

procedures established thereunder by the Board of Trustees of the Trust. Applicants submit that Owner interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, Applicants assert that the consideration to be received and paid is, therefore, reasonable and fair.

9. Applicants assert that the investment objectives of each of the Substituted Funds are sufficiently similar to the investment objectives of the Replaced Funds. In this regard, the Substitutions are consistent with Commission precedent pursuant to Section 17 of the 1940 Act. Applicants also assert that the Substitutions are consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent.

10. Section 6(c) of the 1940 Act provides that the Commission may grant an order exempting persons and transactions from any provision or provisions of the 1940 Act as may be 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 1940 Act. Applicants submit that the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by Section 6(c) of the 1940 Act. Owners will be fully informed of the terms of Substitutions through the prospectus supplements and the Notice, and will have an opportunity to reallocate investments prior to and following the Substitutions.

### Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitutions and related transactions involving in-kind redemptions and the combination of certain separate account sub-accounts should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-27545 Filed 10-16-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26764]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 31, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Western Resources, Inc. (70-9097)

Western Resources, Inc. ("WRI"), located at 818 Kansas Avenue, Topeka, Kansas 66612, a Kansas public utility holding company exempt under section 3(a) pursuant to rule 2 from all provisions of the Act except section 9(a)(2), has filed an application under sections 9(a)(2) and 10 of the Act in connection with a proposed sale of its gas utility operations.

WRI, itself a public utility company, is engaged through its Kansas Power & Light Company division in the generation, purchase, transmission, distribution and sale of electric energy in Kansas and the transportation and sale of natural gas predominantly in Kansas, with some small operations in Oklahoma. WRI provides retail electric service to approximately 329,000 customers in Kansas and northeastern Oklahoma. WRI also provides wholesale

electric generation and transmission services to numerous municipal customers in Kansas, and, through interchange agreements, to surrounding integrated systems. WRI provides natural gas service to approximately 648,000 retail customers in Kansas and northeastern Oklahoma. WRI is regulated as a public utility with respect to retail electric and gas rates and other matters by the Kansas Corporation Commission ("KCC") and with respect to retail gas rates and other matters by the Oklahoma Corporation Commission ("OCC"). WRI is also subject to the jurisdiction of the Federal Energy Regulatory Commission, including jurisdiction with respect to rates for sales of electricity for resale.

WRI has one utility subsidiary, Kansas Gas and Electric Company ("KGE").<sup>1</sup> KGE provides retail electric service to approximately 277,000 residential, commercial and industrial customers in Kansas and wholesale electric generation and transmission services to numerous municipal customers in Kansas and, through interchange agreements, to surrounding integrated systems. KGE does not own or operate any gas properties. KGE has one active subsidiary, Wolf Creek Nuclear Operating Corporation ("Wolf Creek"), a Delaware Corporation which is 47% owned by KGE and operates the Wolf Creek Generating Station on behalf of the plant's owners, including KGE.<sup>2</sup> KGE is regulated as a public utility company with respect to retail electric rates and other matters by the KCC. It is also regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, in connection with its ownership interest in Wolf Creek.

WRI also has numerous direct and indirect non-utility subsidiaries, including (1) Westar Capital, Inc. ("Westar Capital"), a Kansas corporation that is holding company for certain of WRI's non-regulated activities,<sup>3</sup> (2)

<sup>1</sup> WRI has entered into an Agreement and Plan of Merger dated February 17, 1997 with Kansas City Power & Light Company ("KCPL"), a public utility company which operates as an electric utility company in Kansas and Missouri ("KCPL Merger Agreement"). The KCPL Merger Agreement calls for KCPL to be acquired by WRI, after which, WRI would claim, or seek an order from the Commission granting, an exemption under Section 3(a).

<sup>2</sup> KGE has obtained no-action assurance from the Commission regarding its ownership interest in Wolf Creek. SEC No-Action Letter (June 26, 1995).

<sup>3</sup> Westar Capital's subsidiaries and affiliates are: (i) Hanover Compressor Company (offers compression services to the natural gas industry), (ii) Westar Financial Services, Inc. (funds activities of other WRI subsidiaries), (iii) Wing Columbia, L.L.C. (invests in power generation projects in Columbia, South America), (iv) WestSec, Inc.

Westar Energy, Inc. ("Westar Energy"), a Kansas corporation that provides energy related services to large commercial and industrial customers,<sup>4</sup> and (3) Mid Continent Market Center, Inc. ("MCMC"), a Kansas corporation that offers natural gas transportation, wheeling, parking, balancing and storage services to natural gas procedures.<sup>5</sup>

For the year ended December 31, 1996, WRI had consolidated operating revenues of approximately \$2,047 billion, approximately \$549 million of which was derived from the company's natural gas operations, approximately \$1.197 billion of which was derived from its electric energy operations and approximately \$301 million of which was derived from its non-utility activities. Consolidated assets of WRI and its subsidiaries at December 31, 1996 were approximately \$6.65 billion, approximately \$4.36 billion of which consisted of identifiable utility property, plant and equipment. WRI's common stock, \$5.00 par value, is listed on the New York Stock Exchange. There were 65,220,373 shares of WRI common stock outstanding as of July 30, 1997.

