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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
MARKET REGULATION

July 23, 2007

Larry E. Bergmann, Esq.  
Willkie Farr & Gallagher LLP  
1875 K Street, NW  
Washington, DC 20006

**Re: Fortis SA/NV and Fortis NV  
File No. TP 07-76**

Dear Mr. Bergmann:

In your letter dated July 20, 2007, as supplemented by conversations with the staff, you request on behalf of Fortis SA/NV, a company incorporated in Belgium, and Fortis N.V., a public limited liability company incorporated in the Netherlands (together "Fortis"), an exemption from Rule 102 of Regulation M under the Securities Exchange Act of 1934 ("Exchange Act") in connection with the exchange offer ("Offer") being conducted by Fortis, The Royal Bank of Scotland plc, a public limited company organized under the laws of the United Kingdom and registered in Scotland ("RBS"), and Banco Santander Central Hispano, S.A., a bank organized under the laws of the Kingdom of Spain ("Santander" and, together with Fortis and RBS, the "Consortium") to acquire all of the outstanding shares of ABN AMRO Holding NV, a public limited liability company incorporated in the Netherlands ("ABN AMRO").

You seek an exemption to permit Fortis and its affiliates to conduct specified transactions outside the United States in RBS Ordinary Shares during the distribution of RBS Ordinary Shares to the shareholders of ABN AMRO. Specifically, you request that: (i) certain Fortis affiliates be permitted to continue to engage in principal trading and derivatives market-making and hedging activities as described in your letter; (ii) the Asset Managers be permitted to continue to engage in asset management activities as described in your letter; (iii) the Insurance Companies be permitted to engage in insurance activities as described in your letter; and (iv) certain Fortis affiliates be permitted to continue to engage in unsolicited brokerage activities as described in your letter.

You also seek an exemption to permit certain Fortis affiliates to conduct specified transactions in the United States in RBS Ordinary Shares during the distribution of RBS Ordinary Shares to the shareholders of ABN AMRO. Specifically, you request that Fortis Securities and Fortis Clearing be permitted to continue to engage in unsolicited brokerage activities as described in your letter. We have attached a copy of your

correspondence to avoid reciting the facts set forth therein. Unless otherwise noted, each defined term in our response has the same meaning as defined in your letter.

*Response:*

Based on the facts and representations that you have made in your letter, but without necessarily concurring with your analysis, the Commission hereby grants Fortis an exemption from Rule 102 of Regulation M to permit certain Fortis affiliates engaged in principal trading and derivatives trading and hedging, the Asset Managers, the Insurance Companies, certain Fortis affiliates engaged in unsolicited brokerage, Fortis Securities, and Fortis Clearing (collectively, the "Companies") to continue to engage in the transactions described in your letter. In particular, in your correspondence you make the following key representations:

- During the year ended December 31, 2006, the average daily trading volume ("ADTV") of RBS Ordinary Shares in the United Kingdom was approximately 42,287,966 shares, with a value of £421.4 million (approximately \$825.6 million) and RBS's market capitalization at December 31, 2006 was £62.8 billion (\$123.0 billion), with RBS Ordinary Shares comprising 3.78% of the FTSE 100 index;
- The ADTV value for RBS Ordinary Shares was £376.7 million (approximately \$754.9 million) for the two-month period ended June 30, 2007, and the public float value for RBS Ordinary Shares was £59.9 billion (approximately \$120.0 billion) as of June 30, 2007;
- The principal trading market for RBS Ordinary Shares is the United Kingdom and trading on the LSE accounted for approximately 99.7% of the worldwide average trading volume in RBS Ordinary Shares during 2006;
- The number of RBS Ordinary Shares to be delivered to ABN AMRO shareholders in the Offer will represent approximately 5.9% of the RBS Ordinary Shares currently outstanding;
- Fortis maintains and enforces written "Chinese Wall" policies and procedures to prevent material non-public information from passing between the sales /trading areas and the advisory areas of Fortis;
- Fortis' affiliates conduct their principal trading, derivatives trading and hedging, and unsolicited brokerage activities outside the United States;
- The Asset Managers conduct their asset management activities outside the United States;

Larry E. Bergmann, Esq.

July 23, 2007

Page 3 of 4

- The Insurance Companies conduct their insurance activities outside the United States;
- The withdrawal from the market for the RBS Ordinary Shares, which are among the most actively traded in the United Kingdom, for an extended period of time would have harmful effects on Fortis' customers and the ordinary business of Fortis and its affiliates;
- Each of the Fortis affiliates engaged in principal trading and derivatives trading and hedging, the Asset Managers, the Insurance Companies, Fortis affiliates engaged in unsolicited brokerage has confirmed that the activities for which it is requesting relief will be conducted in the ordinary course of its businesses and in accordance with applicable Dutch law and its interpretation by the AFM in relation to the Offer, the Laws of the United Kingdom and other non-US laws;
- In the United States, Fortis conducts a securities business through Fortis Securities and Fortis Clearing, each a separate Fortis affiliate, each of which registered with the Commission as a broker-dealer, and each is a member of the NASD; and Fortis Clearing is also a member of the NYSE and CBOT as well as other exchanges and subject to the jurisdiction of the CFTC; and
- Fortis Securities and Fortis Clearing will not engage in principal trading, derivatives market marking and hedging, asset management and insurance, but rather will only engage in unsolicited brokerage activities in the normal course of its business with its customers.

The exemption is subject to the following conditions:

1. None of the transactions of the Companies described in your letter shall occur in the United States, with the exception of the unsolicited brokerage activities of Fortis Securities and Fortis Clearing described in your letter;
2. All of the transactions described in your letter shall be effected in the ordinary course of business and not for the purpose of facilitating the Offer;
3. The Offer documents distributed to US holders will disclose the possibility of, or the intention to make, the transactions described in you letter;
4. Fortis and each of the Companies will provide to the Division of Market Regulation ("Division"), upon request, a time-sequenced schedule of all such transactions made during the Restricted Period. Such schedule will include:
  - (a) size, broker (if any), time of execution, and price of the transactions;

Larry E. Bergmann, Esq.

July 23, 2007

Page 4 of 4

- (b) the exchange, quotation system, or other facility through which the transactions occurred, and
  - (c) whether the transactions were made for a customer account or a proprietary account;
5. Upon request of the Division, Fortis and each of the Companies will transmit the information requested in item 4 (above) to the Division at its offices in Washington DC within 30 days of its request;
  6. Fortis and each of the Companies shall retain all documents and other information required to be maintained pursuant to this exemption for at least two years following the completion of the Offer;
  7. Representatives of Fortis and each of the Companies shall be made available (in person at the offices of the Commission in Washington, DC or by telephone) to respond to inquiries of the Division relating to their records; and
  8. Except as otherwise exempted by this letter, Fortis and each of the Companies will comply with Regulation M.

The foregoing exemption from Rule 102 of Regulation M is based solely on your representations and the facts presented to the staff and is strictly limited to the application of this rule to the proposed transactions. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations.

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, including Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the participants in the various transactions. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

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



James A. Brigaglano  
Associate Director

Attachment

# WILLKIE FARR & GALLAGHER LLP

1875 K Street, NW  
Washington, DC 20006

Tel: 202 303 1000  
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## SECURITIES AND EXCHANGE COMMISSION

100 F STREET, NE

July 20, 2007

## DIVISION OF MARKET REGULATION

Mr. James Brigaglano  
Associate Director  
Division of Market Regulation  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

### **Re: Fortis SA/NV and Fortis N.V.: Request for Exemptive Relief from Rule 102 of Regulation M**

Dear Mr. Brigaglano:

We are writing on behalf of our client Fortis SA/NV, a company incorporated in Belgium, and Fortis N.V., a public limited liability company incorporated in the Netherlands (together “**Fortis**”) about the application of Regulation M to transactions by Fortis and its affiliates in the ordinary shares of The Royal Bank of Scotland Group plc (the “**RBS Ordinary Shares**”), a public limited company organized under the laws of the United Kingdom and registered in Scotland (“**RBS**”) in connection with a proposed mixed cash and exchange offer (“**Offer**”) by RBS, Fortis and Banco Santander Central Hispano SA, a bank organized under the laws of the Kingdom of Spain (“**Santander**” and, together with RBS and Fortis, the “**Consortium**”) to acquire all of the outstanding shares of ABN AMRO Holding NV, a public limited liability company incorporated in the Netherlands (“**ABN AMRO**”).

Specifically, as previously discussed with members of the staff (the “**Staff**”) of the Securities and Exchange Commission (the “**Commission**”), on behalf of Fortis, we ask the Staff to grant Fortis exemptive relief from Rule 102 of Regulation M to permit Fortis and its affiliates to continue, in the ordinary course of their respective businesses as described below and in accordance with applicable local law, to engage in the activities described in this letter during the Offer.

The availability of the exemptions Fortis is requesting would be conditioned on the disclosure and record-keeping undertakings outlined below.

Willkie Farr & Gallagher LLP is acting as US counsel to Fortis. Fortis has provided and authorized Willkie Farr & Gallagher LLP to make on their behalf the factual representations set forth in this letter as such representations relate to Fortis. The statements contained in this letter with respect to Dutch and UK regulation have been reviewed by Linklaters LLP, Dutch and UK counsel to RBS. The statements contained in this letter with respect to Belgian law have been reviewed by Linklaters LLP, Belgian counsel to Fortis.

## 1 The Market for RBS Ordinary Shares

It is our understanding<sup>1</sup> that, the principal trading market for the RBS Ordinary Shares is the United Kingdom. The RBS Ordinary Shares are listed on the LSE and in connection with the Offer RBS will apply to list the RBS Ordinary Shares on Euronext Amsterdam and American Depository Shares (“ADSs”) in respect of RBS Ordinary Shares (“RBS ADSs”) on the New York Stock Exchange (the “NYSE”). There is no current US trading market for RBS Ordinary Shares or RBS ADSs. RBS is a foreign private issuer as defined in Rule 3b-4(c) under the Exchange Act.

As of December 31, 2006, 3,152,844,335 RBS Ordinary Shares were outstanding, held by 174,809 record holders in the United Kingdom. Approximately 0.74% of RBS’ outstanding Ordinary Shares were held of record by non-residents of the United Kingdom. Based on public filings as of December 31, 2006, 1,244 record holders with registered addresses in the US held 0.08% of RBS’ outstanding Ordinary Shares.

As of June 30, 2007, 9,456,448,005 RBS Ordinary Shares were outstanding<sup>2</sup>, held by 175,622 record holders in the United Kingdom. Approximately 1.32% of RBS’ outstanding Ordinary Shares were held of record by non-residents of the UK. Based on public filings as of June 30, 2007, 1,291 record holders with registered addresses in the US held 0.08% of RBS’ outstanding Ordinary Shares. Assuming the maximum number of ABN AMRO Shares (as defined below) subject to the Offer is tendered, 556,143,700 RBS Ordinary Shares would be issued in the Offer, amounting to approximately 5.9% of the RBS Ordinary Shares outstanding prior to the Offer.

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<sup>1</sup> Our understanding of the market for RBS Ordinary Shares is based on information provided to us by RBS in connection with the Offer.

<sup>2</sup> RBS effected a bonus issue of two new RBS Ordinary Shares with respect to each outstanding RBS Ordinary Share as of May 8, 2007, which accounts for the significant difference between the numbers of RBS Ordinary Shares outstanding as of June 30, 2007 and December 31, 2006.

RBS' market capitalization at December 31, 2006 was £62.8 billion (approximately \$123.0 billion).<sup>3</sup> The LSE accounted for approximately 99.7% of the worldwide average trading volume in the RBS Ordinary Shares during 2006. During the year ended December 31, 2006, the average daily trading volume of RBS Ordinary Shares in the United Kingdom was approximately 42,287,966 shares, with a value of £421.4 million (approximately \$825.6 million).

The average daily trading volume for RBS Ordinary Shares was £376.7 million (approximately \$754.9 million) for the two-month period ended June 30, 2007, and the public float value for the RBS Ordinary Shares was £59.9 billion (approximately \$120.0 billion) as of June 30, 2007.<sup>4</sup>

The LSE provides for trading in equities and bonds principally through three main trading platforms: (i) the Stock Exchange Electronic Trading System ("SETS"), (ii) SETS Market Maker ("SETSmm") and (iii) the Stock Exchange Automated Quotation System ("SEAQ"). SETS is the central limit order book that directly matches willing buyers and sellers on a price/time priority basis, creating efficiencies in the markets by eliminating the need for a wholesaler. As an electronic order book, SETS can execute hundreds of trades in one second. Securities traded on SETS include the FTSE 100 and the most liquid FTSE UK AIM50 securities. SETSmm is the LSE's trading service for Mid Cap, Small Cap and FTSE UK AIM50 securities. SEAQ is the LSE's service for less liquid securities and most AIM securities.

As of June 30, 2007, the market capitalization of UK and international companies on the LSE's markets amounted to £4.8 trillion (approximately \$9.6 trillion), with £7.9 trillion (approximately \$15.8 trillion) of equity business transacted over the prior 12-month period. As of June 30, 2007, there were 3,273 listed companies on the LSE. The primary market index is the FTSE 100, which currently is comprised of 100 of the most prominent companies listed on the LSE, including RBS.

The RBS Ordinary Shares are a significant component of the FTSE 100. The RBS Ordinary Shares comprised 3.70% of the FTSE 100 as of June 30, 2007.

## 2 Fortis

Fortis is an international provider of banking and insurance products and services to personal, business and institutional customers. Fortis delivers a comprehensive package of financial products and services through its own distribution channels and via intermediaries and other partners.

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<sup>3</sup> Pounds sterling have been translated to dollars at the rate of £1.00 = \$1.95910, the noon buying rate in New York City published by the Federal Reserve Bank of New York on December 31, 2006, with regard to data as of or for periods ending December 31, 2006.

<sup>4</sup> Pounds sterling have been translated to dollars at the rate of £1.00 = \$2.00390, the noon buying rate in New York City published by the Federal Reserve Bank of New York on June 30, 2007, with regard to data as of or for periods ending June 30, 2007.

With total assets of €775 billion and shareholder's equity of €20.6 billion at December 31, 2006, Fortis ranks among the twenty largest financial institutions in Europe based on a market capitalisation of €43.3 billion at December 31, 2006, and has a presence in over 50 countries and approximately 57,000 employees (full time equivalents).

In its home market, the Benelux countries, Fortis occupies a leading position in each of its principal business segments, banking and insurance. Fortis's retail banking operations are a market leader in the Benelux region. Fortis also operates worldwide in selected activities, such as fund administration, trade finance, shipping finance, export and project finance and global markets. In other specific countries in Europe and Asia it also operates in banking and insurance, and is a market leader in bancassurance in Spain and Portugal.

Fortis N.V. is headquartered in Utrecht, the Netherlands and Fortis SA/NV has its principal offices in Brussels, Belgium. Fortis conducts its banking business through Fortis Bank SA/NV ("Fortis Bank"), a Belgian bank. In addition, Fortis has subsidiary, branch, representative, and similar offices in various locations around the world. As a binational, integrated financial services provider, Fortis is subject to different forms of external supervision. The Dutch central bank ("DNB") and the Belgian Commission Bancaire Financiere et des Assurances ("CBFA") share the view that, based on European and national regulations, supplementary cross-border supervision – in addition to specific national supervision of the different sectors – needs to be conducted on a Fortis-wide basis. The supervisory bodies laid down the coordination of their respective regulatory scope in an agreement in 1996, which was renewed in 2002. The new agreement between the regulators stipulates that each will continue to perform sector supervision of the relevant activities of Fortis entities in their jurisdiction. Supplementary supervision is exercised jointly by the bodies. Fortis Bank branches in the United States are located in New York and Connecticut and are subject to applicable US and state bank regulation, which includes regular federal and state examinations of operations. Fortis has confirmed that the activities described below, for which it is requesting relief, are permitted under and would be conducted in accordance with applicable Dutch and Belgian law in relation to the Offer and other non-US laws.

In the United States, Fortis conducts a securities business through Fortis Securities LLC ("Fortis Securities") and Fortis Clearing Americas LLC ("Fortis Clearing"), each of which is a broker-dealer registered with the Commission and a member of NASD. Fortis Clearing is also a member of the NYSE, the Chicago Board of Trade and other exchanges and is also subject to the jurisdiction of the Commodity Futures Trading Commission. Fortis Securities' main businesses are structured credit, equity sales (foreign securities to U.S. institutional clients), investment banking, equity research, asset backed securities sales and trading, and back office services for other broker-dealers. Fortis Clearing provides derivatives, futures, fixed income and equity securities clearing services. Fortis Securities and Fortis Clearing will engage only in unsolicited brokerage activities in

RBS Ordinary Shares in the normal course of their business with their customers during the Regulation M restricted period.

Fortis provides asset management services in the United States primarily to an institutional client base through Fortis Investment Management USA, Inc. (“**FIM USA**”)<sup>5</sup>, a wholly owned subsidiary of Fortis Investment Management SA. Fortis provides asset management services under the brand name “Fortis Investments,” which operates as the autonomous global asset management arm of Fortis. FIM USA is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940. FIM USA may enter into transactions involving RBS Ordinary Shares in its normal course of business with its customers. All such transactions take place outside the United States.

Market Activities. Fortis acts as a broker or agent with respect to purchases and sales of securities as part of its ordinary course of business with institutional clients both within and outside the US and with retail and private banking clients outside the US. Fortis does not conduct typical market-making activities in RBS Ordinary Shares, although Fortis may, as principal, purchase and sell RBS Ordinary Shares to facilitate customer orders and engage in related stock borrowing and lending activities. These transactions may be solicited or unsolicited by Fortis, and most of them are effected on the LSE, with the balance on other offshore exchanges, in the London over-the-counter markets and, in some cases, in the over-the-counter market elsewhere outside the United States. As noted above, the vast majority of trading in RBS Ordinary Shares occurs on the LSE. The LSE is based on an order-matching system, not an inter-dealer market with formal, officially designated market makers. Thus, with regard to RBS Ordinary Shares, Fortis is not obligated to make a market or comply with any particular market-maker requirements.

Derivatives Trading and Hedging. Fortis may conduct derivatives market-making activities; any such activities would occur outside the US. It engages in proprietary derivatives trading and related hedging activities for its own account and with institutional customers. It engages in these activities outside the United States and manages these activities principally from the Netherlands and Belgium. This activity involves the issuance, purchase and sale of derivative products for its own account and for the accounts of its customers, on both solicited and unsolicited bases, on certain exchanges and in the over-the-counter market in Belgium and the Netherlands and elsewhere outside the United States. These derivatives products include listed and over-the-counter options, warrants and other securities that are exercisable or convertible into, or the value of which is determined by

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<sup>5</sup> In December of 2006, FIM USA acquired a 70% ownership in Cadogan Management LLC (“**Cadogan**”), which manages commingled and customized multi-manager hedge fund portfolios (i.e., funds of hedge funds) for qualified US and offshore institutional and private investors. Pursuant to the terms of the purchase agreement, Fortis will ultimately acquire 100% of the membership interest in Cadogan. Cadogan is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940.

reference to, RBS Ordinary Shares or proprietary third-party baskets or indices including RBS Ordinary Shares. These derivatives may also include index futures on the foregoing.

In addition, Fortis will maintain varying positions in these derivatives and its financial exposure to movements in the price of the RBS Ordinary Shares will vary from time to time. In order to manage this financial exposure, Fortis continually enters into hedging transactions that involve, in whole or in part, purchases and sales on behalf of its customers in order to assist them in hedging their derivatives positions. The derivative hedging transactions in RBS Ordinary Shares described above occur on certain exchanges and in the over-the-counter markets outside the United States.

Trading in RBS Ordinary Shares by the Asset Managers of Fortis. Certain affiliates<sup>6</sup> of Fortis, manage the assets of certain mutual funds, pension funds and investor portfolios (such affiliates, the “Asset Managers”; such funds and investor portfolios, the “Managed Funds”). As part of their investment management activities, the Asset Managers buy and sell RBS Ordinary Shares outside the United States on behalf of the Managed Funds. Under Dutch, Belgian and other applicable law, the Asset Managers have a fiduciary duty to oversee the Managed Funds in a manner that is in the best interests of the investors of those funds. The Asset Managers are generally prohibited by law from taking into account any factors other than the interests of the funds’ beneficiaries in making investment decisions. Accordingly, the Asset Managers would be prohibited by law from following a directive by Fortis to cease trading RBS Ordinary Shares during the Regulation M restricted period, unless the Asset Managers believed that cessation of such trading was in the best interests of the Managed Funds’ beneficiaries. Similarly, the Asset Managers would be prohibited by law from following a Fortis directive to bid for or purchase RBS Ordinary Shares unless the Asset Managers independently concluded that such bids or purchases were in the best interests of the Managed Funds’ beneficiaries.

Trading by the Insurance Companies. Fortis sells insurance products in the European and Asian markets through certain affiliates (the “Insurance Companies”)<sup>7</sup>. The Insurance Companies

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6 As noted above, Fortis Investments is the autonomous global asset management affiliate of Fortis and provides asset management services on a world wide basis, including through FIM USA in the United States. As an autonomous unit of Fortis, Fortis Investments might be considered to fall outside of the definition of “affiliated purchaser” set forth in Rule 100 of Regulation M and thus the restrictions of Regulation M would not apply to it. Nevertheless, Fortis has assumed for the purpose of this request that Fortis Investments will be subject to the provisions of Rule 102, and respectfully requests the relief described in this letter for Fortis Investments entities.

7 The Insurance Companies include Fortis Insurance Belgium, Fortis Insurance Netherlands, Fortis Insurance Luxembourg, Fortis Corporate Insurance, Fortis Insurance Limited (UK), Fortis Assurances (France), Fortis Emeklilik (Turkey), Pacific Century Insurance (HK), Millenniumbcp Fortis (Portugal - majority interest), Caifor (Spain), Gutingia (Germany), Etalon Life (Ukraine), Fortis Insurance Russia, as well as minority participations in Taiping Life (PRC), Mayban Fortis (Malaysia), Muang Thai Fortis (Thailand), and an Indian joint venture in creation, and including their respective subsidiaries.

The Insurance Companies operate separately from other areas of Fortis and might be considered to fall outside of the definition of “affiliated purchaser” set forth in Rule 100 of Regulation M and thus the restrictions of Regulation M would not apply to them. Nevertheless, Fortis has assumed for the purpose of this request that the

may invest the premiums received from their respective clients directly into equities or into investment funds managed by their own asset managers, or by Fortis Investments or third party managers. It is possible that client funds may be invested in RBS Ordinary Shares as part of the regular operation of the investment funds. The Insurance Companies conduct these activities outside the US.

Under Dutch and Belgian law, the Insurance Companies have a fiduciary duty to purchasers of insurance products to oversee the investment funds with respect to those products in a manner that is in the best interests of those purchasers.

Unsolicited Brokerage. Fortis effects unsolicited brokerage transactions in the RBS Ordinary Shares by placing orders on the LSE and other offshore exchanges or effecting trades in the over-the-counter market in the United Kingdom and elsewhere outside the United States, in each case on behalf of customers. These transactions arise from unsolicited buy and sell orders received from its customers, although Fortis may solicit the other sides of these transactions. As noted above, Fortis Securities and Fortis Clearing may also engage in unsolicited brokerage transactions in the RBS Ordinary Shares with their customers in the United States.

Fortis maintains and enforces written “Chinese Wall” policies and procedures to prevent material non-public information from passing between the sales/trading areas and other areas of Fortis. Accordingly, during restricted periods prior to announcements of earnings results or other material developments that have not yet become public, all ordinary course market activities of Fortis are permitted to continue. Under these policies and procedures, Fortis’ traders and sales force who conduct trading activities will generally be able to continue doing so during and outside these restricted periods, although senior management may restrict such activities in extraordinary circumstances. Fortis will continue to maintain and enforce these policies and procedures during the Offer.

Other affiliates of Fortis conduct market activities in RBS Ordinary Shares in the ordinary course of their business. In connection with the Offer, these other affiliates will comply with Regulation M, either by suspending their market activities during the restricted period or by conducting those activities in accordance with an available exception from Regulation M. These exceptions might include those available for “affiliated purchasers”. Accordingly, Fortis is not seeking relief from the Staff for these activities.

