

## NUCLEAR REGULATORY COMMISSION

### Notice of Issuance of Draft NUREG for Public Comment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance of Draft NUREG for public comment.

**SUMMARY:** The Nuclear Regulatory Commission is issuing Draft NUREG-1761 "Radiological Surveys for Controlling Release of Solid Materials" for public comment for a 90-day period. Copies of the Draft NUREG report can be obtained through the NRC homepage address: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/>.

**FOR FURTHER INFORMATION CONTACT:** George E. Powers; e-mail: [gep@nrc.gov](mailto:gep@nrc.gov) telephone: (301) 415-6212; Office of Nuclear Regulatory Research, Mail Stop T-9F31, USNRC, Washington DC 20555-0001.

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (NRC) has issued Draft NUREG-1761 "Radiological Surveys for Controlling Release of Solid Materials" for a 90-day public comment period. The report was prepared by the NRC technical staff with input from the Oak Ridge Institute for Science and Education (ORISE), staff of the U.S. Department of Energy, the Environmental Measurements Laboratory (EML), and Oak Ridge National Laboratory (ORNL). The NRC staff is developing a technical basis to support decisions on the control of slightly contaminated solid materials. Specifically, the solid materials being evaluated include metals, building concrete, onsite soils, equipment, furniture, and other solid materials, which are present at, and/or used in, licensed nuclear facilities during routine operations. This draft report provides information about measuring residual radioactivity in materials that are to be cleared from nuclear facilities, including guidance about designing, performing, and documenting radiological surveys of solid materials (including characterization practices and measurement protocols).

Information received through the public comment process will be considered in revising NUREG-1761 before publication in final form. Specifically, the NRC staff is seeking information through comments on the Draft NUREG regarding the optimization of surveys through the use of standard and advanced instrumentation and analytical methods.

Information on the Draft NUREG for public comment can be accessed using

the following NRC homepage address: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/> or by notifying the NRC staff contact, George E. Powers.

Dated at Rockville, Maryland, this 21st day of August 2002.

For the Nuclear Regulatory Commission,  
**William R. Ott,**  
*Acting Chief, Radiation Protection,  
Environmental Risk and Waste Management  
Branch, Division of Risk Assessment and  
Applications, Office of Nuclear Regulatory  
Research.*

[FR Doc. 02-21884 Filed 8-27-02; 8:45 am]

**BILLING CODE 7590-01-P**

## RAILROAD RETIREMENT BOARD

### Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

The meeting of the Actuarial Advisory Committee which was to be held on August 23, 2002, at 10 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, has been canceled.

The person to contact for more information is Isaiah Forrest, Senior Actuary, at (312) 751-4739.

Dated: August 22, 2002.

**Beatrice Ezerski,**  
*Secretary to the Board.*  
[FR Doc. 02-21875 Filed 8-27-02; 8:45 am]  
**BILLING CODE 7905-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the Chicago Stock Exchange, Inc. (Meritage Hospitality Group, Inc., Common Stock, \$.01 par value) File No. 1-12319

August 22, 2002.

Meritage Hospitality Group, Inc., a Michigan corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its Common Stock, \$.01 par value ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Issuer states in its application that it has met the requirements of the

<sup>1</sup> 15 U.S.C. 78l(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

CHX Article XXVIII, Rule 4, by complying with Exchange's rules governing an issuer's voluntary withdrawal of a security from listing and registration. In making the decision to withdraw the Security from listing and registration on the CHX, the Issuer states that the Security has traded on the American Stock Exchange ("Amex") since 1999. The Company also states that based on its most recent Form 10-Q filing, the total number of outstanding shares of its Security is 5,328,385.

The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the CHX and shall have no effect upon the Security's continued listing and registration on the Amex under section 12(b) of the Act.<sup>3</sup>

Any interested person may, on or before September 16, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**  
*Secretary.*  
[FR Doc. 02-21952 Filed 8-27-02; 8:45 am]  
**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25715; File No. 812-12632]

### Phoenix Life Insurance Company, et al.; Notice of Application

August 21, 2002.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940, as amended ("1940 Act") approving certain substitutions of securities, and pursuant to section 17(b) of the 1940 Act exempting related transactions from section 17(a) of the 1940 Act.

