 935 F.3d 721, 725 (9th Cir. 2019).

Emphasizing this point, the EB-5 Reform and Integrity Act of 2022 (the "RIA") states repeatedly throughout the statute that EB-5 financings must comply with federal as well as state securities laws. (see Sections 2(b)(E)(iii)(II)(aa), 2(b)(F)(i)(V), 2(b)(I)(i)(I), etc.).

Furthermore, for over 15 years, the SEC and FINRA each have repeatedly and consistently imposed enforcement actions that have been upheld in courts against organizations and persons engaged in non-compliant EB-5 financings.

SUMMARY GUIDELINES

- EB-5 financings involve the issuance of securities and, as such, are subject to federal and state regulatory compliance.[2]

- To be exempt from public registration with the SEC, an EB-5 offering within the U.S. should be conducted with a "manner of offering" following SEC Regulation D, Rule 506, the SEC's private placement "safe harbor" provisions.

- The process of originating securities (setting the security's terms, Issuer due diligence, offering document preparation) for an EB-5 financing within the U.S. should involve a FINRA-registered broker-dealer (BD) assigning investment banking professionals to the transaction who have passed either a Series 79 or Series 82 exam or, to the extent that the offering involves only a direct participation program, individuals with a Series 39 and/or 22 FINRA license.

- EB-5 offerings involving solicitations exclusively outside the U.S. by non-U.S. brokers can rely on Regulation S, while EB-5 offerings involving accredited investors temporarily present in the U.S. can rely on Regulation D.

- If there is any form of solicitation to, or resulting investment by, a person located in the U.S., a U.S. broker-dealer must sponsor the EB-5 financing, except in special circumstances.

[2] SEC Charges Unregistered Sales of Securities Issued under EB-5 Immigrant Investor Program, Sept. 21, 2018

Below readers will find the legal and regulatory background for these Summary Guidelines. The analysis is organized in four sections:

I. **Is an EB-5 investment a Security?** – What are securities, and how are they regulated in the U.S.?

II. **Securities Offerings Management** – The role of FINRA and broker-dealers

III. **EB-5 Investment Origination** – "Reasonable Basis," BD considerations

IV. **EB-5 Investor Solicitation** – Solicitation scenarios, broker-dealer considerations

The following is not a comprehensive analysis, nor is it solely adequate to review all securities compliance considerations for a given EB-5 financing.

Therefore, legal counsel with expertise in U.S. securities law should be retained by the EB-5 financing sponsors to review the specific circumstances of each financing, its offering materials, and its solicitation process.

I. Is an EB-5 Investment a Security?

What is a Security?

A security is a form of financial asset held by an investor. Securities are "issued" by legal entities, such as corporations (an **"Issuer"**), to raise capital through purchases by investors generally expecting to profit from the exchange.

Legal precedent, with a comprehensive analysis, is found in the "Howey Test," first established by the United States Supreme Court in 1946.[3] In 2017, the Howey Test was applied specifically to an EB-5-related enforcement action in the Feng Case,[4] where the respondents unsuccessfully argued to the SEC and, in turn, a federal court that the interests offered by such respondents were not securities because the EB-5 investors did not have an expectation of profits, one of the requirements of the Howey Test.

Examples of securities include any proof of ownership (equity) or indebtedness (loans, often in the form of promissory notes) that have been assigned a monetary value.

The U.S. securities laws broadly include promissory notes (**"Notes"**) under the definition. Generally, it is safe to assume that the activity falls under U.S. securities laws if a business or project borrows from non-bank third parties.

EB-5 Conclusion – EB-5 financings involve the sale of securities, whether the EB-5 investment is in the form of debt or equity.

Securities Registration with the SEC and Private Placement Exemptions

EB-5 Question – Since EB-5 financings involve the sale of securities, which securities laws and regulations are most important for EB-5 financing?

[3] SEC v. W.J. Howey Co., 328 U.S. 293 (1946)

[4] United States Securities and Exchange Commission v. Feng. 935 F.3d 721, 725 (9th Cir. 2019).

