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## Fee-base Foreign Finders and SEC/FINRA (Securities Exchange Commission, Financial Industry Regulation Association) Registration Requirements

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In connection with an EB-5 program, foreign investors are offered a special subset of **private funds** and **securities offerings** made through regional centers and non-regional centers approved by the **USCIS**. In certain instances, when the securities are offered or sold by an intermediary, these transactions are subject to **US securities laws**. There is a significant concern among regulators that the means used to make the offers and sales of the securities involved in the program does not comply with securities laws; specifically, that those compensated in connection with these transactions do not appear to be properly licensed or associated.

Fee-based compensation structures are commonplace among those who source EB-5 investors for an approved EB-5 project. Typically, these individuals are not registered with securities regulators in the U.S. However, according to the SEC, [“if you’re being paid for finding investors, there’s a potential problem if you’re soliciting investors here or abroad. . . .”](#)

Whether registration is required depends principally on whether potential investors are solicited, how the sellers of investment interests are compensated, and the nature of the activities undertaken by an issuer in connection with the offer and sale of an investment under the EB-5 program, including whether such activities comply with the safe harbor for “associated persons” status provided by Rule 3a4-1 of the 1934 Act. However, the associated persons exception applies only to those who do not receive transaction-based payment, excluding most foreign finders.

As of late, regulators seem to be sending a strong message to those who intend to offer or sell securities and receive compensation for their efforts: register as a broker-dealer or become associated with a registered firm. (See *In the Matter of Ranieri Partners, LLC and Donald W. Phillips*; File No. 15243; March 8, 2013.) Consequences of conducting activities that require licensure without the proper registrations can include regulatory sanctions and penalties (fines and substantive limitations of business activities), and investor claims (including recession of securities transactions conducted without appropriate registrations). Unlicensed activity can also create limitations on the ability of the organization to register at a later point in time and restrictions on the ability of the organization to engage in other business activities in the United States. These consequences can seriously hamstring an EB-5 project or derail it completely. Issuers, broker-dealers, finders and associates unsure of their status should seek advice from counsel before taking any action.

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