ONEOK, Inc., is a Delaware corporation which, among other things, operates as a gas utility company ("ONEOK"). ONEOK has its principal office in Tulsa, Oklahoma. It engages through its divisions and subsidiaries in several aspects of the energy business, including local distribution of natural gas. ONEOK is a gas utility company as defined in Section 2(a)(4) of the Act and is presently neither an associate nor an affiliate of a public-utility holding

(engaged in the business of monitored home and business security systems), (v) Westar Limited Partners, Inc. ("Westar Limited") (participates in limited partnerships and investments related to the business of WRI), (vi) Valence, L.L.C. (develops, manufactures, produces and distributes electronic parts, equipment and products), (vii) Thunderbird Limited, III, L.P. (a low income housing project in which Westar Limited is an 82% limited partner), (viii) Thunderbird Monterey, L.P. (a low income housing project in which Westar Limited is a 99% limited partner), and (ix) Oakwood Manor, L.P. (a low income housing project in which Westar Limited is a 99% limited partner).

<sup>4</sup> Westar Energy's subsidiaries are: (i) Westar Energy Investments, Inc. (holds investments of Westar Energy), (ii) Westar Gas Marketing, Inc. ("Westar Gas Marketing") (arranges natural gas purchasing, transportation and delivery for natural gas users), (iii) Westar Gas Company (gathers and processes natural gas in Oklahoma and Kansas), (iv) Indian Basin Venture I and II (collectively, Indian Basin Ventures) (operates a gas processing plant in New Mexico), (v) Westar Electric Marketing, Inc. (arranges electric marketing and brokering for commercial and industrial customers on a wholesale level), and (vi) Westar Business Services, Inc. (provides energy related services to commercial and industrial customers).

<sup>5</sup> MCMC has a subsidiary, Market Center Gathering, Inc., which facilitates the operation of gas gathering systems.

company. Oklahoma Natural Gas Company, a division of ONEOK, and two subsidiaries, ONG Transmission Company and ONG Sayre Storage Company comprise a fully integrated intrastate natural gas gathering, storage, transmission and distribution operation that provides natural gas service to approximately 730,000 customers, primarily in Oklahoma. The operations of the division and two subsidiaries are consolidated for ratemaking purposes by the OCC. ONEOK also engages in a number of non-regulated energy-related businesses, including natural gas marketing and oil and gas exploration and production. As of May 31, 1997, there were 27,997,925 shares of ONEOK common stock outstanding. For the year ended August 31, 1996, ONEOK's operating revenues on a consolidated basis were approximately \$1.224 billion, of which approximately \$538 million was attributable to regulated natural gas distribution activities and approximately \$686 million to gas marketing, gas processing, gas exploration, gas production and other operations. Consolidated assets of ONEOK and its subsidiaries at May 31, 1997 were \$1.40 billion, of which approximately \$678 million consists of its gas distribution property, plant and equipment.

WRI requests authorization to acquire up to (1) 9.9% of the outstanding common stock of WAI, Inc. (WAI), a newly-formed Oklahoma corporation,<sup>6</sup> and (2) shares of WAI's non-voting convertible preferred stock, which, when aggregated with the common stock, may amount to as much as 45% of the total capital stock of WAI (collectively, "WAI Stock"). In return for the WAI Stock, and pursuant to an amended and restated agreement dated May 19, 1997 (the "Agreement") among WRI, WAI and ONEOK, WRI will transfer all of the assets of its Kansas and Oklahoma gas distribution operations and all of the outstanding capital stock of its MCMC and Westar Gas Marketing subsidiaries<sup>7</sup> (collectively, the "WRI Gas Business") to WAI (the "Asset Transaction").<sup>8</sup> ONEOK will then merge with and into

<sup>6</sup> WAI has been formed initially as a wholly-owned subsidiary of WRI.

<sup>7</sup> As noted above, MCMC provides natural gas transportation, wheeling, parking, balancing and storage services to natural gas producers and Westar Gas Marketing arranges natural gas purchasing, transportation and delivery for natural gas users.

<sup>8</sup> Applicant states that transfer of the WRI Gas Business to New ONEOK will improve the efficiency of WRI's gas utility operations, will be in the public interest and the interests of investors and consumers and will not be detrimental to the proper functioning of the resulting holding company system.