The Securities Act of 1933[5] (the "**Securities Act**") is the foundational law governing all securities-related activity in the U.S. by the federal government. It requires that every security offering transacted in the U.S. must be registered with the SEC[6] unless it qualifies for an exemption from registration. Therefore, the "manner of offering" for securities (how they are offered to investors for their investment consideration) is of paramount importance in any securities compliance legal analysis.

A financing "not involving a public offering"[7] is exempt from registration and referred to as a "**Private Placement**," with Regulation D [8] establishing certain "safe harbors" to ensure compliance with Section 4(a)(2) of the Securities Act.[9]

Securities issuances are also governed by the state securities laws in each state where the security is sold or where the recipient of the funds resides. These laws are known as "**Blue Sky**" laws, and, while they are generally consistent with federal securities laws and are, for the most part, comparable from state to state, they must also be taken into consideration when conducting private placements.

EB-5 Conclusion – To avoid public security registration requirements of the SEC and also comply with applicable state securities regulations, an EB-5 offering must be conducted in accordance with the private placement regulations of both the SEC and the applicable states.

SEC Regulation D – Most private placements conducted by companies (whether in the form of a C Corporation, LLC, or an S Corporation) follow one of the Rules within Regulation D ("**Reg D**"), usually either Rule 506(b) or Rule 506(c) (see below).

Reg D was established by the SEC in the 1980s to define a regulatorily acceptable manner of offering securities privately – again, a "safe harbor" for issuers to follow. According to the SEC, Rule 506 is by far the most widely used exemption within Reg D, accounting for an estimated 90 to 95% of all Reg D offerings and the overwhelming majority of capital raised through private placements in the U.S...

[5] 15 U.S.C. § 77b.

[6] 15 U.S.C. § 77b(5)

[7] 15 U.S.C. § 77b(4)(a)(2)

[8] 17 C.F.R. §230.500 et seq.

[9] 17 C.F.R. §§ 230.504 - 506

Unlike securities offered through a public registration process, private placement offering documents are not filed with the SEC, and, since these Private Placement Memorandums ("**PPM's**") are not subject to SEC review before sales are made, there is an increased chance for fraud, which, unfortunately, is well-documented in the EB-5 industry.[10]

As further described herein, registered broker-dealers have due diligence obligations (FINRA Rule 2111) that benefit investors in EB-5 financing programs. BDs are required to explore and disclose the critical assumptions as well as investment risks associated with every security they sell.

Accredited Investors – For sales to individual investors in the U.S., including those participating as U.S. resident EB-5 investors, qualification under certain **"Accredited Investor"** definitions (Reg D Rule 501) is very important. While one can satisfy the Accredited Investor definition through a multitude of ways, most individuals qualify for a Reg D offering through one of two personal financial standards.

They must satisfy at least one of the following:

- A person with an individual net worth, or joint net worth with his or her own spouse, excluding the value of his, her, or their primary residence, exceeding $1,000,000; or

- A person who had an individual income of more than $200,000 in each of the two most recent calendar years or joint income with his or her spouse in excess of $300,000 in each of the two most recent calendar years and who reasonably expects to reach the same income level in the current calendar year.

Importantly, those conducting EB-5 offerings must also be sensitive to situations where an EB-5 investor candidate, such as the child of a wealthy family, may not be accredited individually (e.g., international students themselves often are unlikely to meet the financial criteria identified above) but can meet other accreditation categories, such as being the beneficiary of a trust holding a certain amount of investments or one that has a trustee that is accredited. Wealthy families now also can claim that their otherwise non-accredited children comply under the new **"Family Client"** Accredited Investor definition that was added in 2020.[11]

[10] Investor Alert: Investment Scams Explooit Immigrant Investor Progam, Oct. 1, 2013

[11] SEC Modernizes the Accredited Investor Definition, Aug. 26th, 2020.

