

ATTACHMENT 6

**PROPOSED REVISIONS TO FORM BD FOR PPBD – TITLED
FORM BD-EZ**

GVN Comments on NASD Form 1010EZ

- I have eliminated the word “finder” throughout.
- I have restructured Faith’s comments such that they are comments of the Task Force.
- I have eliminated some of the more personal comments and tried to make them more neutral.
- I have revised the comments where I felt appropriate; e.g. eliminate speculation that “most PPBD’s” will be sole proprietorships.
- I completely changed Instruction ‘A’, but recognize this will be an important issue for further discussion, debate, and deliberation.
- I have treated the Form as applicable only to those who will be engaged in private placement of securities. We have tentatively decided not to try to cover non-private secondary offers of securities, and/or public offerings such as Rule 504 and/or California 25102(n) transactions. In any case we will need to define with some precision what is a private placement.
- I have, for the time being, not tried to make the form applicable (or inapplicable) to merger-only activities.

NASD FORM 1010-EZ

PRIVATE PLACEMENT BROKER-DEALER

INSTRUCTIONS

- A. You may use this form to apply for NASD membership as a Private Placement Broker-Dealer ("PBBD") if you intend to engage ONLY in the following brokerage activities:
- acting as placement agent for a corporation, limited liability company, limited partnership or other entity offering securities in a private placement exempt from registration requirements of the Securities Act of 1933. [THIS WILL NEED TO BE MORE DETAILED] _____.
- B. You must answer all questions on the Form (except Item 10, which is optional). You can type the answers or write in the answers neatly in black or blue ink. Do not use pencil.
- C. You must file all exhibits mentioned in this Form when you file the form with the NASD,
- D. You must send a check with the form to cover all applicable filing fees. The fees are:
- \$_____ for the Applicant
 - \$85 for each Form U-4 to register an individual. If the Applicant is an individual he or she must complete both a Form BD and a Form U-4.
 - \$32 for processing the fingerprint card of each individual for whom a Form U-4 is being filed. Individuals who are not being registered may also need to be fingerprinted. Consult the NASD District Office if you need advice about fingerprint requirements.
- E. When you have completed this Form, send it with ALL of the Exhibits listed in the Form, to the NASD District Office, in which the Applicant's principal place of business is located. To identify the proper District Office see www.nasdr.com.
- F. The Applicant and its personnel may also need to be registered under state "blue sky" laws. The filing fees vary from state to state. You should call the blue sky officials in the state(s) in which you are interested for information about filing requirements and fees. A list of blue sky offices can be found at www.nasaa.com.

FORM 1010-EZ

1. Identification of the Applicant.

Name of Applicant: _____

NOTE: If the business will be conducted by an individual as a sole proprietorship, with or without other employees, give the name of the sole proprietor. If the business will be conducted by an entity (corporation, partnership, LLC, or other) give the name of the entity; in this case the entity is the "Applicant."

Address of Applicant: _____

Telephone number: _____

Fax number: _____

E-mail: _____

2. Identification of people who will be working for the Applicant.

List the names of all individuals who will be involved on behalf of the Applicant in structuring private placements, communicating with prospective investors, or otherwise engaged in the management or operation of the Applicant's business as an NASD PPBD member,

- Indicate which of these individuals will have Executive Responsibility for the business of the applicant. "Executive Responsibility" means authority to sign contracts or make binding decisions for the Applicant.
- Indicate which of these individuals will have Supervisory Responsibility within the Applicant. "Supervisory Responsibility" means the duty of training other workers and reviewing and checking their work to be sure that it complies with all applicable laws and rules and with the internal policies of the Applicant.

If you need more space, attach additional page(s) marked Rider 2,

<u>Name</u>	<u>Social Security No.</u>	<u>CRD No. (if any)</u>	<u>Executive/Supervisory?</u>
_____	_____	_____	_____
_____	_____	_____	_____

3. **Executive and Supervisory Personnel.**

For each individual identified in Item 2 as an Executive or Supervisory person, give a brief statement of what his/her duties and authority will be. Also give a brief statement of the experience that you think qualifies each Executive or Supervisory person for his/her assignment. Attach additional pages as Rider 3 if necessary.