**APPLICANTS:** Phoenix Life Insurance Company ("Phoenix") and PHL Variable

<sup>3</sup> 15 U.S.C. 781(b).

<sup>4</sup> 17 CFR 200.30-3(a)(1).

Insurance Company ("PHL Variable") (together, the "Phoenix Insurance Companies"), and Phoenix Life Variable Accumulation Account ("Phoenix VA Account"), Phoenix Life Variable Universal Life Account ("Phoenix VUL Account"), and PHL Variable Accumulation Account ("PHL VA Account") (collectively, the "Separate Accounts" and, with the Phoenix Insurance Companies, the "Applicants").

**SUMMARY OF THE APPLICATION:**

Applicants request an order to permit the substitution of securities issued by the Federated Fund for U.S. Government Securities II ("Federated Fund"), a portfolio of Federated Insurance Series ("Federated Trust"), for securities issued by the Phoenix-Federated U.S. Government Bond Series ("Phoenix-Federated Fund"), a series of The Phoenix Edge Series Fund ("Phoenix Trust"), held by the Separate Accounts, and to permit certain in-kind redemptions and purchases in connection with the substitution ("In-Kind Transaction").

**FILING DATE:** The application was filed on September 14, 2001 and was amended and restated on August 15, 2002.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 16, 2002 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Ruth S. Epstein, Esq., Dechert, 1775 Eye Street, NW., Washington, DC 20006-2401.

**FOR FURTHER INFORMATION CONTACT:** H. Yuna Peng, Attorney, at (202) 942-0676, or William J. Kotapish, Assistant Director, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is

available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

**Applicants' Representations**

1. Phoenix is a life insurance company originally chartered in Connecticut in 1851 and redomiciled to New York in 1992. Phoenix sells life insurance policies and variable annuity contracts and variable life insurance policies through its own field force of agents and through brokers.

2. PHL Variable is an indirect wholly-owned subsidiary of Phoenix. PHL Variable is a Connecticut stock company formed on April 24, 1981. PHL Variable sells variable annuity contracts through its own field force of agents and through brokers.

3. The Phoenix VA Account and the Phoenix VUL Account are separate accounts of Phoenix created on June 21, 1982 and June 17, 1985, respectively. The PHL VA Account is a separate account of PHL Variable created on December 7, 1994. The Separate Accounts own virtually all of the issued and outstanding shares of the Phoenix-Federated Fund.

4. The Separate Accounts are segregated asset accounts of the Phoenix Insurance Companies. Each Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Accounts fund the respective variable benefits available under the variable annuity contracts and variable life insurance policies (the "Contracts") issued by the Phoenix Insurance Companies. Each of the Separate Accounts is divided into subaccounts, which invest in shares of mutual funds, or series thereof, corresponding to the investment designation of the respective subaccount. Units of interest in the Separate Accounts under the Contracts are registered under the Securities Act of 1933, as amended ("1933 Act").

5. The Contracts offer a range of investment options, which include all series of the Phoenix Trust and series of other variable insurance products funds that are managed by unaffiliated advisers, including the Federated Fund. Contract owners or participants may allocate contributions or premium payments among these variable options and any fixed investment options available under the Contract. Contributions or premium payments allocated to variable funding options are held in corresponding subaccounts of the appropriate Separate Accounts.

6. The Phoenix Trust is an open-end management investment company of the series type registered under the 1940

Act (File No. 811-04642) and its shares are registered under the 1933 Act on Form N-1A (File No. 033-05033). The Phoenix Trust currently has twenty-seven separate series (nine new series are in the process of being organized). The Phoenix Trust is a variable insurance products fund that currently offers its shares exclusively to the Separate Accounts, although the Phoenix Trust may in the future offer its shares to other insurance company separate accounts and qualified retirement or pension plans.

7. Phoenix Variable Advisors, Inc. ("PVA") currently is the investment adviser to fifteen series of the Phoenix Trust. PVA is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). PVA is an indirect wholly-owned subsidiary of Phoenix.

