



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

September 21, 2010

Robert L. Tortoriello, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006-1470

Dear Mr. Tortoriello:

This letter concerns the notice filed December 3, 2009 (the “Notice”), under section 4 of the Bank Holding Company Act (“BHC Act”)¹ by BNP Paribas (“BNPP”), Paris, France, to (1) engage in physically settled tolling agreements with power plant owners (“Energy Tolling”); and (2) provide energy management services to owners of power generation facilities under energy management agreements (“Energy Management Services”), all in the United States. BNPP is currently authorized to engage in Energy Tolling and Energy Management Services through its subsidiary, Fortis Bank S.A./N.V. (“Fortis Bank Belgium”), Brussels, Belgium.² The Notice seeks authority for BNPP to engage in those activities other than through Fortis Bank Belgium.

BNPP is a foreign bank organized under the laws of France and is a financial holding company (“FHC”) for purposes of the BHC Act. In the United States, BNPP is authorized to engage in commodity derivatives activities that are permissible for bank holding companies under the BHC Act (“Commodity Derivatives Activities”),³ and it also provides financial and investment advisory services for derivatives transactions (“Derivatives Advisory Services”) that are permissible for bank holding companies under the BHC Act. Board staff, acting under delegated authority, previously authorized BNPP to engage in physical commodity trading activities (“Physical Commodity Trading”) as an activity

¹ 12 U.S.C. § 1843.

² See Board letter to Robert L. Tortoriello, Esq., December 5, 2008.

³ See 12 U.S.C. § 1843(k)(4)(F).

that is complementary to Commodity Derivatives Activities.⁴ BNPP conducts Physical Commodity Trading in the United States primarily through a nonbank subsidiary of BNPP and Fortis Bank Belgium, Fortis Energy Marketing & Trading GP, Houston, Texas (“FEMT”).

BNPP has requested approval to transfer FEMT within the BNPP organization and for FEMT to engage in Energy Tolling after it is no longer a subsidiary of Fortis Bank Belgium. Under the energy tolling agreements to which BNPP would be a party, BNPP would make periodic fixed payments to the owner of a power generation facility (“capacity payments”) in exchange for the right to all or part of the plant’s power output. BNPP would also generally supply fuel and make payments to cover the owner’s variable costs plus a profit margin. The plant owner, however, would retain control over the day-to-day operations of the plant and physical plant assets at all times.

BNPP has committed to conduct Energy Tolling in accordance with the restrictions, definitions, and conditions previously approved by the Board for the conduct of those activities. In connection with the Board’s approval of BNPP to engage in Physical Commodity Trading, BNPP committed to the Board that it will limit the aggregate market value of physical commodities that it and any of its subsidiaries hold at any one time to 5 percent of BNPP’s tier 1 capital. BNPP also has committed to include the present value of capacity payments associated with Energy Tolling contracts in that 5 percent limit.⁵ As a

⁴ Board letter to Paul E. Glotzer, Esq., August 31 2007. BNPP also holds interests in companies that engage in Physical Commodity Trading pursuant to section 2(h)(2) of the BHC Act. That section permits a foreign bank holding company that is principally engaged in the banking business outside the U.S. to hold shares in a foreign company that engages in business in the U.S., provided that the foreign company is principally engaged in business outside the U.S. and the U.S. activities are in the same line of business as activities conducted by the foreign company outside the U.S. See 12 U.S.C. § 1841(h)(2), 12 CFR 211.23(f)(5).

⁵ BNPP has also committed to include any holdings authorized by section 2(h)(2) of the BHC Act in calculating its compliance with the 5 percent limit of tier 1 capital on the aggregate market value of the physical commodities that it and any of its subsidiaries hold at any one time as a result of Physical Commodity Trading.

result, BNPP's potential exposure to commodity price risk would not increase by engaging in Energy Tolling.

In addition, BNPP has requested approval to provide Energy Management Services through FEMT after its transfer, pursuant to an energy management agreement with a power plant owner, as an activity that is complementary to its Commodity Derivatives Activities and Derivatives Advisory Services. As an energy manager, BNPP proposes to provide transactional and advisory services to power plant owners. The transactional services would consist primarily of acting as a financial intermediary, substituting its credit and liquidity for those of the owner to facilitate the owner's purchase of fuel and sale of power. BNPP's advisory services would include providing market information to assist the owner in developing and refining a risk-management plan for the plant and providing a variety of administrative services to support those transactions.

