

YES, is primarily engaged in the retail distribution of natural gas through its wholly-owned subsidiary, Yankee Gas Services Company ("Yankee Gas"), a Connecticut public utility service company. Yankee Gas serves approximately 185,000 residential, commercial and industrial customers in 69 cities and towns, and covers approximately 1,995 square miles in Connecticut.<sup>3</sup> Yankee Gas operates the largest natural gas distribution system in Connecticut as measured by number of customers and size of service territory.

YES also owns four active non-utility subsidiaries including: (1) NorConn Properties Inc., which holds property and facilities of Yes; (2) Yankee Energy Financial Services Company, which provides customers with financing for energy equipment installations; (3) Yankee Energy Services Company, which provides a wide range of energy-related services for its customers; and (4) R.M. Services, Inc., which provides debt collection service to utilities and other businesses nationwide.

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

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

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Atlantic Energy Service Corporation has operational responsibility for Seabrook. Northeast Nuclear Energy Company acts as agent for the System companies and other New England utilities in operating the Millstone nuclear generating facilities in Waterford, Connecticut. Three other subsidiaries (Rocky River Realty Company, The Quinnehtuk Company, and Properties, Inc.) construct, acquire or lease some of the property and facilities used by the System companies.

In January 1999, Northeast added three new corporations to the System: NU Enterprises, Inc. ("NUEI"), the holding company for the System's unregulated businesses; Northeast Generation Company and Northeast Generation Services Company. Also in January 1999 Northeast transferred to NUEI the stock of three other of its subsidiaries, making them wholly owned subsidiaries of NUEI: Select Energy, Inc.; HEC Inc.; and Mode 1 Communications, Inc. These companies engage, either directly or indirectly through subsidiaries, in a variety of energy-related and telecommunications activities, as applicable, primarily in the unregulated energy retail and wholesale commodity, marketing and service fields.

<sup>3</sup> Yankee Gas' assets include distribution lines, meters, pumps, valves and pressure and flow controllers. Yankee Gas owns approximately 2,820 miles of distribution mains, 133,033 service lines, and 185,000 active meters for customer use, all located in Connecticut. Yankee Gas also owns and operates various propane facilities and six gas storage holders.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42141A; File No. 1-2346]

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Southwestern Bell Telephone Company, Seven Year 6⅞% Notes, Due March 1, 2000; Eight Year 6⅞% Notes, Due April 1, 2001; Twelve Year 6⅞% Notes, Due April 1, 2005; Twenty-Two Year 7% Debentures, Due July 1, 2015; Thirty Year 7⅝% Debentures, Due March 1, 2023; and Thirty-Two Year 7¼% Debentures, Due July 15, 2025); Correction

November 23, 1999.

In notice document 99-30318, beginning on page 63833, in the issue of Monday, November 22, 1999, the heading should read as set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

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

[FR Doc. 99-31029 Filed 11-29-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24173; 812-11702]

### SSgA funds, et al.; Notice of Application

November 23, 1999.

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

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "Act") under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

**APPLICANTS:** SSgA Funds and its existing and future series; any other existing or future registered open-end management investment company or series thereof that is advised or subadvised by State Street Bank and Trust Company ("SSB&T") or a person controlling, controlled by, or under common control

with SSB&T ("State Street") and that is part of the same group of investment companies as SSgA Funds (together with SSgA Funds, the "Funds"); and State Street.

**FILING DATES:** The application was filed on July 22, 1999. 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 requested relief 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 December 16, 1999, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Philip H. Newman, Esq., Goodwin, Procter & Hoar LLP, Exchange Place, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Mundt, Branch Chief, (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**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 (tel. 202/942-8090).

### Applicants' Representations

1. SSgA Funds is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust. SSB&T serves as the investment adviser, custodian, and transfer agent for each series of SSgA Funds. SSB&T is a bank within the meaning of section 202(a)(2) of the Investment Advisers Act of 1940 ("Advisers Act") and currently is not required to register as an investment adviser under the Advisers Act.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests

or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a portfolio security sold by a Fund has been delayed. Currently, some Funds have committed lines of credit with unaffiliated third party banks under which the banks are obligated to lend money to the Funds to meet the Funds' temporary cash needs.