8. The Phoenix-Federated Fund is a series of the Phoenix Trust. The Phoenix-Federated Fund invests primarily in debt obligations of the U.S. government, its agencies and instrumentalities, including mortgage-backed securities. Its investment adviser is PVA, which has retained Federated Investment Management Company ("Federated") as subadviser. In that capacity, Federated performs all day-to-day portfolio management of the Phoenix-Federated Fund. Federated, a Delaware business trust with principal offices at 1001 Liberty Avenue, Pittsburgh, Pennsylvania, is a wholly-owned subsidiary of Federated Investors, Inc., and is not an affiliated person of PVA, the Phoenix Insurance Companies, or the Separate Accounts within the meaning of section 2(a)(3) of the 1940 Act.

9. The Phoenix-Federated Fund is available only through Phoenix-Federated Fund subaccounts offered under the Contracts. As of February 16, 2001, the Phoenix-Federated Fund subaccounts are not available for allocations of Contract value, either by premium payment or transfer of account value, except by Contract owners who, at or prior to that time, had Contract value allocated to the Phoenix-Federated Fund subaccounts.

10. The Federated Trust is an open-end management investment company of the series type registered under the 1940 Act (File No. 811-08042) and its shares are registered under the 1933 Act on Form N-1A (File No. 033-69268). The Federated Trust currently has thirteen series. The Federated Trust is a variable insurance products fund whose shares are available exclusively to separate accounts of insurance companies writing variable life

insurance policies and variable annuity contracts, including the Separate Accounts. Under Fund Participation Agreements between the Phoenix Insurance Companies, Federated Trust, and Federated Trust's distributor (the "distributor"), the distributor pays the Phoenix Insurance Companies a fee for administrative services provided by the Phoenix Insurance Companies to their Contract owners. The amount of the fee is computed at an annual rate of 0.25% of the average daily net asset value of shares held in subaccounts for which the respective Phoenix Insurance Company provides administrative services. The distributor's payments to

the Phoenix Insurance Companies are for administrative services only and do not constitute payment in any manner for investment advisory services. The Federated Trust changed its name from Insurance Management Series to Federated Insurance Series on November 14, 1995.

11. The Federated Fund is a series of the Federated Trust. Like the Phoenix-Federated Fund, the Federated Fund invests primarily in U.S. Government securities, including mortgage-backed securities issued by U.S. government agencies. Federated, as its investment adviser, provides day-to-day portfolio management for the Federated Fund.

12. The Federated Fund is not affiliated with the Phoenix Insurance Companies except as the Separate Accounts may be deemed affiliates of the Federated Fund by virtue of their ownership of shares of the Federated Fund.

13. Applicants propose to substitute shares of the Federated Fund for shares of the Phoenix-Federated Fund (the "Substitution"). Although the investment objectives for the Phoenix-Federated Fund and the Federated Fund are stated differently, the two Funds have substantially similar investment strategies and anticipated risks, as described in the table below.

	Removed fund: Phoenix-Federated fund	Substituted fund: Federated fund
Investment Objective .....	Total return, by investing primarily in debt obligations of the U.S. government, its agencies and instrumentalities.	Current income, by investing primarily in a diversified portfolio of U.S. government securities.
Principal Investment Strategies.	Under normal circumstances, the Phoenix-Federated Fund will invest at least 80% of its total assets in debt obligations of the U.S. government, its agencies and instrumentalities, including mortgage-backed securities.	The Federated Fund invests primarily in U.S. government securities, including mortgage-backed securities issued by U.S. government agencies.
Principal Risks .....	<ul style="list-style-type: none"> <li>• Interest Rate Risk .....</li> <li>• Prepayment Risk .....</li> <li>• Credit Risk .....</li> </ul>	<ul style="list-style-type: none"> <li>• Interest Rate Risk.</li> <li>• Prepayment Risk.</li> <li>• Credit Risk.</li> <li>• Liquidity Risk.</li> </ul>

14. Federated provides the day-to-day portfolio management for both the Phoenix-Federated Fund and the Federated Fund, as investment adviser to the Federated Fund and subadviser to the Phoenix-Federated Fund.