Primary Forms of Rule 506 Offerings

Rule 506(b) – Discrete solicitations only (no public advertising)

Rule 506(b) has been in effect for many years. It enables Issuers to raise an unlimited amount of capital so long as:

- The Securities are not offered in a general solicitation or through public advertising;
- Investors self-verify as being an Accredited Investor;
- No more than 35 non-Accredited Investors participate in the Offering (however, the Issuer opens itself to the same disclosure requirements as a Regulation A offering, which may include the need for audited financials);
- Solicitations under Rule 506(b) are only made to persons with whom the Issuer or their broker-dealer has a substantive, pre-existing relationship.[12]

Rule 506(c) – General solicitations acceptable (e.g., public advertising)

Rule 506(c) Offerings, which also enable Issuers to raise an unlimited amount of capital, became effective on September 23, 2013 (as a result of Title II of the JOBS Act of 2012).[13]

This Rule allows Issuers to broadly solicit and publicly advertise an offering, providing that:

- All investors in the offering are Accredited Investors;
- The Issuer takes reasonable steps to independently verify each investor's Accredited Investor status, unlike under Rule 506(b), where an investor "checking the box" in subscription documents is often sufficient.

[12] While not the exclusive method of ensuring that a "General Solicitation" has not occurred, establishing such substantive, pre-existing relationship has been the only method explicitly recognized by the SEC as not rising to the level of a general solicitation. See SEC's Education Material on General Solicitation.

[13] Jumpstart Our Business Startups (JOBS) Act Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified at 15 U.S.C. §§ 77-78 (2012))

EB-5 Conclusion – EB-5 offerings should adhere to the guidelines for private placements established by the SEC following either Rule 506(b) or Rule 506(c) to avoid SEC public registration requirements for the security.

IMPORTANTLY – A primary purpose of the Securities Act is to ensure that every securities offering is fair to investors and, in particular, that disclosures made to investors by Issuers are both accurate and complete.

As a result, all securities transactions, including all private placements, are subject to the anti-fraud provisions of the federal Securities laws, which prohibit false or misleading statements regarding the Company and the securities offered or which omit important details regarding the offering and its associated risks. Criminal, civil, and administrative proceedings can be initiated by the U.S. government as well as by investors associated with a given transaction.

II. Securities Offering Management

The Role of FINRA and Broker-Dealers

While the Securities Act established a foundation for securities issuance regulation in the United States, the Securities Act of 1934 (the "**Exchange Act**") originated the regulatory framework for this regulation and, very importantly, the creation of the SEC.

The Exchange Act also instituted a securities industry self-regulatory structure to oversee "broker-dealers" ("**BDs**"). This self-regulatory organization is the Financial Industry Regulatory Authority, commonly called FINRA, and it reports to the SEC.

What is a Broker-Dealer?

As defined in the Exchange Act, a BD is "any person engaged in the business of effecting transactions in securities for the account of others." [14]

The definition goes on to specify three activities. The broker-dealer must be (1) engaged in the business (2) of effecting transactions in securities (3) for the account of others. In practical terms, these activities mean:

1. "Engaged in the business" if it (the brokerage firm) conducts securities transactions on a regular basis, and the compensation for such activities is significant;

2. "Effecting transactions in securities" when, among other actions, it is structuring an investment, helping identify potential Investors, soliciting investors, negotiating between Issuer and investor, and executing the investment; and

3. "Doing so for the account of others" means that it is effecting transactions not for its own account but on others' behalf.

[14] U.S.C. § 78c(a)(4)

Broker-Dealer Oversight by FINRA

Broker-dealers must be approved by FINRA to become "**Member**" firms of FINRA. Ongoing FINRA compliance by broker-dealers includes a long list of items, including periodic inspections, investigations, and disciplinary actions, compliance with minimum net capital requirements, customer protection rules, financial reporting requirements, and others. These standards are continually updated to reflect the evolution of the financial markets.

Broker-dealers are directly subject to anti-fraud, anti-manipulation, and anti-money laundering provisions of the federal Securities laws. Other requirements involve Insider Trading and extending credit to customers.

Individuals working at Member firms and who are involved in banking and sales activities must become **"Registered Representatives."** This requires a comprehensive personal background search and passing examinations specific to their role at the Member firm. The Series 79 exam is required for investment banking, and the Series 7 exam is required for security sales. Alternatively, the Series 82 enables the professional to engage both in sales and banking activities, but only in private placements. Registered Representatives must also maintain their annual continuing education status with FINRA via their Member firm.

