

Comparison of Rule 506(d) “Bad Actor” Provisions to FINRA Forms U4 and U5

Rule 506(d) uses significantly different language from FINRA Forms U4 and U5. Below is a correlation of Rule 506(d) disqualifying events to comparable FINRA Forms U4 and U5 disclosure obligations. FINRA Form U5 disclosure obligations are a subset of those for FINRA U4 and, except as noted in the chart below, are not specifically identified below. The following provision of Rule 506(d) does not appear to have a correlative provision in the FINRA Forms:

Rule 506(d)(1)(viii)- if the issuer or another covered person is subject to a U.S. Postal Service false representation order entered within the preceding five years, or to a temporary restraining order or preliminary injunction with respect to conduct alleged to have violated the false representation statute that applies to U.S. mail.

FINRA Form U4	Rule 506(d)(1)¹
Criminal Disclosure	
Felony conviction/no contest (personal)	Rule 506(d)(1)(i) – Disqualifying event if any covered person “has been convicted, within ten years before such sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor: (A) In connection with the purchase or sale of any security; (B) Involving the making of any false filing with the Commission; or (C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;”
Charged with a felony (personal)	
Felony conviction/no contest (organization controlled)	Rule 506(d)(1)(i)
Charged with a felony (organization controlled)	
Misdemeanor conviction (fraud/investment related) (personal)	Rule 506(d)(1)(i)
Charged with misdemeanor (fraud/investment related) (personal)	
Misdemeanor conviction (fraud/investment related) (organization controlled)	Rule 506(d)(1)(i)
Charged with misdemeanor (fraud/investment related) (organization controlled)	

¹ Internal citations omitted.

Regulatory Action Disclosure – SEC/CFTC/ Other Federal / State Regulatory Agency or Foreign Financial Regulatory Authority/SRO ²	
Subject to any <i>final order</i> of a state securities commission (or any agency or office performing like functions), state authority that supervises or examines banks, savings associations, or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate <i>federal banking agency</i>, or the National Credit Union Administration, that: (a) bars you from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or (b) constitutes a <i>final order</i> based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?	Rule 506(d)(1)(iii) – Disqualifying event if any covered person “is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; <u>the U.S. Commodity Futures Trading Commission</u>; or the National Credit Union Administration that: (A) At the time of such sale, bars the person from: 1. Association with an entity regulated by such commission, authority, agency, or officer; 2. Engaging in the business of securities, insurance or banking; or 3. Engaging in savings association or credit union activities; or (B) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before such sale;”
Found you to have made a false statement or omission or been dishonest, unfair or unethical?	Rule 506(d)(1)(iii)
Involved in a violation of its rules, regulations or statutes?	Rule 506(d)(1)(v) – Disqualifying event if any covered person “is subject to any order of the Commission entered within five years before such sale that, at the time of such sale, orders the person to cease and desist from committing or causing a violation or future violation of: (A) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b-5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78 o (c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or (B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);”

² FINRA Form U4 breaks the below into separate sections based on organization. The questions in each section are substantially similar. For purposes of this chart we have combined them into one section.

Cause of an investment-related business having its authorization to do business denied suspended, revoked or restricted?	Rule 506(d)(1)(vi) – Disqualifying event if any covered person “is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;”
Expelling or suspending from membership, barring or suspending your association with its members, or restricting your activities?	Rule 506(d)(1)(vi)
Order against you in connection with investment related activity?	Rule 506(d)(1)(iv) – Disqualifying event if any covered person “is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (b) or 78o-4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e) or (f)) that, at the time of such sale: (A) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser; (B) Places limitations on the activities, functions or operations of such person; or (C) Bars such person from being associated with any entity or from participating in the offering of any penny stock;” Rule 506(d)(1)(vii) – Disqualifying event if any covered person “has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued;”
Imposed a civil money penalty on you, or <i>ordered</i> you to cease and desist from any activity?	Rule 506(d)(1)(v) – Disqualifying event if any covered person “is subject to any order of the Commission entered within five years before such sale that, at the time of such sale, orders the person to cease and desist from committing or causing a violation or future violation of any scienter-based anti-fraud provision of the federal securities laws (including without limitation Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 15(c)(1) of the Exchange Act and Section 206(1) of the Advisers Act, or any other rule or regulation thereunder) or Section 5 of the Securities Act.”