15. The Federated Fund has lower overall expenses than the Phoenix-Federated Fund. The chart below shows the investment advisory fees, other expenses and total expenses of the Phoenix-Federated Fund and the

Federated Fund for the year ending December 31, 2001, expressed as a percentage of average daily net assets.

	Removed fund: Phoenix-Federated Fund in 2001 (in percent)	Substituted fund: Federated Fund 2001 (in percent)
Advisory Fee .....	0.60	0.60
Shareholder Services Fee .....	N/A	0.25
Other Expenses .....	0.86	0.14
<b>Total Expenses .....</b>	<b>1.46</b>	<b>0.99</b>
<b>Total Expenses of Waivers and Reimbursements .....</b>	<b>0.90</b>	<b>0.74</b>

16. The Federated Fund is substantially larger than the Phoenix-Federated Fund. As of December 31, 2001, the net assets of the Federated Fund were approximately \$300.4 million, while the net assets of the Phoenix-Federated Fund were approximately \$15.1 million.

17. The Phoenix-Federated Fund and the Federated Fund each pays an investment advisory fee equal, on an annual basis, to 0.60% of the fund's average daily net assets. Under its subadvisory agreement with Federated, PVA pays Federated a subadvisory fee in the amount of 0.30% of the Phoenix-

Federated Fund's average daily net assets up to \$25 million, 0.25% on the next \$25 million, and 0.20% on the next \$50 million. The fee is negotiable on amounts over \$100 million.

18. Under the terms of a shareholder services agreement between the Federated Fund and Federated Shareholder Services, an affiliate of Federated, the Federated Fund may pay a fee in an amount up to 0.25% of its average annual net assets to Federated Shareholder Services for providing certain shareholder services. The Federated Fund did not pay or accrue the shareholder services fee during the

year ending December 31, 2001. The Federated Fund has no present intention of paying or accruing the shareholder services fee during the year ending December 31, 2002.

19. Total expenses net of waivers and reimbursements have been restated to reflect the effect of current reimbursement arrangements as if they had been in effect during all of 2001. PVA currently reimburses the Phoenix-Federated Fund expenses, other than advisory fees, to the extent such expenses exceeded, on an annual basis, 0.30% of the Fund's total average daily net assets. This arrangement has been in

effect since May 1, 2002, and may be discontinued at any time. During 2001, the Phoenix-Federated Fund's total expenses net of waivers and reimbursements were 0.82% of the

Phoenix-Federated Fund's total average daily net assets, based on reimbursement arrangements in place at various times during the year.

20. The table below shows the one, five, and ten year performance for each of the Funds, in addition to the lifetime performance, through December 31, 2001:

	One year (in percent)	Five years (in percent)	Ten years	Life of fund (in percent)
Phoenix-Federated Fund .....	5.01	N/A	N/A	10.59 (Dec. 15, 1999).
Federated Fund .....	7.03	6.66	N/A	6.28 (Mar. 28, 1994).

21. Applicants state that each of the Contracts reserves to Applicants the right, subject to compliance with applicable law, to substitute shares of another fund for shares of the Phoenix-Federated Fund held by the Separate Accounts. The prospectuses describing the Contracts contain disclosure of this right.

22. Applicants have provided their respective Contract owners and participants with disclosure of the proposed Substitution through prospectuses or prospectus supplements, as appropriate. Applicants will send Contract owners and participants confirmation of the Substitution within five days after the Substitution is effected.

23. Applicants state that, as described above, the two Funds have substantially similar investment strategies and their day-to-day portfolio management is performed by Federated, within the same investment group. For these reasons, the two Funds effectively represent duplicative options under the Contracts. This duplication presents an unnecessary source of complexity and possible confusion for Contract owners deciding how to allocate account value under the Contracts.

