

LIABILITY ASSOCIATED WITH EB-5 MARKETING MATERIALS



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SEC Rule 10b-5

It is unlawful for any person to use or employ any device, scheme or artifice to defraud; to omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; or to engage in any act, practice or course of business which operates as a fraud or deceit upon any person in connection with the purchase or sale of any security.

FINRA Rule 2210

Requires that all member communications with the public be based on principals of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts regarding the security or service being promoted.

Members may not omit any material or qualification omission that would cause the communication to be misleading.

Members are prohibited from making any false, exaggerated, unwarranted or misleading claim in a communication with the public.

May not predict or project performance, imply that past performance will recur or make any unwarranted claim, opinion or forecast.

Section 17(b) of the Securities Act

"It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof."

Marketing materials often include:

- Regional Center experience
- Results from previous projects; principal paid back to investors
- I-526 and I-829 approvals
- Description of project
- Project highlights;
 - Budget, Loan amount, Job cushion, Rate, Term

Topics for Discussion

- Horrendous translations
- Putting marketing materials through a different legal review than the offering documents
- Disclaimers in the marketing materials
- The need to control what marketing materials say
- Attending presentations
- Promotional deck should not conflict with PPM
- Reg D - always provide marketing materials w/PPM
- “Apparent agency”
- Most common FINRA rules and procedures related to sales materials
- GIPS Compliance; Past performance, what is being measured
- Maintain a log of all marketing materials
- Don’t make guarantees
- Make use of affirmative language
- JOBS Act
- Is there less risk if the marketing materials are created in China v. U.S.?
- ‘Institutional Caliber’ investor
- Job creation might be considered performance data
- Related Performance information