Chief Executive:

Chief Financial Officer:

Other key personnel:

4. **Types of securities to be offered and sold.**

Check the boxes below to indicate what kinds of securities the Applicant intends to sell. Check all categories that describe the proposed business of the Applicant.

- / / Corporate stock
- / / Corporate debt securities
- / / Other corporate securities (explain on Rider 4)
- / / Limited partnership interests
- / / LLC interests
- / / Other securities (explain)

5. **Types of issuers.**

Give a brief description of the type of business(es) whose securities the Applicant intends to offer. For example, if the issuers will be in a manufacturing business, state the primary products manufactured. If the issuers will be in service businesses, state the types of services performed.

If you have identified any specific issuers for which you intend to act as a placement agent, give this information here, and attach any written agreements with those issuer(s).

6. **Types of investors.**

Indicate what kinds of investors the Applicant expects to solicit and sell to.

- / / Institutional investors. i.e., organizations that have internal professional money managers and a net worth of at least \$2 million [?].
- / / High-net-worth individuals, i.e., people who have personal net worth of at least \$1 million [?].
- / / Individuals or entities that have a net worth of less than \$1 million.
- / / Other (explain).

7. **How will the Applicant locate prospective investors? Check all applicable boxes.**

- / / Prior business associates of the Applicant or its executives?
- / / Social contacts of the Applicant or its executives?
- / / Relatives of the Applicant or its executives?
- / / Prospects whose names will be supplied by the issuer?
- / / Prospects whose names will be supplied by other sources? (If this box is checked, state what other sources will be used.) _____
- / / Prospects obtained via the Internet? (Reminder: USE OF THE INTERNET MAY RESULT IN LOSS OF PRIVATE PLACEMENT STATUS.)

8. **Record Keeping**

Describe the Applicant's proposed record keeping system.

/ / Financial books and records be kept on a computer. (If so, state what kind of software will be used.)

/ / Financial books and records will be kept manually.

/ / Applicant will use the services of an outside accountant or service bureau to help it keep financial records. (If so, identify the service provider(s) and attach a copy of any written agreement with them).

9. **Professional counsel.**

Give the name of legal counsel or other consultant the Applicant has retained (or expects to retain) to advise it about NASD membership or its proposed business as a PPBD.

Name of adviser: _____

Name of firm: _____

Address: _____

10. **Other information,**

Attach any other information or descriptive material that you think is relevant to show that Applicant is qualified to conduct business as PPBD member of the NASD. This item is OPTIONAL.

EXHIBITS

ALL of the Exhibits listed below must accompany Form 101O-EZ when it is filed with the NASD District Office.

- | | |
|------------------|--|
| Exhibit 1 | <u>Form BD.</u> An original signed and notarized paper Form BD. |
| Exhibit 2 | <u>Form U-4.</u> An original signed paper U-4 for each individual for whom NASD registration is being requested, including the Applicant if the Applicant is an individual. |
| Exhibit 3 | <u>Fingerprints.</u> An original fingerprint card for each person required to be fingerprinted |
| Exhibit 4 | <u>Financial Statement.</u> A balance sheet as of a date not more than 30 days before this form will be received by the NASD District Office. |
| Exhibit 5 | <u>Income and expense projection.</u> A projection of the Applicant's income and expenses from the securities business for the first 12 months of operation as an NASD PPBD member. This should be done on a month-by-month basis, with some explanation of the basis for each element of income and expense. |
| Exhibit 6 | <u>Written supervisory procedures.</u> A copy of any internal procedures adopted by the Applicant for supervision of its personnel or for compliance with applicable laws and rules. If no procedures have been adopted, state this. This Exhibit is not required for any PPBD which proposes to have only one person for whom a Form U-4 is required to be submitted. |

Exhibit 7

Applicant's plan for continuing education.
For advice about how this plan should be
constructed, see www.nasdr.com.
[wherever].