24. Moreover, Applicants state that the Phoenix-Federated Fund, which commenced operations in December 1999, has not proved to be a popular investment option under the Contracts and has never grown to a viable size. As of December 31, 2001, the Phoenix-Federated Fund had only approximately \$15.1 million in assets, of which approximately \$6.0 million represents the value of the initial seed money. As a consequence of its small size, the gross expenses of the Phoenix-Federated Fund remain high, in the range of 1.46% of average net assets. While the Phoenix-Federated Fund's adviser currently waives or reimburses a significant portion of these expenses, it is under no obligation to continue to do so. Finally, since the Contracts no longer offer the Phoenix-Federated Fund as an investment option to Contract owners who have not previously allocated account value to it, there is no

reasonable likelihood that the Phoenix-Federated Fund will grow appreciably in the future.

25. Applicants assert that the Substitution is proposed to eliminate the above-described duplication by consolidating the assets of the Phoenix-Federated Fund into the larger Federated Fund. With this goal in mind, Applicants believe that the Substitution will: (i) Facilitate Contract owner understanding of the underlying investment options for the Contracts and reduce the potential for Contract owners to be confused by two separate underlying investment options that invest in similar types of securities (*i.e.*, securities issued or guaranteed by the United States government, its agencies or instrumentalities); and (ii) provide Contract owners who have their Contract values currently allocated to the Phoenix-Federated Fund with an investment in a larger fund that permits greater efficiency and diversification in its portfolio holdings, benefits from economies of scale, and has lower overall expenses.

26. The Phoenix Insurance Companies and PVA will not receive for three years from the date of the Substitution any direct or indirect benefit from the Federated Fund, its adviser or underwriter, or from affiliates of the Federated Fund, its adviser or underwriter, in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than the Phoenix Insurance Companies or PVA were contractually entitled to receive from the Phoenix Federated Fund, its adviser or underwriter, or from any of their affiliates, including without limitation, Rule 12b-1 fees, shareholder service or administrative or other service fees, revenue sharing or other arrangements. The Phoenix Insurance Companies represent that the Substitution and their selection of the Federated Fund is not motivated by any financial consideration paid to or to be paid to the Phoenix Insurance Companies or any of their affiliates by the Federated Fund, its adviser or underwriter, or by the affiliates of the

Federated Fund, its adviser or underwriter.

27. Applicants assert that the proposed Substitution is designed to provide Contract owners and participants with an opportunity to continue their investment in a similar investment option without interruption and without any cost to them. In this regard, the Phoenix Insurance Companies will be responsible for expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting and other fees and expenses. On the effective date of the Substitution, the amount of any Contract owner's or participant's Contract value or the dollar value of a Contract owner's or participant's investment in the relevant Contract will not change as a result of the Substitution.

28. Applicants state that they have filed with the Commission and have sent to all existing and new Contract owners and participants prospectuses or supplements to prospectuses containing a description of the proposed Substitution (the "Notice"). The Notice disclosed the impact of the Substitution on fees and expenses at the underlying fund level. The Notice informed affected Contract owners and participants (*i.e.*, those Contract owners or participants who have Contract value allocated to the Phoenix-Federated Fund subaccount) that they will have the opportunity to reallocate Contract value:

- a. prior to the Substitution, from the Phoenix-Federated Fund subaccount; or
- b. for thirty days after the Substitution, from the Federated Fund subaccount to other subaccounts available under the respective Contracts without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year. Existing Contract owners and participants who have not previously received a prospectus for the Federated Fund, and new Contract owners and participants, have been or will be sent a prospectus for the Federated Fund.

29. Applicants state that confirmation of the Substitution (the "Confirmation")

will be mailed to affected Contract owners and participants within five days after the Substitution is effected (the "Substitution Date"). The Confirmation will disclose: (i) That the Substitution was carried out; and (ii) that affected Contract owners and participants will have the opportunity to reallocate Contract value for thirty days after the Substitution from the Federated Fund subaccount to other subaccounts available under the respective Contracts without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

30. Applicants state that it is expected that the Substitution will be effected by redeeming the shares of the Phoenix-Federated Fund in kind on the Substitution Date at their net asset value. Those assets will then be contributed in kind to the Federated Fund to purchase its shares at their net asset value on the same date.