The public can review the regulatory history of each BD and those of its Registered Representatives using BrokerCheck (brokercheck.finra.org). Through this internet site, one can find a Registered Representative's employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments, and arbitration awards, if any.

State Regulatory Oversight

In addition to the federal regulatory system, BDs are also subject to state Securities laws, known as the Blue Sky Laws, which often follow the Uniform Securities Act of 1956 or 2022. The Uniform Securities Act makes it unlawful for any person to transact business in a state as a broker-dealer or agent without registration.

III. EB-5 Investment Origination

"Reasonable Basis" and Broker-Dealer considerations

EB-5 Questions – Is a broker-dealer needed to originate an EB-5 security that is being sold to investors in the U.S., and, if so, what BD qualifications are needed?

Securities compliance starts with the creation of the investment opportunity, principally, setting the security's terms, completing of a due diligence process to affirm representations made by the Issuer, and creating offering materials that include all pertinent risk factors for the investment.

Within broker-dealers, this is an "investment banking" function, as opposed to the "sales" function that is more commonly associated with BDs. As indicated above, FINRA has established specific examinations for those Registered Representatives engaged in investment banking functions to better ensure that they are qualified to originate securities.

To clarify two terms:

- **Origination** – The activities by or on behalf of the Issuers of a security then to offer this investment to investors. These include the steps taken in setting the terms of the security, conducting due diligence, and identifying the disclosures (including risk factors) to be made by the offering materials used to sell the security.

- **Due diligence** – Investigating all aspects of the Issuer and the security being offered. This includes independently evaluating whether the statements in the Offering Documents are complete, consistent, and accurate, with no material fact omitted.

U.S. Investor Suitability & Best Interest Requirements

As noted above, under U.S. securities regulations, to be eligible to invest in Reg D private investments, investors must meet specific Accredited Investor standards, as was addressed earlier.

Broker-dealers also are required by FINRA Rule 2111 to determine whether the investment is "suitable" for the investors being solicited. Rule 2111 lists the three main suitability obligations for broker-dealers and their associated persons.

- **Reasonable-basis suitability** requires a BD to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. Reasonable diligence must provide the broker-dealer with an understanding of the potential risks and rewards of the recommended security or strategy.

- **Customer-specific suitability** requires that a broker-dealer, based on a particular customer's investment profile, has a reasonable basis to believe that the recommendation is suitable for that customer. The BD must attempt to obtain and analyze a broad array of factors specific to that customer to support this determination.

- **Quantitative suitability** requires a BD with actual or de facto control over a customer's account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, is not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.

In 2019 the SEC heightened the BD requirements by adopting Regulation Best Interest,[15] which retains the same Reasonable Basis, Customer-specific, and qualitative categories, but also requires that a broker-dealer's investment recommendation is not just "suitable" in each of these categories, but also is in the investor's best interest.

EB-5 Conclusion – An EB-5 security that is sold to investors in the U.S. involves the creation of a security requiring a due diligence process and the preparation of offering materials disclosing all pertinent risk factors associated with the offering. Therefore, a Registered Representative of a broker-dealer holding either a Series 79 or a Series 82 registration is required to support the origination process (A Series 39 qualification may be sufficient for direct investment programs.).

[15] 17 C.F.R. § 240.15l-1.

IV. EB-5 Investor Solicitations

Solicitation Scenarios and Broker-Dealer Considerations

EB-5 Question – When is a broker-dealer required to support sales of EB-5-related securities?

Regulation S – Defines when an offering of securities is deemed to be executed entirely outside the U.S. and, therefore, is not subject to the registration requirement under Section 5 of the Securities Act.

Regulation S requires that offers and sales of the securities be made outside the United States and that no offering participant (including the Issuer, the banks assisting with the offer, and their respective affiliates) engage in "directed selling efforts." In the case of Issuers whose securities have substantial U.S. market interest, the regulation also requires that no offers and sales be made to U.S. persons (including U.S. persons physically located outside the United States).