Denied, suspended, or revoked your registration or license or otherwise, by <i>order</i> , prevented you from associating with an <i>investment-related</i> business or restricted your activities?	Rule 506(d)(1)(v)
Found you to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or <i>found</i> you to have been unable to comply with any provision of such Act, rule or regulation?	Rule 506(d)(1)(v)
Found you to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?	Rule 506(d)(1)(v)
Found you to have failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?	Rule 506(d)(1)(v)
Authorization to act as an attorney, accountant or federal contractor revoked or suspended?	
Subject of any regulatory complaint or preceding that could result in a “yes” answer to the above?	
Civil Judicial Disclosure	
Has an domestic or foreign court ever: (a) Enjoined you in connection with any investment-related activity? (b) found that you were involved in a violation of any investment-related statute(s) or regulation(s)? (c) found that you were involved in a violation of any investment-related statute(s) or regulation(s)?	Rule 506(d)(1)(ii) – Disqualifying event if any covered person “is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before such sale, that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice: (A) In connection with the purchase or sale of any security; (B) Involving the making of any false filing with the Commission; or (C) Arising out of the conduct of the business of

	an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;"
Named in any investment-related civil action or proceeding that could result in a "yes" answer to the above?	
Customer Complaint/Arbitration/Civil Litigation Disclosure	
Have you ever been <u>named</u> as a respondent/defendant in an <i>investment-related</i> , consumer-initiated arbitration or civil litigation which alleged that you were <i>involved</i> in one or more <i>sales practice violations</i> and which: (a) is still pending; or (b) resulted in an arbitration award or civil judgment against you, regardless of amount; or (c) was settled, prior to 5/18/2009, for an amount of \$10,000 or more; or (d) was settled, after to 5/18/2009, for an amount of \$15,000 or more.	
Have you ever been the subject of an <i>investment-related</i> , consumer-initiated arbitration or civil litigation which alleged that you were <i>involved</i> in one or more <i>sales practice violations</i> and which: (a) was settled, prior to 5/18/2009, for an amount of \$10,000 or more; or (b) was settled, after to 5/18/2009, for an amount of \$15,000 or more.	
Within the past twenty four (24) months, have you been the subject of an <i>investment-related</i> , consumer-initiated, written complaint which: (a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or; (b) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?	
Have you ever been the subject of an <i>investment-related</i> , consumer-initiated arbitration claim or civil litigation which alleged that you were <i>involved</i> in one or more <i>sales practice violations</i> , and which:	

(a) was settled for an amount of \$15,000 or more, or; (b) resulted in an arbitration award or civil judgment against any named respondent/defendant regardless of amount?	
Within the past twenty four (24) months, have you been the subject of an investment-related, consumer-initiated arbitration claim or civil litigation not otherwise reported under question 14I(4) above, which: (a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the arbitration claim or civil litigation must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or; (b) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?	
Termination Disclosure (Form U5)	
Have you ever voluntarily <i>resigned</i>, been discharged or permitted to <i>resign</i> after allegations were made that accused you of: (a) violating investment-related statutes, regulations, rules, or industry standards of conduct? (b) Fraud or the wrongful taking of property? (c) Failure to supervise in connection with investment-related statutes, regulations, rules or industry standards of conduct? (d)	
Financial Disclosure – past 10 years	
Have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?	
Based upon events that occurred while you exercised control over it, has an organization made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?	
Based upon events that occurred while you exercised control over it, has a broker or dealer been the subject of an involuntary bankruptcy petition, or had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act?	

Bonding company ever denied, paid out on or revoked a bond for you?	
Unsatisfied judgments or liens against you?	
Investigation Disclosure (Form U5)	
Currently is, or at termination was, the individual the subject of an <i>investigation</i> or <i>proceeding</i> by a domestic or foreign governmental body or <i>self-regulatory organization</i> with jurisdiction over <i>investment-related</i> businesses?	
Internal Review Disclosure (Form U5)	
Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct?	