

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

**IN RE: Carinthia 1 L.P.)
 Carinthia 2 L.P.)**

DOCKET NO. 21-053-S

Ex Parte Order to Cease and Desist

Based on the Motion of the Securities Division of the Department of Financial Regulation (“the Department”), pursuant to 9 V.S.A. §§ 5501(3) and 5604, for an order requiring Carinthia 1 LP and Carinthia 2 LP (“Respondents”) to cease and desist from issuing refunds of investment funds to any investor who has not either (a) reached the end of their conditional residence period or (b) executed a waiver substantially identical to the form attached as Exhibit A, pending further order of the Commissioner, based on violations of 9 V.S.A. § 5501 and the immediate need to protect the health and welfare of investors, the Commissioner hereby renders the following findings of fact and conclusions of law and enters the following Order:

I. FINDINGS OF FACT

1. Carinthia 1 LP and Carinthia 2 LP are Vermont limited partnerships organized in October 2012 and March 2014 respectively, by their general partner Mount Snow GP Services LLC, for the purpose of financing two construction projects (collectively, the Project) at Mount Snow ski area in Dover, Vermont.

2. Respondents’ principal office is located at 89 Grand Summit Way, West Dover, Vermont 05356.

3. At the time the partnerships were organized, the sole member of the general partner was Mount Snow Ltd., a wholly owned subsidiary of Peak Resorts Inc. In the fall of 2019, Vail Resorts Inc. via purchase of Peak Resorts became the sole member of the general partner and the owner and operator of the Mount Snow ski area and associated resort facilities.

4. The Respondents, their investment offering, and the Project were explicitly organized to operate collectively as an approved "EB-5" project within the State of Vermont regional center, structured to help investors meet the requirements of the EB-5 immigrant investor program created pursuant to Section 203(b)(5) of the Immigration and Nationality Act (INA) and administered by U.S. Citizenship and Immigration Services (USCIS).

5. Within the EB-5 program, Respondents are two New Commercial Enterprises (NCEs), into which investors placed funds. Those funds were then loaned to West Lake LLC and Carinthia Ski Lodge LLC, the original Job Creating Entities (JCEs), to fund the Project. A JCE is the vehicle through which the job creation requirement of the EB-5 program, set forth *infra*, is fulfilled

6. Vail Resorts Inc. is the sole member of each LLC and retains operational control over the JCEs. Vail Resorts Inc. is also the sole member and manager of the NCEs.

7. A key requirement of the immigrant investor program, as interpreted and administered by USCIS, is that the funds invested must remain at risk in a JCE or be redeployed by an NCE into one or more other JCEs, until the end of the

investors' conditional residence period, so that investors can receive approval of their Form I-829 to remove conditions from their permanent resident status.

8. By virtue of their status as NCEs, and as set forth in the Offering documents, Respondents retain fiduciary obligations to investors until the end of the investors' conditional residence periods. If investment funds are not to remain at risk in the JCE, the NCEs must ensure those funds are redeployed to another JCE within a reasonable period of time.

9. On or about April 11, 2014, Respondents issued a Private Placement Memorandum and other associated documents (the Offering), pursuant to which Respondents offered for sale up to 104 units at a subscription price of \$500,000 per unit, plus an administrative fee of \$50,000. The Offering provided that the Project would have an overall cost of \$66,000,000, \$52 million of which would be funded through the Offering and the balance paid by Mount Snow. The Offering was fully subscribed, and the projects, an upgraded snowmaking facility and an improved ski lodge, were built.

10. Within the Offering, Respondents spelled out in detail the requirements of the Immigrant Investor Program and the four steps to becoming a lawful permanent resident through the EB-5 visa program.¹

11. The Offering states that to complete Step 4, Removal of Conditions (i.e. the approval of the I-829 petition), an investor must demonstrate full capital investment in the enterprise that has been sustained continuously. The continuous

¹ See *Offering*, pages 18-23

investment requirement is described more fully in the USCIS policy manual, which requires that invested funds remain at risk, with a chance for gain or loss, that invested funds be used in a business activity and that the full amount of the investment remain available to the business enterprise. *Offering at 22-23.*

12. On information and belief, for most investors in the Project, the anticipated immigration benefit was a substantial, if not the primary, reason for their investment.

13. Within the Offering, Respondents advised that the Immigrant Investor program, for a Vermont project, required (a) an investment of at least \$500,000; (b) the creation of at least 10 indirect jobs through the investment; (c) funds must remain at risk until the end of the investors' period of conditional residence; and (d) investors must file applications for conditional (I-526) and final (Form I-829) permanent resident status.

14. In the Offering, Respondents promised repeatedly that they would conduct themselves in a manner that would protect the investors' compliance with the requirements of the EB-5 program so they could achieve the desired immigration status, expressly stating that they would refrain not only from early repayment of the EB-5 loan but also from repayment at maturity if investors had not yet reached the end of their conditional residence period.²

² See, e.g., Notes, Section 6 (prohibits the exercise of rights and remedies that would jeopardize immigration benefits), Loan Agreement §6.9 (prohibits payment that would jeopardize immigration benefits), Business Plan at page 33 of Offering.