3. If the Funds were to borrow money from any bank under their current arrangement, the Funds would pay interest on the borrowed cash at a rate that would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the bank's profit for serving as a middleman between a borrower and lender. With respect to committed lines of credits, the Funds pay substantial commitment fees in addition to interest.

4. Applicants request an order that would permit the Funds to enter into lending agreements ("Interfund Lending Agreements") under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan").<sup>1</sup> Applicants state that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance Funds' ability to earn higher rates of interest on short-term lending. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to continue their committed lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. The situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the fund has undertaken to purchase a security with the proceeds from securities sold. Under such circumstances, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks may continue to be available to cover unanticipated redemptions and sale fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of an SSgA Fund that is a money market fund or short-term bond fund ("Central Fund").<sup>2</sup> Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the "Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate for any day would be the highest rate available to a lending Fund from investment in overnight repurchase agreements.<sup>3</sup> The Bank Loan Rate for any day would be calculated by State Street each day an Interfund Loan is made according to a formula established by the Funds' trustees (the "Trustees") designed to approximate the lowest interest rate at which bank short-term loans would be available to the funds. The formula would be based

<sup>2</sup> SSgA Funds and State Street have applied for an order from the SEC to permit certain SSgA Funds to invest cash balances in shares of Central Funds.

<sup>3</sup> SSgA Funds and State Street may in the future apply for an order from the SEC to permit the Funds to deposit cash balances that remain at the end of a trading day in one or more joint trading accounts to be used to enter into short-term investments. If such an order is obtained, the "Repo Rate" would be the highest rate from investments in overnight repurchase agreements that is available to a lending Fund or to a joint account in which a lending fund may participate.

upon a publicly available rate (e.g., Federal Funds plus 25 basis points) that would vary so as to reflect changing bank loan rates. Each Fund's Trustees periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Trustees.

9. The credit facility would be administered by a representative of State Street's fund accounting group and a compliance officer of the Funds (collectively, the "Credit Facility Team"). Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. State Street on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it has determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After allocating cash for Interfund Loans, the Credit Facility Team will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds. The money market Funds would not participate as borrowers.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

11. State Street would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the

<sup>1</sup> All Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

Trustees concerning any transactions by the Funds under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by each Fund's Trustees, including a majority of Trustees who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. State Street would administer the credit facility as part of its duties under its existing management or advisory and service contract with each Fund and would receive no additional fee as compensation for its services. State Street may collect standard pricing, recordkeeping, bookkeeping, and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (i) the Fund has obtained shareholder approval for its participation or, if such approval is not required by law, the Fund's prospectus and/or statement of additional information have, prior to the Fund's lending or borrowing any amounts under the credit facility, disclosed the possibility of the Fund's participation in the credit facility; (ii) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information; and (iii) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements.

#### Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control

with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having State Street as their common investment adviser, and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is 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 Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) State Street would administer the program as a disinterested fiduciary; (ii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Central Funds; (iii) the Interfund Loans would not involve a greater risk than other similar investments; (iv) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application

would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that State Street would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

6. No equity, taxable bond or money market Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to

exceed 5%, 7.5% or 10%, respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. State Street will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Trustees concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Trustees of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing

appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, State Street will promptly refer the loan for arbitration to an independent arbitrator selected by the Trustees of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.<sup>4</sup> The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on overnight repurchase agreements and bank borrowings, the yield of any Central Fund in which the lending Fund could otherwise invest, and such other information presented to the Fund's Trustees in connection with the review required by conditions 13 and 14.

17. State Street will prepare and submit to the Trustees for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are created fairly. After commencement of operations of the credit facility, State Street will report on the operations of the credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates State Street's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed

<sup>4</sup> If the dispute involves Funds with separate Boards, the Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

pursuant to Item 77Q3 of Form N-SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) that the Interfund Loan Rate will be higher than the Repo Rate, and, if applicable, the yield of the Central Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24158; 812-11684]

### Fortis Series Fund, Inc. and Fortis Advisers, Inc.

November 23, 1999.

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

**ACTION:** Notice of an application 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, as well as from certain disclosure requirements.

**SUMMARY OF APPLICATION:** Applicants, Fortis Series Fund, Inc. (the "Company") and Fortis Advisers, Inc. (the "Adviser"), request an order to permit them to enter into and materially amend sub-advisory agreements without shareholder approval and to grant relief from certain disclosure requirements.