

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78657 / August 24, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17419

In the Matter of

MARK A. IVENER AND
IVENER & FULLMER, LLP

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Mark A. Ivener and Ivener & Fullmer, LLP (“Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. Respondents violated Section 15(a)(1) of the Exchange Act by acting as unregistered broker-dealers in connection with their representation of clients who were seeking U.S. residency through the Immigrant Investor Program. Respondents, an immigration attorney and a law firm, advised their clients with respect to the need for an investment in EB-5 securities in order to qualify for lawful permanent residency through a Regional Center and referred their clients to one or more Regional Centers which led to securities purchases. In addition to receiving legal fees from their clients, Respondents earned a commission from the Regional Center for each investment they facilitated.

Respondents

2. Mark A. Ivener, age 74, is a resident of Los Angeles County, California. He is a licensed attorney specializing in immigration. During the relevant time period, he was a partner of Ivener & Fullmer, LLP.

3. Ivener & Fullmer, LLP is a law firm located in Los Angeles, California.

Background

4. The United States Congress created the Immigrant Investor Program, also known as "EB-5," in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The Program offers EB-5 visas to individuals who invest \$1 million in a new commercial enterprise that creates or preserves at least 10 full-time jobs for qualifying U.S. workers (or \$500,000 in an enterprise located in a rural area or an area of high unemployment). A certain number of EB-5 visas are set aside for investors in approved Regional Centers. A Regional Center is defined as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(e) (2015).

5. Typical Regional Center investment vehicles are offered as limited partnership interests. The partnership interests are securities, usually offered pursuant to one or more exemptions from the registration requirements of the U.S. securities laws. The Regional Centers are often managed by a person or entity which acts as a general partner of the limited partnership. The Regional Centers, the investment vehicles, and the managers are collectively referred to herein as "EB-5 Investment Offerers."

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. Various EB-5 Investment Offerers paid commissions to anyone who successfully facilitated the sale of limited partnership interests to new investors.

Respondents Earned Commissions for Their Clients' EB-5 Investments

7. From at least January 2009 through December 2011, Respondents earned commissions from one EB-5 Investment Offerer totaling \$450,000. These commissions were paid pursuant to a "Referral Services Agreement" between Respondents and the specific Offerer.

8. Respondents advised their clients with respect to the need for an investment in EB-5 securities in order to qualify for lawful permanent residency through a Regional Center and referred their clients to one or more Regional Centers, which led to securities purchases, and in one or more instances provided information about a specific Offerer. Respondents earned transaction-based commissions for their services from the EB-5 Investment Offerers. While some of Respondents' activities overlapped with legal services, for which they earned fees, Respondents earned transaction-based compensation for facilitating the investor's transactions in EB-5 securities.

9. As a result of the conduct described above, Respondents violated Section 15(a)(1) of the Exchange Act which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer to make use of the mails or any means or instrumentality of interstate commerce "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents Mark A. Ivener's and Ivener & Fullmer's Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondents shall pay, jointly and severally, within ten (10) days of the entry of this Order, disgorgement of \$450,000 and prejudgment interest of \$87,855 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600].

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Mark A. Ivener and Ivener & Fullmer, LLP as the Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephanie Avakian, Deputy Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary