



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

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 21, 2008

David R. Sahr, Esq.  
Mayer Brown LLP  
1675 Broadway  
New York, New York 10019-5820

Dear Mr. Sahr:

This letter concerns the notice filed March 13, 2008, under section 4 of the Bank Holding Company Act (“BHC Act”) by Fortis S.A./N.V., Fortis N.V., Fortis Brussels S.A./N.V., and Fortis Bank S.A./N.V. (collectively, “Fortis”), all of Brussels, Belgium, to enter into physically settled tolling agreements with power plant owners in the United States (“Energy Tolling”).

In the United States, Fortis currently engages in commodity derivatives activities that are permissible for bank holding companies under the BHC Act (“Commodity Derivatives Activities”)<sup>1</sup> and physical commodity trading activities (“Physical Commodity Trading”) and provides energy management services for owners of power generation facilities under energy management agreements (“Energy Management Services”). The Board previously authorized Fortis to engage in Physical Commodity Trading and to provide Energy Management Services as activities that are complementary to Commodity Derivatives Activities and, in the case of Energy Management Services, also complementary to providing financial and investment advisory services for derivatives transactions.<sup>2</sup> Fortis conducts Commodity Derivatives Activities and Physical Commodity Trading and provides Energy Management Services primarily through a nonbank subsidiary, Fortis Energy Marketing & Trading GP (“FEMT”).

Fortis has requested approval to expand FEMT’s current activities to include Energy Tolling. Under the energy tolling agreements to which Fortis would be a party, Fortis 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

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<sup>1</sup> See 12 U.S.C. § 1843(k)(4)(F).

<sup>2</sup> Board Letter regarding Fortis S.A./N.V. (September 29, 2006); Fortis S.A./N.V., 94 Fed. Res. Bull. C20 (2008).

plant's power output. Fortis 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.<sup>3</sup>

The Board has previously determined pursuant to Regulation Y that Energy Tolling complements the financial activity of engaging in Commodity Derivatives Activities.<sup>4</sup> The Board has delegated to the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, the authority to approve requests by financial holding companies to engage in Energy Tolling as an activity that is complementary to Commodity Derivatives Activities, if the proposal meets the conditions imposed by the Board when approving previous requests to engage in Energy Tolling and does not raise significant legal, policy, or supervisory issues.

Fortis has committed to conduct Energy Tolling activities in accordance with the restrictions, definitions, and conditions previously imposed by the Board on the conduct of those activities. In connection with the Board's approval of Fortis's Physical Commodity Trading activities, Fortis 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 Fortis's tier 1 capital. Fortis also has committed to include the present value of capacity payments associated with Energy Tolling contracts in that 5 percent limit. As a result, Fortis's potential exposure to commodity price risk would not increase by engaging in Energy Tolling activities. Fortis also has established and maintained policies and systems for monitoring and controlling the risks associated with Physical Commodity Trading and Energy Tolling. Going forward, Fortis is expected to continue to maintain effective risk-management policies and systems for both of those activities. Approval of the current proposal would likely benefit Fortis's customers by enhancing Fortis's ability to provide efficiently a full range of commodity-related services and improving its understanding of the commodity 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 the proposed Energy Tolling is complementary to the Commodities Derivatives Activities

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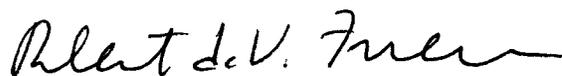
<sup>3</sup> [The footnote has been redacted.]

<sup>4</sup> The Royal Bank of Scotland Group PLC, 94 Federal Reserve Bulletin \_\_ (2008).

conducted by Fortis; that the proposal would not appear to pose a substantial risk to Fortis, depository institutions operated by Fortis, or the financial system generally; and that the proposal can reasonably be expected to produce benefits to the public that outweigh any potential adverse effects.

In making these determinations, the Director and the General Counsel relied on all the information, representations, and commitments provided by Fortis to the Board in connection with the notice and the conditions contained in the previous decisions noted above. These commitments and conditions are critical to the determination that Energy Tolling would not pose a substantial risk to the safety and soundness of Fortis, other financial institutions, or the financial system generally. These determinations are also subject to all the conditions set forth in Regulation Y, including those in section 225.7,<sup>5</sup> 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 by the Board in connection with the notice and this approval and, as such, may be enforced in proceedings under applicable law. 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,



Robert deV. Frierson  
Deputy Secretary of the Board

cc: Federal Reserve Bank of New York

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<sup>5</sup> 12 CFR 225.7.