



**Agency of Commerce and Community Development**

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July 9, 2014

Ariel Quiros, Chairman  
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Bill Stenger  
President & CEO  
Jay Peak Resort  
Route 242  
Jay, VT 05859

✓ William Kelly  
111 N.E. 1<sup>st</sup> Street, 4<sup>th</sup> Floor  
Miami, FL 33132

ADDRESS

Re: EB5 Meeting at ACCD Regarding AnC BIO Vermont – Follow-up and Requirements

Dear Gentlemen:

I am writing to summarize the next steps we agreed upon at our June 27<sup>th</sup> meeting at ACCD. We appreciate the time all three of you allotted to work with the Vermont Regional Center to identify necessary and important ways in which to improve the AnC BIO Vermont EB5 Private Offering.

The focus of our discussion was on the application of the Securities and Exchange Commission's requirements concerning the disclosure of material information to EB5 investors in AnC BIO Vermont. Indeed, the Memorandum of Understanding signed in October 2012 calls upon AnC BIO Vermont to assist ACCD's Regional Center in assuring compliance with U.S. immigration laws and regulations as well as all applicable federal and state securities laws and regulations. ACCD has sought and obtained expert advice on SEC disclosure requirements from the law firm representing the State Treasurer's Office. Based on their opinions, ACCD expressed to you during the June 27<sup>th</sup> meeting the requirement for the AnC BIO Vermont EB5 project to take a number of steps to ensure adequate disclosure of material information to investors.



July 9, 2014

Page 2

To that end, we agreed that you would suspend offering and marketing of the AnC BIO Vermont EB5 project until high caliber securities attorneys had ensured that adequate disclosure of all material information has been provided to existing investors and any new investors yet to subscribe to the offering. To better frame the discussion in our meeting, we had provided a two-page outline of critical questions and issues regarding major areas of ACCD's concern related to AnC BIO's compliance with securities laws and regulations, particularly around disclosure requirements. A copy of that outline is attached for your reference. We emphasized that ACCD's outline was not intended to be the complete list of concerns, but significant ones, among other likely issues, on which ACCD is requiring you to obtain expert legal assistance from attorneys with substantial qualifications and experience in compliance obligations for the issuer of private offerings of comparable complexity (i.e. EB5, stem cell research, biomedical technology) and dollar amounts to those aspects of AnC BIO Vermont.

We appreciate your helpful participation in our discussion last Friday as well as your understanding reception of the concerns we raised. We also greatly appreciate your willingness to agree to suspend for thirty days, or until August 1, 2014, the marketing and offering of EB5 investments in AnC BIO Vermont to allow for all of the marketing and offering materials to be thoroughly reviewed and approved by very experienced securities attorneys familiar with private offerings similar in scale and complexity to AnC BIO Vermont. We will be waiting to receive a written opinion from counsel for AnC BIO Vermont that the private offering is in compliance in all respects with securities laws and regulations. Once AnC BIO has submitted an amended offering to ACCD, obtained signatures from every investor acknowledging receipt of the updated offering, and certified in writing to ACCD that it has fully implemented the advice of counsel to assure the project's compliance with all applicable state and federal securities laws and regulations, ACCD will then authorize AnC BIO Vermont to resume marketing and offering its EB5 project to investors.

Lastly, although we did not discuss similar concerns ACCD may have regarding the offering of other EB5 investment opportunities, we expect you will understand that ACCD will require the same degree of attention and effort to assure all other EB5 projects are in compliance with securities laws and regulations. Accordingly, we now wish to address two of those projects – Jay Peak West Bowl and Q Burke related to improvements at Burke Mountain.

With respect to the West Bowl project, the MOU was executed December 15, 2010. At that time, ACCD's review was not yet as fully developed as it has become in the following years, particularly as USCIS increased its offering of advisory memoranda, the SEC began its scrutiny of the EB5 program, and IIUSA established Best Practices for EB5 regional centers and projects. We are all also familiar with recent SEC enforcement activity, most notably the Chicago Convention Center case. Therefore, due in part to the inactivity on the West Bowl project, but mainly due to the significant changes in circumstances, including but not limited to those just described, ACCD advises you that it is hereby cancelling the West Bowl MOU and withholding its approval for any marketing or offering of the West Bowl EB5 project to potential investors until the same issues of concern related to securities laws and regulations, particularly those related to the adequate disclosure of material information, have been taken and certified in writing to ACCD in the same manner as described in more detail above concerning AnC BIO

July 9, 2014

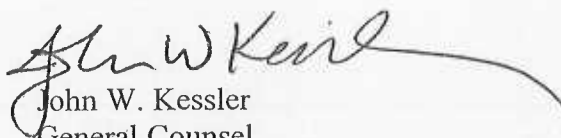
Page 2

Vermont. Once all of those steps have been taken, ACCD would consider a new MOU for the West Bowl EB5 project.

With respect to Q Burke, the MOU was executed June 17, 2013. Unlike the West Bowl project, we understand Q Burke has already subscribed a large number of investors and has begun construction of the first on-mountain hotel. Nevertheless, due to the significant changes in circumstances described above, ACCD advises you to obtain highly experienced securities counsel to thoroughly review all of the marketing and offering materials and provide a written opinion that those materials are in compliance with securities laws and regulations, particularly those related to the adequate disclosure of material information. ACCD's approval for Q Burke to continue marketing and offering its EB5 project to investors will be dependent on either Q Burke's having submitted to ACCD on or before August 18, 2014 the written opinion of securities counsel that the current marketing and offering materials are in compliance with all securities laws and regulations, or Q Burke having submitted to ACCD updated offering materials that have fully adopted the changes advised by securities counsel, obtained signatures from every investor acknowledging receipt of the updated offering, and certified in writing to ACCD that it has fully implemented the advice of counsel to assure the project's compliance with all applicable state and federal securities laws and regulations.

Thank you for your attention to these substantial issues related to assuring that the present and future marketing of all EB5 projects is performed in full compliance with all securities laws and regulations. If you have any questions or concerns on the above requirements, please do not hesitate to call me.

Sincerely,

  
John W. Kessler  
General Counsel  
Agency of Commerce and Community  
Development

Enclosure

cc: Patricia Moulton  
Brent Raymond

## Jay Peak and Related EB5 Projects

### 1. Separate Issues: Immigration vs. Securities

- USCIS approval vs. Compliance with SEC Regulations.

### 2. SEC Perspective

- Disclosure of "material" facts about the offering.

Issuer of securities must provide prospective investors with full, fair and complete disclosure of all "material" facts about the offering, the issuer of the securities and the issuer's management personnel, business, operations and finances.

- "material" if a reasonable investor would consider the information important in making an investment decision.
- Simple disclosure is not enough. Must be developed fully so there is fair, full and complete disclosure.
- "Accredited investor" aspect of EB5 private offering is irrelevant for disclosure requirements.

SEC won't accept argument that investors only relied on the PPM for the Visa offering and not for the investment offering.

### 3. Questions Regarding AnC BIO Vermont

- Inadequate support for business projections

No basis for the numbers.

Could never survive a claim of inadequate disclosure.

- No regulatory discussion of biomedical and stem cell research

Most sensitive area subject to intense regulation, but no discussion of where FDA approval stands.

Without question, must provide same level of information as for the registration of any security.

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■ AnC BIO Korea

Master Distribution Agreement identifies AnC BIO Korea as a Party, but not included as a signatory.

➤ PPM claims IP transferred to AnC BIO Vermont in 2012

Why provide investors another form in the PPM regarding the transfer instead of simply showing the acquisition Agreement?

Was the IP transfer in 2012 made before or after the commencement of the court auction of the AnC BIO Korea Headquarters facility? Was the validity of the IP transfer affected by the court auction? Could it be affected?

AnC BIO Korea is described as an “affiliate” of AnC BIO Vermont, but this relationship is not adequately explained.

Involuntary auction of Headquarters facility in South Korea. Court records show:

- Outstanding Taxes at the National, Regional, and Local level
- List of employees owed compensation
- Other outstanding business debt

4. **Corrective Action Plan**

■ MOU requires EB5 Project to assure compliance with:

- U.S. immigration laws and regulations
- All applicable federal and state securities laws and regulations
- Responding to ACCD inquiries about the project and assisting ACCD in complying with its obligations as a regional center