Continuing Education. A copy of the

NASD MEMBERSHIP APPLICATION CHECKLIST

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

Rule ¹	Item	Comment
2(A)	Original signed and notarized paper Form BD	<ol style="list-style-type: none"> 1. This is not burdensome. 2. It is necessary to identify any "bad boy" affiliates, which information is elicited in Items 11 and 10A. 3. The Applicant can check 12W -PLA for private placement of securities. This does not require identification of the type of securities to be sold. 4. Normally, after the initial paper filing all subsequent filings must be done electronically through CRD. Perhaps PPBD's could be excused from CRD and be able to file amendments on paper.
2(B)	Original signed paper U-4s	<ol style="list-style-type: none"> 1. This is not burdensome. 2. It is necessary to elicit "bad boy" information about the individuals. Also, Form U-4 contains a consent to NASD arbitration with customers (or broker-dealer employers). 3. If a new kind of exam will be permitted for PPBD's, there would have to be a space for it in Item 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	<ol style="list-style-type: none"> 1. This is not burdensome. 2. 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 PPBD's.

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

2(E)	Filing Fees	<p>Normal fees for a broker-dealer that does not engage in clearing activities are:</p> <p>*\$3,000 – NASD membership application *\$85 -- each Form U-4, if no DRPs *\$32 -- each fingerprint card. Fees cover state registrations and any exams needed.</p> <p>Presumably, a lower fee would be charged for a PPBD membership application.</p>
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 PPBD's 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 PPBD to demonstrate, some level of net worth.
(ii)	Monthly projection of income and expenses, with a supporting rationale, for the first 12 months of operations	This becomes relatively irrelevant if the PPBD will not be subject to the net capital rule. One hopes that even a PPBD would make some analysis of its probable expenses vs. probable income.
(iii)	Organizational chart	Normally supplied in the form of an Exhibit to the Written Supervisory Procedures (WSP). Even if WSP's are not required, it is not unreasonable for the NASD to ask who will work for the PPBD, and it should not be difficult for the finder 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.	This is not 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 PPBD 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	This is not burdensome and is relevant.

	products; specific reference to cold calling, use of Internet, etc.	
(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. Most likely, many PPBD's will 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	The proposed form of Private Placement Agreement should be submitted.
(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 is "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 first 12 months of business.	The answer is probably "none" or "N/A"; no need to eliminate the question.
(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 anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures that my impede customer usage or firm order	The answer is probably "N/A" no need to eliminate the question.

	entry or execution; system redundancies; disaster recovery plans; system security; disclosures to be made 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.	
2(G)	Copy of any adverse regulatory action affecting registration or licensing	This is relevant and should be retained, even if it is "burdensome."
2(H)	List of all Associated Persons (AP's)	Relevant and not burdensome.
2(I)	Documentation of the following events, unless already reported to CRD:	All parts of 2(I) are relevant and necessary, even if burdensome.
(i)	Regulatory action against Applicant or AP's	
(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 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.	Probably requires submission of proposed Escrow Agreement with qualified escrow agent if offerings with specified minimum levels are contemplated, as would almost certainly be the case for a PPBD.
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 a PPBD, this could be eliminated. However, that the NASD is looking for is applicants "fronting" for backers who should not be in the securities business. Since PPBD's generally have not significant need for capital, the question of financial backers would probably be largely irrelevant.
2(N)	Description of financial controls	This is probably N/A as the PPBD will never have custody of 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	This is generally one of the biggest elements of work in a Membership Application. It is also frequently done very badly. However, at least some minimal procedures are appropriate. The main topics would include: (1) registration, training and supervision of employees; (2) prohibition of commission-sharing

	required by Rule 3010	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 qualification 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	This is not burdensome or irrelevant, but can be marked N/A where the PPBD will have only one U-4 person.
2(Q)	Description of proposed recordkeeping system	This can be a very simple statement, such as "Applicant will keep its book on an IBM-compatible computer using Quickbooks software" or "Applicant will keep manual books and records."
2(R)	Web CRD entitlement request form and Member Contact Questionnaire user access request form	If paper filings will be accepted, no Web entitlement would be needed. However, NTM's and other material are distributed vial e-mail. Possibly there should be a requirement that the PPBD have email access.

ADDITIONAL MATERIAL

The following items, not mentioned in Rule 1030, 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. It probably could be dispensed with for PPBD's and certainly should be for a PPBD with only one U-4 person.
·	NASD Certification	This is a statement that the applicant will comply with applicable NASD rules. It should be required of all PPBD's
·	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	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. It would be inconsistent with a "don't ask; don't tell" policy.
·	Copy of organic documents of applicant (Board resolutions, LLC Agreements, Partnership Agreements, etc.) & similar documents for any parent entity	This should be required of each PPBD that is not a sole proprietorship.