31. In-kind redemptions and contributions will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Federated Fund and the Phoenix-Federated Fund. All assets subject to in-kind redemption and purchase will be valued based on the normal valuation procedures of the Federated Fund and the Phoenix-Federated Fund, as set forth in the registration statements for the Federated Trust and the Phoenix Trust. To the extent that any shares are redeemed otherwise than in kind, the Phoenix Insurance Companies will assume any related brokerage costs.

32. Applicants assert that the significant terms of the Substitution described above include:

- a. The Federated Fund will have investment objectives, investment strategies and anticipated risks that are compatible with or similar to those of the Phoenix-Federated Fund.
- b. The fees and expenses of the Federated Fund are lower than those of the Phoenix-Federated Fund.
- c. To the extent that any shares are redeemed otherwise than in kind, the Phoenix Insurance Companies will be responsible for brokerage costs incurred in connection with those redemptions.
- d. Affected Contract owners and participants may, prior to the Substitution, transfer assets from the Phoenix-Federated Fund subaccount to another subaccount available under their Contract and, for thirty days after the Substitution, transfer assets from the Federated Fund subaccount to another subaccount available under their Contract without the imposition of any

transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

e. The Substitution will be effected at the relative net asset value of the respective shares of the Phoenix-Federated Fund and the Federated Fund in conformity with section 22(c) of the 1940 Act and Rule 22c-1 thereunder, without the imposition of any transfer or similar charge by Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of any Contract owner's or participant's investment in such Contract.

f. Contract owners and participants will not incur any fees or charges as a result of the proposed Substitution, nor will their rights or the Phoenix Insurance Companies' obligations under the Contracts be altered in any way. The Phoenix Insurance Companies will be responsible for expenses incurred in connection with the proposed Substitution and related filings and notices, including legal, accounting and other fees and expenses. The proposed Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed Substitution than before the proposed Substitution.

g. Redemptions in kind and contributions in kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Phoenix-Federated Fund and the Federated Fund. Consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the In-Kind Transaction.

h. The Substitution will not be counted as a new investment selection in determining the limit, if any, on the total number of investment options that Contract owners and participants can select during the life of a Contract.

i. Applicants do not believe that the Substitution will have adverse tax consequences to Contract owners and the Substitution will not alter in any way the annuity or life benefits, tax benefits or any contractual obligations of Applicants.

j. Contract owners and participants may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

k. Contract owners and participants affected by the Substitution will be sent written confirmation of the Substitution

that identify the substitutions made on behalf of that Contract owner or participant within five (5) days following the Substitution Date.

33. Applicants state that they will not complete the Substitution unless all of the following conditions are met:

a. The Commission shall have issued an order approving the Substitution under section 26(c) of the 1940 Act.

b. The Commission shall have issued an order exempting the In-Kind Transaction from the provisions of section 17(a) of the 1940 Act, to the extent necessary to carry out the Substitution as described herein.

c. Each Contract owner or participant will have been mailed the Notice and current prospectuses for the Contracts and the Federated Fund.

d. Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the substitution of funds as described in this application, and that the transactions can be consummated as described herein under applicable insurance laws and under the various Contracts.

e. Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

#### Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the Contracts reserve to Applicants the right, subject to compliance with applicable law, to substitute shares of the Federated Fund for shares of the Phoenix-Federated Fund held by the Separate Accounts. Applicants assert that they have reserved this right of substitution both to protect themselves and their Contract owners and participants in situations where either might be harmed or disadvantaged by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in certain situations where a substitution could benefit themselves and their Contract owners and participants.

3. Applicants assert that the proposed Substitution protects the Contract owners and participants who have allocated Contract value to the Phoenix-Federated Fund by: (i) Providing an underlying investment option for the subaccounts invested in the Phoenix-Federated Fund that invests in similar types of securities as those in which the Phoenix-Federated Fund invests; (ii) providing such Contract owners and participants with simpler and more focused disclosure documents; and (iii) providing such Contract owners and participants with an investment option with the same investment advisory fee and lower total expenses than the current investment option.