Over the years, most EB-5 sales have been made to non-U.S. investors by non-U.S. brokers with U.S. Issuers relying upon Regulation S[16] for securities law compliance. If Regulation S is strictly adhered to, a broker-dealer isn't needed.

However, EB-5 offshore solicitation scenarios also commonly involve U.S. sales and investment activities where Regulation S is not applicable for compliance, and a U.S. broker may be able to assist with identifying another exemption from registration.

"Issuer Exemption" from using a broker-dealer – The "Issuer Exemption" [17] (Rule 3A-4 of the Securities Act) is available as a way to raise capital directly from U.S. investors without using a BD. And some EB-5 Regional Centers have claimed this exemption as the basis for not using a BD to fund New Commercial Enterprises (NCE's) where they are the general partner or manager.

This exemption is unavailable to Regional Centers if they are funding more than one NCE in a 12-month period.

[16] 17 C.F.R. § 230.903

[17] 17 C.F.R. § 240.3a401

In the first place, Issuer Exemption is a misnomer in that compliance under this exemption hinges upon an analysis of the role of the persons involved in the securities sales, the "**Natural Person**," not the Issuer. The Natural Person designation under this exemption is available only to associated persons of Issuers who:

- Are not subject to statutory disqualification, for example, as a "bad actor"
- Are not compensated in connection with their participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities
- Meet **either one** of the indicia set forth in the paragraphs below:

(a) Meets each of the following conditions:

1. The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the Issuer otherwise than in connection with transactions in securities;

2. The associated person was not registered with a BD in the last 12 months; and

3. The associated person does not participate in selling an offering of securities for any Issuer more than once every 12 months.

OR

(b) The associated person restricts his participation to any one or more of the following activities:

1. Preparing any written communication or delivering such communication through means that does not involve oral solicitation, provided that the content of such communication is approved by a partner, officer, or director of the Issuer;

2. Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser, provided that the content of such responses is limited to information contained in a registration statement; or

3. Performing ministerial and clerical work involved in effecting any transaction.

The Issuer Exemption is a "safe harbor": no "presumption shall arise" that a person is violating the BD registration requirements solely because they don't meet the requirements of the Issuer Exemption.

In sum, while the Issuer Exemption may be claimed by natural persons soliciting investment on behalf of a Regional Center, the Issuer Exemption is not available to the Regional Center itself.

V. EB-5 Solicitation Scenarios and Broker-Dealer Involvement

Broadly speaking, the following scenarios are most likely to arise in EB-5 financings:

- **Offshore-only selling with U.S. investment activity** – While outside of U.S. "broker-dealer" activity, EB-5 financing sponsors are still required to ensure that applicable securities regulations in the country where the solicitation occurs are satisfied and that the anti-fraud requirements of U.S. securities laws are observed.

- **Cross-border selling (from offshore to the U.S.)** – Either the offshore agent must be registered with FINRA or, under SEC Rule 15a-6,[18] the investor in the security must have an account at a BD, though there are case-specific exceptions.

- **U.S.-based solicitations** – If a security is sold in the U.S., it is highly likely that a BD must be involved, given the very limited exclusions for not doing so.

Whether a BD must be involved in an EB-5 financing, therefore, is highly dependent on the specifics of the offshore/onshore solicitation interaction between the offshore agent and either an offshore or U.S.-domiciled investor.

[18] 17 C.F.R. § 240.15a-6

EB-5 Solicitation Scenarios – Is a Broker-Dealer Needed?

Scenario #1

Offshore-only solicitation by a non-U.S. agent to an offshore-domiciled person.

Example – An offshore broker or dealer solicits an EB-5 investment from an offshore investor for the purpose of the offshore investor gaining EB-5 eligibility.

SEC Consideration – Regulation S could provide a "safe harbor" to avoid the registration of the securities by the EB-5 Issuer. As the EB-5 securities are still offered by a United States Issuer, anti-fraud and registration requirements still apply.