15. The Offering repeatedly indicated that the Partnership Agreement specifically prohibits the Partnership from returning any portion of the capital investment amount prior to the approval of the EB-5 investor's I-829 Petition.

16. The Exit Strategy disclosures in the Offering note that the Partnership Agreement "specifically prohibits the Partnership from returning any portion of the capital investment amount prior to the approval of the EB-5 investor's I-829 Petition." Offering at 33.

17. Likewise, the Offering states that, "notwithstanding [the nominal six-year term of the loans to the JCE], no interests of EB-5 investors will be repurchased or otherwise acquired by the partnership unless such repurchase or other acquisition complies with the requirements of the EB-5 Visa Program." As noted, the Offering outlines those "requirements" to include that capital remain at risk until the Investor's I-829 petition is approved.

18. The Limited Partnership Agreement (LPA), which was included in the Offering and referenced in the PPM, expressly prohibits the General Partner from taking "any action that would intentionally jeopardize or would reasonably be expected to jeopardize any of the limited partners' capacity to be admitted to the [US] as unconditional lawful permanent residents . . . pursuant to the EB-5 Immigrant Investor Program." LPA § 4(b).

19. Although it outlines numerous potential risks associated with the investment, the Offering fails to disclose any risk that Respondents would repay investor loans before the end of the conditional residence period. Indeed, the

Offering promises not to redeem investors unless such redemption complies with the EB-5 program.

20. In late November and early December 2021, notwithstanding the repeated representations in the Offering, Respondents expressed their intent to begin issuing refunds of the investments described in the Offering on or about January 15, 2022.

21. Numerous investors in the Project, who have not yet reached the end of their conditional residence period, have contacted Respondents and the Department to express their concern about the proposed refund and the attendant threat to their immigration status.

22. Respondents, as reflected in a December 17, 2021 letter to the Department, have not changed their position, and state that they intend to proceed with the proposed refund.

23. The Department has asked Respondents to refrain from issuing the proposed refunds in light of the threat to investors and the many representations in the Offering, but Respondents have declined.

II. CONCLUSIONS OF LAW

24. Pursuant to 9 V.S.A § 5102(28), the term “security” includes promissory notes, investment contracts, and related types of participation in profit-sharing agreements. The investments offered by Respondents are securities within the meaning of § 5102(28).

25. Pursuant to 9 V.S.A. § 5501(3), it is unlawful for a person to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

26. By promising repeatedly in the Offering to take no action that would jeopardize investors' immigration benefits, including specifically promising not to take any action that would reasonably be expected to jeopardize the removal of conditions, but then offering premature refunds that would directly threaten those benefits without disclosing the immigration risks of such refunds, Respondents have violated Section 5501(3).

27. Because Respondents violated 9 V.S.A. § 5501(3), the Commissioner may take action against them.

III. Commissioner's Authority

28. Pursuant to 9 V.S.A. § 5604(a)(1), the Commissioner may issue orders or directives to any person to cease and desist from specific conduct if the Commissioner finds that the person has engaged, is engaging or is about to engage in an act, practice or course of business which constitutes a violation of 9 V.S.A. Chapter 150, the Vermont Uniform Securities Act.

29. Pursuant to 9 V.S.A. § 5604(b) and Section 13 of Department Regulation 82-1 (Revised), the Commissioner may issue such orders without prior notice or an opportunity to be heard.

30. In light of the known violations of 9 V.S.A. § 5501, Respondents' failure to reconsider their actions, and the risk that the financial health and welfare

of additional investors in the Projects may be affected by Respondents' conduct, an *ex parte* order is appropriate in this case.

31. The Commissioner may require the production of records pursuant to 8 V.S.A. § 13 and 9 V.S.A. § 5602(b).

IV. ORDER

32. Given the aforementioned findings of fact and conclusions of law, IT IS HEREBY ORDERED:

- A. Respondents shall cease and desist from issuing refunds of investments in the Partnership to any investor who has not either a) reached the end of their conditional residence period or b) executed a waiver, after a minimum of three (3) weeks' time to review the matter, substantially in the form attached as Exhibit A.
- B. Respondents shall not withhold, destroy, mutilate, or by any means modify or falsify any documentary material in their possession that is relevant to the activities and transactions described herein.
- C. Respondents shall produce to the Division, by January 24, 2022, all correspondence between Respondents and investors from January 1, 2019 to the present.

Dated at Montpelier, Vermont this ^{7th} day of January 2022



Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation

Exhibit A

Notice of Request for Redemption and Waiver of Claims

I am an investor in Carinthia 1 or 2. I am aware that receiving the return of my investment capital from Carinthia [1 or 2] L.P. before the end of my conditional residence period will result in failure to sustain my investment in the New Commercial Enterprise as required by USCIS and thus likely will result in the denial of my I-829 petition (and even denial or revocation of my pending or approved I-526 if I have not yet been admitted to U.S. conditional permanent residence). I am aware that receiving premature redemption will disqualify me for U.S. immigration benefits.

Nevertheless, I request such redemption upon repayment of loans by West Lake LLC and Carinthia Ski Lodge LLC (or their successors) to Carinthia [1 or 2] L.P., and I waive any and all claims for the loss of immigration benefit which will result from the redemption of my investment capital.

Date

Investor