BNPP has committed to provide Energy Management Services in accordance with the restrictions, definitions, and conditions previously approved by the Board for the conduct of those activities. BNPP has made all the commitments that were required in connection with the Board's previous approvals of Energy Management Services. Those commitments generally limit the scope of the activities that BNPP may perform as energy manager to ensure that BNPP incurs only those risks that are consistent with the agency nature of the Energy Management Services and limit the revenues attributable to BNPP's Energy Management Services to 5 percent of BNPP's total consolidated operating revenues.⁶ The authority to act as energy manager should not expand BNPP's ability to engage in Physical Commodity Trading beyond what it is currently allowed to do under its authority for that activity.

As noted, the Board previously has determined pursuant to Regulation Y that Energy Tolling and Energy Management Services complement the financial activity of engaging in Commodity Derivatives

⁶ "Total operating revenues" is defined as net interest income and all non-interest revenue, including net securities gains but excluding extraordinary items.

Activities and Derivatives Advisory Services.⁷ The Board has delegated its authority to the Director of the Division of Banking Supervision and Regulation (“Director”), with the concurrence of the General Counsel, to approve proposals by an FHC to engage in Energy Tolling and to provide Energy Management Services when the proposal meets the conditions approved by the Board in approving previous proposals and raises no significant legal, policy, or supervisory issues.

Furthermore, BNPP has committed to conduct Energy Tolling and to provide Energy Management Services in accordance with the restrictions, definitions, and conditions previously relied on by the Board in authorizing those activities. BNPP also has established and maintained policies and systems for monitoring and controlling the risks associated with Energy Tolling and Energy Management Services and is expected to continue to maintain effective risk-management policies and systems for each of those activities. Approval of the request to engage in Energy Tolling and Energy Management Services likely would benefit BNPP’s customers by enhancing BNPP’s ability to provide efficiently a full range of commodity-related services consistent with existing market practice. Approval also would enable BNPP to improve its understanding of physical commodity and commodity derivatives markets and its ability to serve as an effective competitor in physical commodity and commodity derivatives markets.

Based on the record, including all the commitments made to the Board in connection with the Notice and the conditions imposed by the Board in previous cases, the Director, with the concurrence of the General Counsel, has determined that (1) the proposed Energy Tolling is complementary to BNPP’s Commodity Derivatives Activities and (2) the proposed Energy Management Services are complementary to BNPP’s Commodity Derivatives Activities and Derivatives Advisory Services. In approving the proposed Energy Tolling and Energy Management Services, the Director, with the concurrence of the General Counsel, also has determined that the proposed activities do not pose a substantial risk to the safety or soundness of BNPP, its depository institutions, or

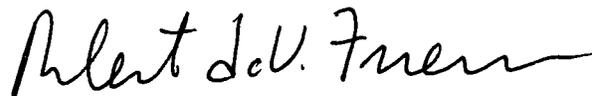
⁷ See The Royal Bank of Scotland Group PLC, 94 Federal Reserve Bulletin C60 (2008), and Fortis S.A./N.V., 94 Federal Reserve Bulletin C20 (2008). As noted above, Board staff, acting under delegated authority, previously authorized BNPP to engage in these activities through Fortis Bank Belgium.

the financial system generally and can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.

In making these determinations, the Director relied on all the information, representations, and commitments provided by BNPP to the Board in connection with the Notice. These commitments and conditions are critical to the determination that Energy Tolling and Energy Management Services would not pose a substantial risk to the safety and soundness of BNPP, other financial institutions, or the financial system generally. These determinations also are subject to all the conditions set forth in Regulation Y, including those in section 225.7,⁸ and to the conditions contained in the Board's previous decisions noted above. These commitments and conditions are deemed to be conditions imposed in writing in connection with the Notice and these approvals and, as such, may be enforced in proceedings under applicable law.

These determinations should not be construed as granting relief from any other conditions or commitments to which BNPP may be subject. In addition, these determinations are subject to the Board's authority to require modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, or to prevent evasion of, the provisions and purposes of the BHC Act and the Board's regulations and orders issued thereunder.

Sincerely yours,

A handwritten signature in cursive script, reading "Robert deV. Frierson".

Robert deV. Frierson
Deputy Secretary of the Board

cc: Ivan J. Hurwitz, Vice President
Federal Reserve Bank of New York

⁸ 12 CFR 225.7.