Broker-dealer involvement? – No, as all solicitation activity occurs offshore.

Scenario #2

Offshore-only solicitation by a non-U.S. agent to an offshore domiciled person, but the EB-5 investment is made by another person resident in the U.S.

Example – An offshore broker-dealer solicits the investment of a wealthy offshore family in an EB-5 project so that their child, currently in the U.S. on a temporary work visa, can gain EB-5 eligibility. The funds necessary for the investment are gifted to the child present in the United States, who makes the investment.

SEC Consideration – Per SEC Rule 15a-6, the investment by the child in the EB-5 security must go through a U.S. broker-dealer acting as agent for the child,[19] unless the foreign solicitor has a bona fide, pre-existing relationship with the child.[20] For an exemption from registration, the Issuer can rely on Regulation S for the offshore solicitations, while the onshore investments are made pursuant to Regulation D.

Broker-dealer involvement? – Yes, working closely with the non-U.S. agent.

[19] 17 C.F.R. § 240.15a-6(a)(4)(i)

[20] 17 C.F.R. § 240.15a-6(a)(4)(iii)

EB-5 Solicitation Scenarios – Is a Broker-Dealer Needed?

Scenario #3

U.S. solicitation by a non-U.S. agent to a person resident in the U.S.

Example – A foreign broker-dealer solicits EB-5 investment of an individual resident in the U.S. on a temporary work visa.

SEC Consideration – If the foreign broker-dealer has a bona fide, pre-existing relationship with the temporary worker, it would be exempt from broker-dealer registration in the U.S. by virtue of Rule 15a-6.[21] However, if such a relationship does not exist, the investment must be transacted through a U.S. registered broker-dealer acting as an agent for the temporary worker.[22]

U.S. broker-dealer involvement? – Yes, working closely with the non-U.S. agent.

Scenario #4

U.S. solicitation by an agent located in the U.S. to a person resident in the U.S.

Example – The employee of a Regional Center (RC) solicits an investment in an EB-5 security from a temporary worker in the U.S (eg., an H1-B Visa holder). The RC employee receives commissions for EB-5 security sales or is compensated otherwise but solicits investments in more than one NCE every 12 months.

SEC Consideration – The individual making these solicitations is likely to run afoul of the broker-dealer registration requirements of the Exchange Act, as they (1) are engaged in the business (i.e., a Regional Center is in the business of sponsoring EB-5 projects) (2) of effecting transactions in securities (i.e., the Regional Center's EB-5 projects are funded through the sales of the securities) (3) for the account of others (i.e., the EB-5 investor is purchasing the securities), and (4) the Issuer Exemption is unavailable because this individual is either (x) receiving commissions for the sales of the EB-5 securities, or (y) is soliciting investments for more than one NCE in any twelve-month period.

Broker-dealer involvement? – Yes, it's important that a BD is involved. Failure to do so could result, at a minimum, in a recission order by the regulatory authorities that would mandate the return of the investment proceeds to the investor, and, potentially, civil or criminal prosecution by the SEC of the EB-5 financing's sponsors.

[21] 17 C.F.R. § 240.15a-6(a)(4)(iii)

[22] 17 C.F.R. § 240.15a-6(a)(4)(i)

Applicable SEC, FINRA, and Other Notes

Interpretations / Guidance and Actions

FINRA Interpretations / Guidance:

- August 26, 2013 – Interpretive Letter to Brian Sweeney, Trustmont Financial Group, Inc.
- May 2023 – Regulatory Notice 23-08 – FINRA Reminds Members of Their Obligations When Selling Private Placements
  - Footnote 13 references EB-5 programs as part of the Reg Notice – Other legislative actions designed to encourage business development through capital formation led to the creation and promotion of specialized investment products.