4. Applicants submit that the proposed Substitution meets the standards that the Commission and its staff generally have applied to other substitutions that have been approved. The Substitution is not the type of substitution that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner that permanently affected all the investors in the trust, the Contracts provide each Contract owner and participant with the right to exercise his own judgment and transfer Contract values into any other available variable and/or fixed investment option. Additionally, the proposed Substitution will not, in any manner, reduce the nature or quality of the available investment options. Moreover, Applicants will offer Contract owners and participants the opportunity to transfer amounts out of the affected subaccount without any cost or other penalty that may otherwise have been imposed until thirty days after the Substitution Date. The proposed Substitution, therefore, will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

5. Applicants submit that the proposed Substitution is also unlike the type of substitution that Section 26(c) was designed to prevent in that, by purchasing a Contract, Contract owners and participants select much more than a particular underlying fund in which to invest their Contract values. Contract owners, in purchasing a Contract, also select the specific type of insurance coverage offered by Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. It is likely that, in choosing to purchase a Contract, the Contract owner also may have considered the size, financial condition, and reputation for service of the Phoenix Insurance Companies. None of

these considerations and factors will change as a result of the proposed Substitution.

6. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

7. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from the provisions of Section 17(a) if evidence establishes that:

a. the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

b. the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

c. the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants assert that the proposed In-Kind Transaction, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants maintain that the terms of the proposed Substitution, including the consideration to be paid and received, are reasonable, fair and do not involve overreaching because: (i) The proposed Substitution will not adversely affect or dilute the interests of Contract owners and participants; (ii) with respect to those securities for which market quotations are readily available, the proposed Substitution will comply with the conditions set forth in Rule 17a-7, other than the requirement relating to cash consideration; and (iii) with respect to those securities for which market quotations are not readily available, the proposed Substitution will be effected in accordance with the Phoenix-Federated Fund's and the Federated Fund's normal valuation procedures, as set forth in the registration statements of the Phoenix Trust and the Federated Trust.

9. Applicants submit that the In-Kind Transaction will be effected at the respective net asset values of the Phoenix-Federated Fund and the

Federated Fund, as determined in accordance with the procedures disclosed in the registration statements of the Phoenix Trust and the Federated Trust and as required by Rule 22c-1 under the 1940 Act. The In-Kind Transaction will not change the dollar value of any participant's or Contract owner's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transaction, the value of a Separate Account's investment in the Federated Fund will equal the value of its investment in the Phoenix-Federated Fund before the In-Kind Transaction.

10. Applicants assert that the proposed In-Kind Transaction will comply in substance with the principal conditions of Rule 17a-7. Applicants will assure themselves that the Phoenix Trust and the Federated Trust will carry out the proposed In-Kind Transaction in conformity with the conditions of Rule 17a-7 (or, as applicable, the Phoenix-Federated Fund's and the Federated Fund's normal valuation procedures, as set forth in the registration statements of the Phoenix Trust and the Federated Trust), except that the consideration paid for the securities being purchased or sold will not be cash. The proposed In-Kind Transaction will be effected based upon the independent current market price of the portfolio securities as specified in paragraph (b) of Rule 17a-7. The proposed In-Kind Transaction will comply with paragraph (d) of Rule 17a-7 because no brokerage commission, fee or other remuneration will be paid to any party in connection with the proposed In-Kind Transaction. Furthermore, a written record of the proposed In-Kind Transaction will be maintained and preserved in accordance with paragraph (f) of Rule 17a-7.

11. Applicants submit that even though the proposed In-Kind Transaction will not comply with the cash consideration requirement of paragraph (a) of Rule 17a-7, the terms of the proposed In-Kind Transaction will offer to the Phoenix-Federated Fund and the Federated Fund the same degree of protection from overreaching that Rule 17a-7 generally provides in connection with the purchase and sale of securities under that Rule in the ordinary course of business. In particular, because all of the portfolio securities of the Phoenix-Federated Fund will be transferred to the Federated Fund, and these portfolio securities were selected and retained, or will be selected between the date of this application and the Substitution Date,

without regard to the proposed In-Kind Transaction, none of the parties will be in a position to “dump” undesirable securities on either the Phoenix-Federated Fund or the Federated Fund or to transfer desirable securities to other advisory clients. Nor can the Phoenix Insurance Companies (or any of their affiliates) effect the proposed In-Kind Transaction at a price that is disadvantageous to the Phoenix-Federated Fund or the Federated Fund.

