

## Conclusion

Applicants submit that their request for an amended Order is appropriate in the public interest. Applicants state that such an amended Order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in the Application described herein. Applicants submit that filing additional applications would impair their ability to effectively take advantage of business opportunities as they arise. Furthermore, Applicants state that if they were repeatedly required to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants further submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested amended Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47240; File No. SR-NASD-2002-113]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Implementation of a Fingerprinting Program for Nasdaq Employees and Independent Contractors

January 23, 2003.

On August 16, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market,

Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish a program for conducting fingerprint-based background checks of Nasdaq employees and independent contractors. On September 10, 2002, Nasdaq submitted an amendment to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on December 16, 2002.<sup>4</sup> The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder,<sup>5</sup> and, in particular, the requirements of section 15A of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with sections 15A(b)(2) and 15A(b)(6) of the Act.<sup>7</sup> Section 15A(b)(2)<sup>8</sup> requires that the Association have the capacity to enforce compliance by its members and persons associated with its members with the federal securities laws and the rules of the Association. Section 15A(b)(6)<sup>9</sup> requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, promotes the objectives of these sections of the Act. The Commission notes that Nasdaq is an important component of the National Market System and that a serious disruption in the operation of Nasdaq systems could have a significant deleterious impact on the U.S. and global financial markets. The proposed rule change will promote the objectives of the Act by establishing procedures

that should help prevent a serious disruption to Nasdaq systems. Specifically, the proposal should provide Nasdaq with an effective tool for identifying and excluding individuals whose prior criminal activities may pose a threat to the security of Nasdaq operations.<sup>10</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change, as amended, (File No. SR-NASD-2002-113) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-2169 Filed 1-29-03; 8:45 am]

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## DEPARTMENT OF STATE

[Public Notice 4255]

### Culturally Significant Objects Imported for Exhibition Determinations: "Ernst Ludwig Kirchner: 1880-1938"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Ernst Ludwig Kirchner: 1880-1938," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from on or about March 2, 2003 to on or about June 1, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of

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<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See September 9, 2002 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 46974 (December 9, 2002), 67 FR 77119 ("Notice").

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(2) and 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78o-3(b)(2).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> As explicitly stated in the proposed rule language in the Notice, such identification and exclusion of individuals will be carried out by Nasdaq only when permitted by applicable law.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).