Other noted guidance:

- March 2023 – GAO Report – IMMIGRANT INVESTOR PROGRAM Oppotunities Exist to Improve Fraud and National Security Risk Monitoring
- USCIS EB-5 Program website – https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program
  - EB-5 Questions and Answers (updated Dec. 2023) – https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers-updated-dec-2023
- August 2016 – NASAA Informed Investor Advisory: EB-5 Fraud

Recent SEC and FINRA actions:

- October 2021 – FINRA Case #2017053116801
- June 2017 – FINRA Hearing Panel Bars Registered Representative for Failing to Disclose Private Securities Transactions Totaling $100 Million in EB-5 Investments
- December 2015 – SEC: Lawyers Offered EB-5 Investments as Unregistered Brokers
- September 2021 – SEC Obtains Emergency Relief Against New York Real Estate Developer Charged with EB-5 Securities Fraud
- November 2023 – SEC Charges New York Businessman with Fraud and Unregistered Sales of Securities to Investors Seeking Permanent Residency in the U.S.

VI. Conclusion

It's hoped that the review above helps clarify current securities regulations, particularly relating to regulatory compliance for future EB-5 financings.

To summarize:

- EB-5 financings involve the issuance of securities in the U.S. and, as such, are subject to federal and state regulatory compliance.[23]
- To be exempt from public registration with the SEC, an EB-5 offering within the U.S. should be conducted with a "manner of offering" that follows SEC Regulation D, Rule 506, which includes private placement "safe harbor" provisions.
- The process of originating securities (setting the security's terms, Issuer due diligence, offering document preparation) for an EB-5 financing within the U.S. should involve a FINRA-registered broker-dealer. It should assign investment banking professionals to the transaction who have passed either a Series 79 or 82 exam or, to the extent that the offering involves only a direct participation program, individuals with a Series 39 and/or 22 FINRA license.
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The above is not a comprehensive analysis, nor is it solely adequate to review all securities compliance considerations for a given EB-5 financing.

Therefore, legal counsel with expertise in securities law should be retained by the EB-5 financing sponsors to review the specific circumstances of each financing, its offering materials, and its solicitation process.

[23] SEC Charges Unregistered Sales of Securities Issued under EB-5 Immigrant Investor Program, Sept. 21, 2018

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Investment bank – Since 1995, specializing in private finance for small-to-medium businesses. 25 professionals in 9 locations across the United States

Direct Private Investments – Accredited Investors only: family offices, high-net-worth individuals, private professional-managed investment funds.

Debt and equity security investments – offerings of $2,000,000 - $200,000,000 – Securities designed to reflect the Issuer's circumstances and related risks.
– $1.1 billion+ of financing raised since 1995 – 100+ companies (200+ financings)

Proprietary technology platform – supports all banking, sales and ongoing investor-support activities.

International experience & communication skills – 30+ years transactional experience, native Spanish, Mandarin, Portuguese, Arabic and English speakers

Compliance – All activities are underpinned by regulatory compliance:
- Carolina Financial Securities, LLC – FINRA Member Firm since 1997
- Carofin, LLC – FINRA Member Firm since 2019

Carofin's Business is built upon:

Corporate Finance Expertise – Experienced investment bankers. Institutional stan-

dards are applied to security offerings that address the capital requirements of each Issuer while fully disclosing the associated risks to Investors.

Full-service, In-house Capabilities – Investment banking, sales, compliance, FINOPS, operations and technology support (W-2 employees).

Investor Suitability – Understanding and recording each investor's risk-return preferences and then offering investments which are best suited to them.

Knowledge Base – Carofin's publicly available Knowledge Base provides a library of pertinent White Papers, articles and videos addressing important aspects of private investment.

Post-investment Support – To better protect investors, Carofin continually monitors and supports each investment it offers for as long as the investment remains outstanding.

[1] Past performance is not a guarantee or indication of future performance. Investing involves risks, including the loss of principal.

[2] Diversification does not guarantee a profit or protect against a loss in a declining market. It is a method used to help manage investment risk.

[3] The actual amount and timing of distributions paid is not guaranteed and may vary. There is no guarantee that investors will receive distributions or a return of their capital. These programs can give no assurance that it will be able to pay or maintain distributions, or that distributions will increase over time.

[4] Programs that depend on tenants for their revenue may suffer adverse consequences as a result of any financial difficulties, bankruptcy or insolvency of their tenants.