12. Applicants submit that the proposed redemption of shares of the Phoenix-Federated Fund will be consistent with the investment policies of the Phoenix-Federated Fund, as recited in the current registration statement of the Phoenix Trust, provided that the shares are redeemed at their net asset value in conformity with Rule 22c-1 under the 1940 Act. Likewise, the proposed sale of shares of the Federated Fund for investment securities is consistent with the investment policy of the Federated Fund, as recited in the registration statement of the Federated Trust, provided that: (i) the shares are sold at their net asset value; and (ii) the investment securities are of the type and quality that the Federated Fund could have acquired with the proceeds from the sale of its shares had the shares been sold for cash. The second of these conditions is met for the proposed In-Kind Transaction because the Federated Fund is compatible with or similar to the Phoenix-Federated Fund.

13. Applicants assert that the In-Kind Transaction is consistent with the general purposes of the 1940 Act and that the In-Kind Transaction does not present any of the conditions or abuses that the 1940 Act was designed to prevent.

### Conclusion

Applicants assert that, for the reasons stated above, the requested order approving the Substitution and exempting the In-Kind Transaction should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-21953 Filed 8-27-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25716; 812-12514]

### USAllianz Variable Insurance Products Trust and USAllianz Advisers, LLC; Notice of Application

August 22, 2002.

**AGENCY:** Securities and Exchange Commission (“SEC” or “Commission”).

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF THE APPLICATION:** USAllianz Variable Insurance Products Trust (the “Fund”) and USAllianz Advisers, LLC (the “Manager”) (together, “Applicants”) request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

**FILING DATES:** The application was filed on May 2, 2001, and amended on August 19, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC’s Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC’s Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549-0609. Applicants: the Fund, c/o BISYS Fund Services, 3435 Stelzer Road, Columbus, OH 43219; the Manager, 5701 Golden Hills Drive, Minneapolis, MN 55416.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 942-0581, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC’s Public Reference Branch, 450 5th Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants’ Representations

1. The Fund, a Delaware business trust, is registered under the Act as an open-end management investment company. The Fund currently is comprised of multiple series (each a “Portfolio,” and collectively, the “Portfolios”), each with its own investment objectives and policies.<sup>1</sup> The Portfolios currently serve as the investment medium for variable life insurance policies and variable annuity contracts issued by Allianz Life Insurance Company of North America or its insurance company affiliate, Preferred Life Insurance Company of New York.

2. The Manager, registered under the Investment Advisers Act of 1940 (the “Advisers Act”), serves as the investment adviser to the Portfolios pursuant to an investment advisory agreement with the Fund (“Management Agreement”) that was approved by the board of trustees of the Fund (the “Board”), including a majority of the trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act (“Independent Trustees”), and by each Portfolio’s initial shareholder.<sup>2</sup> Under the terms of the Management Agreement, the Manager

<sup>1</sup> Applicants also request relief with respect to future series of the Fund and any other registered open-end management investment companies and their series that: (a) Are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager; (b) use the manager of managers structure described in the application; and (c) comply with the terms and conditions in the application (“Future Portfolios,” included in the term “Portfolios”). The Fund is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Portfolio contains the name of a Portfolio Manager (as defined below), it will be preceded by the name of the Manager or the name “USAZ,” which is an abbreviation of the name “USAllianz Advisers, LLC.”

<sup>2</sup> One of the Portfolios, the USAZ Money Market Fund, was recently restructured. The former investment adviser of the USAZ Money Market Fund, Allianz of America, Inc., an affiliate of the Manager, currently serves as its Portfolio Manager (as defined below) and the Manager serves as its investment adviser. The restructuring to permit the USAZ Money Market Fund to operate under the manager of managers structure will require the approval of its shareholders. A shareholder meeting of the USAZ Money Market Fund is scheduled to take place on August 30, 2002, for that purpose, as well as the ratification of its Management Agreement with the Manager and its Portfolio Management Agreement (as defined below) with the Portfolio Manager.