

ATTACHMENT 5

**PROPOSED REDUCTION OF REVIEW PROCEDURES FOR
PPBD**

NASD MEMBERSHIP APPLICATION CHECKLIST

All documents must be filed with the NASD at the District Office where the Applicant will have its principal office.

<u>Rule¹</u>	<u>Item</u>	<u>Comment</u>
2(A)	Original signed and notarized paper Form BD	<p>1. I don't think this is burdensome.</p> <p>2. I think it is necessary to identify any "bad boy" affiliates, which information is elicited in Items 11 and 10A.</p> <p>3. The Limited Private Placement Broker-Dealer ("LPPBD") can check 12W - PLA for private placement of securities. This does not require identification of the type of securities to be sold.</p> <p>4. Normally, after the initial paper filing all subsequent filings must be done electronically through CRD. Perhaps LPPBDs could be excused from CRD and be able to file amendments on paper.</p>
2(B)	Original signed paper U-4s	<p>1. I don't think this is burdensome.</p> <p>2. I think it is necessary to elicit "bad boy" information about the individual. Also, Form U-4 contains a consent to NASD arbitration with customers (or broker-dealer employers).</p> <p>3. If a new kind of exam will be permitted for LPPBDs, there would have to be a space for it in Item</p>

¹References are to subparagraphs of NASD Rule 1013(a).

		11. 4. See Comment 4 in 2(A).
2(C)	Original fingerprint card for each person required to be fingerprinted under Sec. Exch. Act Rule 17f-2	1. I don't think this is burdensome. 2. I think it is necessary/desirable to identify "bad boys."
2(D)	New member assessment report	This is usually a waste of time for any applicant. It asks for information about revenues in the preceding fiscal year. Especially if we adopt a "don't ask, don't tell" approach, the amount of last year's revenues should be irrelevant and this requirement should be eliminated for LPPBDs.
2(E)	Filing fees	Normal fees for a broker-dealer that does not engage in clearing activities are: \$3000 - NASD membership application; \$85 - each Form U-4, if no DRPs \$32 - each fingerprint card Fees to cover state registrations & any exams needed. Maybe lower fees could be accepted from LPPBDs.
2(F)	A detailed business plan, including plans for future business expansion, and:	
(i)	Trial balance, balance sheet, supporting schedules, net capital computation, each as of a date not more than 30 days before filing date of the application	If LPPBDs will be exempted from the net capital rule, it may not be relevant to ask for a balance sheet, etc. However, even if there is no net capital requirement it may be reasonable for the NASD to ask for, and the LPPBD to demonstrate, some degree of solvency.

(ii)	Monthly projection of income and expenses, with a supporting rationale, for the first 12 months of operations	This becomes relatively irrelevant if the LPPBD will not be subject to the net capital rule. One hopes that even a LPPBD would make some analysis of his probable expenses vs. probable income.
(iii)	Organizational chart	We normally supply this in the form of an Exhibit to the Written Supervisory Procedures (WSP). Even if WSP are not required, I don't think it is unreasonable for the NASD to ask who will work in/for the LPPBD and it should not be difficult for the LPPBD to supply this information.
(iv)	Intended location of principal place of business and all other offices, whether or not required to be registered, and names of persons in charge of each	I don't think this is burdensome and has, at least, some relevance.
(v)	Types of securities to be sold and types of retail or institutional customers	This should not be hard for the LPPBD to state, and would definitely be relevant to eligibility for some form of limited membership.
(vi)	Description of methods and media to be used to develop a customer base and offer/sell products; specific reference to cold calling, use of Internet, etc.	This is not burdensome and is relevant.
(vii)	Description of business facilities and copy of any proposed or final lease	This is probably unnecessary and can be in the mild- nuisance burden category. Many LPPBDs probably work out of their homes, or as a sideline to

		another business.
(viii)	Number of markets to be made, if any; type and volatility of products; anticipated maximum inventory positions	The answer is "N/A"; no need to eliminate the question.
(ix)	Any plans to enter into contractual commitments such as underwriting	This question should remain; it should elicit copies of any agreements to act as private placement agent.
(x)	Any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, liquidity, and speculative nature of the products	The answer would be "N/A"; no need to eliminate the question.
(xi)	"Any other activity" that Applicant may engage in that reasonably could have a material impact on net capital within the first 12 months of business	This question should remain. Some LPPBDs may act as consultants or perform other non-broker-dealer services that may have an impact on their LPPBD activities.
(xii)	A description of the communications and operational systems the Applicant will employ to conduct business with customers or other members and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle	The answer is probably "N/A"; no need to eliminate the question.