WAI, with WAI as the surviving corporation (the "Merger," and together with the Asset Transaction, the "Transactions"), and WAI will be renamed ONEOK, Inc. ("New ONEOK").<sup>9</sup>

Immediately following the Merger, the New ONEOK board of directors and management will be the same as that of ONEOK prior to the Merger, except for (i) the expansion of the board from 14 to 16 directors to allow the appointment two directors designated by WRI<sup>10</sup> and (ii) the appointment of five persons who are currently officers of WRI with respect to the WRI Gas Business (including officers of MCMC and Westar) as additional officers of New ONEOK, with comparable responsibilities.<sup>11</sup> New ONEOK will be subject to regulation with respect to rates and other corporate matters by KCC and OCC.

Upon consummation of the Transactions, on a fully diluted basis, after giving affect to the Transactions and based on the number of shares of ONEOK Common Stock outstanding as of December 12, 1996, WRI will hold 2,966,702 shares of New ONEOK Common Stock and 19,317,584 shares of Series A Convertible Preferred Stock of New ONEOK,<sup>12</sup> representing up to 9.9%

<sup>9</sup> Pursuant to a Registration Rights Agreement to be entered into by WRI and New ONEOK upon closing of the Transactions, the outstanding shares of ONEOK common stock ("ONEOK Common Stock") will be converted on a one-for-one basis into the right to receive shares of New ONEOK common stock ("New ONEOK Common Stock"). Each share of New ONEOK Common Stock will be issued together with the corresponding number of associated rights to purchase one one-hundredths of a share of Series C Preferred Stock of New ONEOK.

<sup>10</sup> Only one of the two directors may be an officer, director or employee of WRI or its subsidiaries. The two directors to be designated by WRI approximate the number of directors it could elect in ordinary circumstances, based on its 9.9% common equity interest, if cumulative voting applied. No board member designated by WRI will serve on the New ONEOK board nominating committee, or chair any other committee of New ONEOK's board.

<sup>11</sup> Under certain circumstances, following the occurrence of a "Regulatory Change," WRI has the right to designate additional directors providing for aggregate representation of up to one-third of the New ONEOK Board.

<sup>12</sup> Shares of Series A Convertible Preferred Stock are non-voting, except that they vote with the New ONEOK Common Stock (and any other class or series of stock which may be similarly entitled to vote with the holders of New ONEOK Common Stock) as a single class with respect to certain extraordinary matters such as transactions constituting a Change in Control (as defined in the Shareholder Agreement) or proposed changes to New ONEOK's Certificate of Incorporation or By-Laws. The Series A Convertible Preferred Stock is convertible, at the option of the holder, in whole or in part, at any time following the occurrence of a Regulatory Change (as defined in the Shareholder Agreement), into New ONEOK Common Stock at the rate of one share of New ONEOK Common Stock for each share of Series A Convertible Preferred Stock (as adjusted to reflect any stock

of the New ONEOK Common Stock outstanding before conversion of any of the Series A Convertible Preferred Stock into New ONEOK Common Stock and up to 45% of the New ONEOK Common Stock that would be outstanding after conversion of all such stock. The present shareholders of ONEOK Common Stock will hold shares of New ONEOK Common Stock representing at least 90.1% of the New ONEOK Common Stock then outstanding and not less than 55% of the New ONEOK Common Stock that would be outstanding after conversion of all of the Series A Convertible Preferred Stock to be held by WRI.

WRI and New ONEOK will enter into a shareholder agreement ("Shareholder Agreement"), upon the closing of the Transactions, which will place certain restrictions on WRI's actions as a New ONEOK shareholder during the term of the Shareholder Agreement.<sup>13</sup> Among other things, the Shareholder Agreement will provide that the "Shareholder Group" (defined as WRI, its affiliates, partners and certain other persons and groups contemplated by Section 13(d) of the Securities Exchange Act of 1934) will be prohibited from acquiring (1) any Voting Securities (as defined in the Shareholder Agreement) that would cause the Shareholder Group to have more than a 9.9% Voting Ownership Percentage,<sup>14</sup> prior to the occurrence of a Regulatory Change (as defined in the Shareholder Agreement),<sup>15</sup> or (2) any securities that would, at any time, cause

split or similar events). In addition, any shares of the Series A Convertible Preferred Stock transferred by WRI to any person other than WRI or its affiliates is required to be converted into New ONEOK Common Stock.

<sup>13</sup>The Shareholder Agreement terminates under certain circumstances described in Article V of the agreement.

<sup>14</sup>"Voting Ownership Percentage" means the Voting Power (as defined in the Shareholder Agreement) represented by New ONEOK Common Stock and shares of any other class of capital stock of New ONEOK then entitled to vote in the election of directors (not including Convertible Preferred Stock) ("Voting Securities") beneficially owned by the person whose voting ownership percentage is being determined.

