

**Velocity Law, LLC**  
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**Bad Actor Questionnaires, Representations and Officers Certificates**  
**For Reg D Rule 506(b) and (c), Reg D Rule 504, Reg A Tier 1 and 2 and Reg CF Crowdfunding**

**Information about the new Bad Actor Disqualification Requirements:**

The “Bad Actor” reps are new under SEC law effective 9/23/13, and started affecting transactions in 2014. Requirements are newer and may not yet have come to the attention of issuers, sponsors, or those who introduce companies to capital. You will start to see “Bad Actor Questionnaires” or “Bad Actor Reps” in deals, from the issuer’s counsel. If you have not seen any yet, or not many, more will appear as time moves on, and as deals move through the system, since the requirement went into effect 9/23/13.

The new requirements affect any company raising capital now, even the smallest issuers raising capital, as the smaller raises and smaller companies move their way through the system, until they currently, or eventually, raise capital under a Reg D 506 offering. Even if the current raise avoids Reg D and uses 4(a)(2), the issuer company’s history is now, by virtue of the new law, forever affected if it has had any “Bad Actor” in its house as an officer, director, principal, partner, promoter, broker, investor, or 10% owner (and in some cases 20% owner).

Therefore, even the earliest stage issuers should be screening for bad actors, even issuers doing offerings under 4(a) (2) below the radar screen of Reg D.

**Effects of the new SEC law screening for “Bad Actors”:**

1. SEC shifts the burden of “gatekeeping” against “Bad Actors”, over to the Issuers, even small start-up issuers, and the persons who represent early stage or small companies raising private capital, such as consultants, finders, lawyers, accountants. The smaller companies end up bearing the cost of the gatekeeping. Side benefit: Smaller companies don’t end up with bad guys on their board or in their ownership.
2. SEC’s goal is to prevent “Bad Actors” from getting a foot in the door into the system, and working their way in to the system. The SEC knows that Bad Actors prey on smaller and early stage companies that might be desperate for capital.
3. Investors in the early stage deal now have to be screened out as “Bad Actors”, because they can no longer latch onto, and travel with, a small business through its capital-raising history.
4. This is the SEC forcing early stage and small business to “do your due diligence and background checks”, “or we take away your private offering exemption if you have bad guys onboard”.
5. Smaller companies are required to produce a “No Bad Actor Disqualification” Officer’s Certificate as a condition of a Reg D offering. The Certificate is a requirement of the exemption now under Reg D Rule 506. (See attached example in our template.)

Note that “Promoter” includes a person who introduces a company to capital.

**More Info and Background on the Bad Actor Topic, See Related:**

- A. Bad Actor Questionnaire & Issuer’s Certification, by Velocity Law, for a Reg D, Reg A or Reg CF capital raise.
- B. Information on SEC Adopting the Bad Actor Rules, and
- C. An article on the Bad Actor Questionnaire by law firm Stinson Leonard Street

Yes this is new, annoying, adds cost, and changes the way you screen your employees, officers and even your large investors, but it is new law since 9/23/13. Sorry to be the bearer of bad news if you had not learned of this yet. Questions welcome! NFH [nfallon@velocitylaw.com](mailto:nfallon@velocitylaw.com) 630-963-0439 x 22.