	<p>the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures that may impede customer usage or firm order entry or execution; system redundancies; disaster recovery plans; system security; disclosures to be made to potential and existing customers who may use such systems; and supervisory or customer protection measures that may apply to customer use of, or access to such systems</p>	
2(G)	<p>Copy of any adverse regulatory action affecting registration or licensing</p>	<p>This is relevant and should be retained, even if it is "burdensome." The NASD should also get information about adverse action such as disbarment or expulsion from other professions, such as CPA. [Some of this information is required by Form U-4 Item 23F.]</p>
2(H)	<p>List of all Associated Persons (APs)</p>	<p>Relevant and not burdensome.</p>
2(I)	<p>Documentation of the following events, unless already reported to CRD:</p>	<p>All parts of 2(I) are relevant and necessary, even if burdensome.</p>
	<p>Regulatory action</p>	

(i)	against Applicant or APs	
(ii)	Investment-related civil action for damages or injunction against Applicant or Associated Person that is pending adjudicated or settled	
(iii)	Investment-related customer complaint or arbitration that is required to be reported on Form U-4	
(iv)	Criminal action (other than minor traffic violations) against Applicant or AP that is pending, adjudicated, or resulted in guilty or no-contest plea	
(v)	A copy of any document evidencing termination for cause or permitted resignation after investigation of alleged violation of federal or state securities law, rule, or SRO rule or standard of conduct	
2(J)	Description of any remedial action, e.g., special training, Cont. Ed., or "heightened supervision" imposed on an AP by state or federal authority or SRO	Same as 2(I).

2(K)	Written acknowledgment that heightened supervision may be required pursuant to NTM 97-19 for any AP whose record reflects disciplinary actions or sales practice events	Relevant and usually not burdensome.
2(L)	A copy of final or proposed contracts with banks, clearing agents, or service bureaus, and general description of any other final or proposed contracts	This material should be required,
2(M)	Description of nature and source of capital with supporting documentation, including a list of all persons who have contributed or plan to contribute financing, the terms of such arrangements, the risk to net capital presented by Applicant's proposed business, and any arrangement for additional capital should need arise	If there is no net capital requirement for LPPBDs, this could be eliminated. However, what the NASD is looking for is applicants "fronting" for backers who should not be in the securities business. Since LPPBDs generally have no significant need for capital, the question of financial backers may be of less interest.
2(N)	Description of financial controls	This is probably irrelevant, assuming the LPPBD has adequate policies and procedures to ensure that he/it will never have custody assets of customers, issuers, selling security holders, or others.

2(O)	Description of supervisory system and copy of WSP, internal operating procedures, internal inspections plan, written approval process, and qualifications investigations required by Rule 3010	This is generally one of the biggest elements of work in a membership application. From what I have seen, it is also frequently done very badly. This includes work by some of the prominent consultants who help with membership applications. However, I think that at least some minimal amount of procedures are appropriate. The main topics would include: (1) registration, training and supervision of employees; (2) prohibition of commission-sharing with unregistered persons; (3) money-laundering provisions; (4) whatever reporting recordkeeping will be required; (5) insider trading policies to comply with ITSFEA; (6) private placement procedures, such as Reg. D *Rules 10b-9 & 15c2-4.
2(P)	Description of number, experience, and qualifications of supervisory personnel and of persons to be supervised by each of them; other responsibilities of supervisors and principals, including full- or part-time status, other business, hours per week to be devoted to outside activities, and explanation of how person will be able to discharge duties to Applicant if not a full-time employee	I don't think this is burdensome or irrelevant.
2(Q)	Description of	This can be a very simple

	proposed recordkeeping system	statement, such as "Applicant will keep its books on an IBM-compatible computer using Quickbooks software" or "Applicant will keep manual books and records." No biggie!
2(R)	A copy of Firm Element of Continuing Education Plan	I don't object to at least the regulatory element of CLE.
2(S)	Web CRD entitlement request form and a Member Contact Questionnaire user access request form	If paper filings will be accepted, no Web entitlement would be needed. However, NTMs and other material are distributed via e-mail. Is it too much to hope that the LPPBD will have a computer that receives and sends e-mail?

Additional Material

The following items, not mentioned in Rule 1013, are required by SEC or NASD rules.

•	Designation of accountant	If there is no audit requirement, this should be eliminated.
•	FINS number	This definitely should be eliminated because there should be no SIC registration required.
•	Proof of SIC registration	Should be eliminated.
•	Fidelity bond	This bond protects the member against loss, damage, etc. by its employees. I believe it is waived if the member has only one associated human being who is its owner. It probably could be dispensed with for LPPBDs.
•	NASD Certification	This is a statement that the applicant will comply with applicable NASD rules. I see no basis for eliminating it.
•	FOCUS Filing Certification	See the comments above about use of the Web.
•	Web FOCUS Registration	See the comments above about use of the Web.
•	Securities Sales Activity Statement Copy of organic documents of applicant (Board resolutions, LLC Agreements, Partnership Agreements, etc.) & similar documents	This probably can be eliminated. It is a statement that the applicant has not yet engaged in securities business and will not do so before becoming an NASD member.

for any parent entity.	
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