Securities are offered through Carofin, LLC, Member of FINRA/SIPC. Carolina Financial Securities is an affiliate of Carofin and both Broker-Dealers are affiliates of Carolina Financial Group, LLC.

Our firms seek to present vital capital with meaningful investment opportunities through the fundamental analysis of the businesses we seek to finance. Such analysis is usually conducted through a First Principles approach.When we provide you with a recommendation, we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the recommendations we provide you. Here are some examples to help you understand what this means:

Proprietary Products: Our firms will often present investments that are only available through them, which may result in a higher placement fee. The Firms will receive the placement fee regardless of your investment performing as expected.

Administrative Agent Services: CFG Financial Services, LLC, an affiliate of our firms, will act as Administrative agent for the securities while they are outstanding. Given that our firms have an interest in providing recurring services to the Issuer, while the administrative agent looks after the interests of investors, there may be a conflict of interest between the firms and its affiliates.

Our firms offer brokerage services to accredited investors, exclusively through the sale of private placements. the offerings we bring to market are carefully selected, and any recommendation you may receive from us will be limited to these offerings. Therefore, we may be unable to adequately compare the risks and benefits of the offerings we bring to offerings presented by other financial professionals. While our firms will often present new investments and discuss such investment's risks and benefits with you, the ultimate authority to make such investment rests solely with you.

Our firms do not hold any investor cash or securities, and securities offered by us often have no easily assessable market value, so our firms will not monitor the market value of your investment on an ongoing basis. The investments we present often require a minimum investment of $5,000 for equity offerings and $10,000 for debt offerings.

Fees and costs may reduce any amount of money you make on your investments over time. Our firms are mostly compensated through placement fees, which are payable by the issuer, meaning that the firms will be compensated by receiving a percentage of the funds raised in an offering, regardless of the investment performing as expected. Such placement fee is usually between 3% and 7% (please find the specific Placement Fee for this offering in the "Placement Agent Fees" section of the "Security Terms". Given that different investments have different placement fees, we may often have a conflict of interest when presenting these investments to you. The Firms' bankers are often compensated by receiving a percentage of the placement fee, and may have their own conflict of interest when presenting you with offerings they structure.

Private placements are high risk and illiquid investments. As with other investments, you can lose some or all of your investment. Nothing in this document should be interpreted to state or imply that past results indicate future performance, nor should it be interpreted that FINRA, the SEC or any other securities regulator approves of any of these securities. Additionally, there are no warranties expressed or implied as to accuracy, completeness, or results obtained from any information provided in this document. Investing in private securities transactions bears risk, in part due to the following factors: there is no secondary market for the securities; there is credit risk; where there is collateral as security for the investment, its value may be imped if it is sold. Please see the Private Placement Memorandum (PPM), and the complete list of contents for each contemplated investment for a more detailed explanation of the securities Summary of Terms, Investor Suitability Standards, Confidentiality, Securities Matters and Risk Factors.

Caution Regarding Forward-Looking Statements

Certain statements herein may be "Forward-looking" in that they do not discuss historical facts but instead note future expectations, projections, intentions, or other items relating to the future. We caution you to be aware of the speculative nature of forward-looking statements as these statements are not guarantees of performance or results.

Forward-looking statements, which are generally prefaced by the words "may," "anticipate," "estimate," "could," "should," "would," "expect," "believe," "will," "plan," "project," "intend," and similar terms, are subject to known and unknown risks, uncertainties and other facts that may cause our actual results or performance to differ materially from those contemplated by the forward-looking statements.

Although these forward-looking statements reflect our good faith belief based on current expectations, estimates and projections about, among other things, the industry, and the markets in which we operate, they are not guarantees of future performance. Whether actual results will conform to our expectations and predictions is subject to several known and unknown risks and uncertainties, including risks and uncertainties discussed in the offering materials for each specific investment.

Consequently, all the forward-looking statements made herein are qualified by these cautionary statements and there can be no assurance that the actual results anticipated by us will be realized or, even if substantially realized, that they will have the expected consequences to, or effects on, your investment. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.