<sup>15</sup>The Shareholder Agreement states that a "Regulatory Change" will be deemed to have occurred upon the receipt by WRI of an opinion of counsel (which counsel must be reasonably acceptable to New ONEOK) to the effect that either (1) the 1935 Act has been repealed, modified, amended or otherwise changed or (2) WRI has received an exemption, or, in the unqualified opinion of WRI's counsel, is entitled without any regulatory approval to claim an exemption, or has received an approval or no-action letter from the Commission or its staff under the 1935 Act or has registered under the 1935 Act, or any combination of the foregoing, and as a consequence of (1) and/or (2), WRI may fully and legally exercise such rights under the Shareholder Agreement as take effect in the period after the Regulatory Change has occurred.

the Shareholder Group's Total Ownership Percentage<sup>16</sup> to exceed the Maximum Ownership Percentage specified in the Shareholder Agreement.<sup>17</sup> The Shareholder Agreement gives the Shareholder Group certain "top-up" and "dilutive issuance" rights that enable the Shareholder Group to ensure that the Voting Ownership Percentage does not fall below 9.9% and the Total Ownership Percentage does not fall below the Maximum Ownership Percentage. The Shareholder Agreement will also impose certain restrictions on WRI's ability to vote<sup>18</sup> or transfer the securities of New ONEOK.

Applicant states that the proposed Transactions satisfy all of the requirements of Sections 9(a)(2) and 10 under the Act.<sup>19</sup> In addition, WRI and ONEOK have requested a no-action letter from the Commission in connection with the proposed Transactions seeking assurances that

<sup>16</sup>"Total Ownership Percentage" means the Voting Power (as defined in the Shareholder Agreement) which would be represented by the Securities Beneficially Owned (as defined in the Shareholder Agreement) by the Person whose Total Ownership Percentage is being determined if all shares of Convertible Preferred Stock (as Defined in the Shareholder Agreement), or other Securities convertible into Voting Securities (as defined in the Shareholder Agreement), Beneficially Owned by such Person were converted into shares of Common Stock (or other Voting Security).

<sup>17</sup>The Shareholder Agreement defines "Maximum Ownership Percentage" as a Total Ownership Percentage of 45%, less the Voting Power (as defined under the Shareholder Agreement) represented by all Voting Securities (as defined in the Shareholder Agreement) transferred by the Shareholder Group during the term of the Shareholder Agreement, including the Voting Power represented by any shares of Convertible Preferred Stock which were converted into shares of New ONEOK Common Stock contemporaneously with such transfer pursuant to the terms of the Shareholder Agreement.

<sup>18</sup>Among other things, the Shareholder Agreement provides that, with respect to the election of directors to New ONEOK's board of directors, WRI will vote all New ONEOK Common Stock held by it in accordance with the recommendation of New ONEOK's nominating committee. The New ONEOK nominating committee recommends nominees to fill vacancies on the board, establishes procedures to identify potential nominees, recommends criteria for membership on the board, and recommends the successor chief executive officer when a vacancy occurs. The New ONEOK By-laws provide that the chief executive officer of New ONEOK must be elected by the affirmative vote of 80% of the directors of New ONEOK.

<sup>19</sup>Section 9(a)(2) makes it unlawful, without approval of the Commission under Section 10, "for any person \* \* \* to acquire, directly or indirectly, any security of any public utility company, if such person is an affiliate \* \* \* of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate." Commission approval under Section 9(a)(2) is required because WRI (which is already an affiliate of its subsidiary, KGE) will become an affiliate of New ONEOK as a result of the proposed Transactions.

WRI's ownership interest in New ONEOK will not cause NEW ONEOK to be deemed a "subsidiary" of WRI or WRI to be deemed a "holding company" under the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-27522 Filed 10-16-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22850; 812-10808]

### Security First Trust, et al.; Notice of Application

October 10, 1997.

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

**ACTION:** Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

*Summary of Application:* Signet Banking Corporation ("Signet"), parent of Virtus Capital Management, Inc. ("Subadviser"), has entered into an agreement and plan of merger with First Union Corporation ("First Union"). The indirect change in control of the Subadviser will result in the assignment, and thus the termination, of the existing subadvisory contract between Security First Investment Management Corporation ("Adviser") on behalf of Security First Trust ("Fund"), and the Subadviser. The order would permit the implementation, without shareholder approval, of a new investment subadvisory agreement for a period of up to 120 days following the date of the change in control of the Subadviser (but in no event later than April 30, 1998). The order also would permit the Subadviser to receive all fees earned under the new subadvisory agreement following shareholder approval.

*Applicants:* Fund, Adviser, and the Subadviser.

*Filing Dates:* The application was filed on October 7, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included 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