

Dated: July 9, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-17974 Filed 7-16-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25655; 812-12640]

### The Phoenix Edge Series Fund and Phoenix Variable Advisors, Inc.; Notice of Application

July 10, 2002.

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

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

*Summary of Application:* The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

*Applicants:* The Phoenix Edge Series Fund (the "Fund") and Phoenix Variable Advisors, Inc. (the "Advisor").

*Filing Dates:* The application was filed on September 26, 2001, and amended on July 9, 2002.

*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 August 5, 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 Fifth Street, NW., Washington, DC 20549-0609. Applicants, One American Row, P.O. Box 5056, Hartford, CT, 06102-5056.

**FOR FURTHER INFORMATION CONTACT:** Keith A. Gregory, Senior Counsel, at (202) 942-0611, 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 from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the Act as an open-end management investment company. The Fund is presently comprised of twenty-seven series, each with its own investment objectives, policies, and restrictions. Shares of the Fund are currently offered only to the separate accounts of Phoenix Life Insurance Company ("Phoenix"), PHL Variable Insurance Company, and Phoenix Life and Annuity Company to fund benefits under variable annuity and variable life insurance contracts issued by those companies.

2. The Advisor, a Delaware corporation, serves as the investment adviser to certain series of the Fund that use the management structure described in the application (each a "Series" and collectively, the "Series")<sup>1</sup>. The Advisor is registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is an indirect, wholly owned subsidiary of Phoenix.

3. The Fund, on behalf of the Series, has entered into an investment advisory agreement with the Advisor (the "Advisory Agreement"), pursuant to which the Advisor serves as the investment adviser to the Series. The Advisory Agreement has been approved by a majority of the Fund's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund or the Advisor ("Independent Trustees"), and each Series' shareholder(s). Under the terms of the Advisory Agreement, the Advisor, subject to oversight by the Board, has supervisory responsibility for the

<sup>1</sup> The Applicants also request relief with respect to current or future series of the Fund and any other registered open-end management investment companies and their series that: (a) Are advised by the Advisor or any entity controlling, controlled by, or under common control with the Advisor; (b) use the management structure described in the application; and (c) comply with the terms and conditions in the application ("Future Series," included in the term "Series"). The Fund is the only registered open-end management investment company that currently intends to rely on the requested order. Applicants state that if a Series has the name of any Subadvisor, as defined below, in the Series' name, the Series' name will be preceded by the name of the Advisor (such as "Phoenix," which is the name of the Advisor in conducting its business) or the name of the entity controlling, controlled by, or under common control with the Advisor that serves as the primary adviser to such Series.

investment program of each Series. The Advisor also evaluates, selects, and recommends subadvisors ("Subadvisors") to manage all or a portion of the assets of each Series. Each Subadvisor is, or will be, an investment adviser registered, or exempt from registration, under the Advisers Act, and performs services pursuant to a written agreement with the Advisor ("Subadvisory Agreement"). As compensation for its services, the Advisor receives a fee from the Fund at annual rates based on a percentage of the applicable Series' average daily net assets. Each Subadvisor will be paid by the Advisor out of the fees received by the Advisor from the Series.

4. The Advisor selects Subadvisors based on continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a specific investment style. The Advisor monitors compliance of Subadvisors with the investment objectives and related policies of each Series and reviews the performance of each Subadvisor in order to assure continuing quality of performance. The Advisor may recommend to the Board reallocation of Series' assets among Subadvisors, if necessary, or recommend that the Fund employ or terminate particular Subadvisors, to the extent the Advisor deems appropriate to achieve the overall objectives of a particular Series.

5. Applicants request an order to permit the Advisor, subject to oversight by the Board, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Advisor, other than by reason of serving as a Subadvisor to one or more of the Series ("Affiliated Subadvisor"). None of the current Subadvisors is an Affiliated Subadvisor.

### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of the company's outstanding voting securities. Rule 18f-2 under the Act provides, in relevant part, that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the

Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f-2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that shareholders rely on the Advisor to select and monitor the Subadvisors best suited to achieve a Series' investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisors is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of the Subadvisory Agreements would impose expenses and unnecessary delays on the Series, and may preclude the Advisor from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain fully subject to section 15(a) of the Act and rule 18f-2 under the Act, including the requirements for shareholder approval.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series (or, if the Series serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by owners of the variable annuity contracts and variable life insurance contracts ("Contract Owners") who have allocated assets to that sub-account).

2. At all times, a majority of the Board will be Independent Trustees, subject to the suspension of this requirement for the death, disqualification or bona fide resignation of trustees as provided by rule 10e-1 under the Act, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

3. When a Subadvisor change is proposed for a Series with an Affiliated Subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Series and its

shareholders (or, if the Series serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Series and the Contract Owners who have allocated assets to that sub-account), and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

4. Before a Series may rely on the requested order, the operation of the Series in the manner described in the application will be approved by a majority of the Series' outstanding voting securities, (or, if the Series serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by Contract Owners who have allocated assets to that sub-account) or, in the case of a Series whose public shareholders (or Contract Owners through a sub-account of a registered separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 6 below, by the initial shareholder(s) before offering shares of that Series to the public (or to Contract Owners through a sub-account of a registered separate account).

5. The Advisor will provide general management services to the Fund and its Series, including overall supervisory responsibility for the general management and investment of each Series' securities portfolio, and, subject to review and approval by the Board, will: (a) Set the Series' overall investment strategies; (b) evaluate, select and recommend Subadvisors to manage all or part of a Series' assets; (c) allocate and, when appropriate, reallocate a Series' assets among multiple Subadvisors; (d) monitor and evaluate the performance of Subadvisors; and (e) implement procedures reasonably designed to ensure that the Subadvisors comply with the relevant Series' investment objectives, policies and restrictions.

6. Each Series relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Advisor has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisors and recommend their hiring, termination, and replacement.

7. No trustee or officer of the Fund or officer or director of the Advisor will own directly or indirectly (other than through a pooled investment vehicle

that is not controlled by that trustee, director or officer), any interest in a Subadvisor, except for: (a) Ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadvisor or an entity that controls, is controlled by, or is under common control with a Subadvisor.

8. Within 90 days of the hiring of any new Subadvisor, shareholders of the Series (or, if the Series serves as a funding medium for any sub-account of a registered separate account, Contract Owners who have allocated assets to that sub-account) will be furnished all information about the new Subadvisor that would be included in a proxy statement, including any change in such disclosure caused by an addition of a new Subadvisor. To meet this condition, the Series will provide shareholders (or Contract Owners) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-17916 Filed 7-16-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46176; File No. SR-Amex-2002-60]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

July 9, 2002.

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> notice is hereby given that on July 3, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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