### 3      The Offer

The Offer would cover all the outstanding ordinary shares, nominal value of €0.56 per share, of ABN AMRO (“**ABN AMRO Ordinary Shares**”) and ADSs, each representing one ABN AMRO

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Insurance Companies will be subject to the provisions of Rule 102, and respectfully requests the relief described in this letter.

Ordinary Share, of ABN AMRO (“**ABN AMRO ADSs**” and, together with the ABN AMRO Ordinary Shares, “**ABN AMRO Shares**”).

In the Offer, ABN AMRO shareholders would have the right to exchange each of their ABN AMRO Ordinary Shares and each of their ABN AMRO ADSs for consideration which would include a combination of 0.296 RBS Ordinary Shares and €35.60 in cash. The number of RBS Ordinary Shares to be offered in the Offer is based on a fixed exchange ratio and is not subject to change based on fluctuations in the price of RBS Ordinary Shares on the LSE or the ABN AMRO Shares on Euronext Amsterdam. We have been informed that prior to completion of the Offer, RBS intends to establish an American Depository Receipt facility in the United States in which former holders of ABN AMRO Shares who received RBS Ordinary Shares in the Offer would be able to deposit their RBS Ordinary Shares in exchange for RBS ADSs. It is expected that an application would be made to list the RBS ADSs on the NYSE.

The RBS Ordinary Shares to be delivered in the Offer will be registered under the US Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the “**Securities Act**”), pursuant to a registration statement of Form F-4 and, assuming the maximum number of ABN AMRO Shares subject to the Offer is tendered, 556,143,700 RBS Ordinary Shares would be issued globally in the Offer, of which 85,108,032 RBS Ordinary Shares would be issued in the United States, amounting to approximately 5.9% and 0.9%, respectively, of the RBS Ordinary Shares outstanding prior to the Offer.

The Offer is expected to comprise:

- a US offer made pursuant to the US Offer Document (the “**US Offer Document**”) to all holders of ABN AMRO Ordinary Shares who are located in the United States and to all holders of ABN AMRO ADSs, wherever located (the “**US Offer**”); and
- a Dutch offer made pursuant to the Dutch Offer Document (the “**Dutch Offer Document**” and, together with the US Offer Document, collectively referred to as the “**Offer Document**”) to all holders of ABN AMRO Ordinary Shares who are located in the Netherlands and to all holders of ABN AMRO Ordinary Shares who are located outside of the Netherlands and the United States, if, pursuant to the local laws and regulations applicable to such holders, they are permitted to participate in such offer (the “**Dutch Offer**”).

The Dutch Offer would be structured to comply with the applicable requirements of the Dutch Financial Supervision Act (*Wet financieel toezicht*) (the “**DFSA**”), the Dutch Securities Market Supervision Act (*Wet toezicht effectenverkeer 1995*), the Dutch Securities Market Supervision Decree (*Besluit toezicht effectenverkeer 1995*) (the “**SMSD**”) and the relevant regulations promulgated

thereunder (collectively, the “**Dutch Takeover Regulations**”), which govern tender offers in the Netherlands, as well as applicable rules and regulations of the Dutch Securities regulator, Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*) (the “AFM”). The US Offer would be structured to comply with the applicable requirements of Sections 14(d) and 14(e) of the US Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the “**Exchange Act**”) as well as the applicable provisions of the Securities Act. The Consortium expects that the US Offer would be a “Tier II” offer. The US Offer would, to the extent applicable, also be governed by the Dutch Takeover Regulations as well as applicable rules and regulations of the AFM. The Offer would be made in the relevant jurisdictions pursuant to an Offer Document published on or shortly after the date the Offer are formally commenced.

#### **4 Application of Regulation M**

In connection with the US Offer, the Consortium, through its special purpose bid vehicle RFS Holdings B.V., will offer US investors the ability to exchange their ABN AMRO Shares for cash and RBS Ordinary Shares. As a result, RBS, Santander and Fortis will be considered to be engaged in a distribution in the United States for purposes of Regulation M. Pursuant to Rule 100 under Regulation M, the restricted period for the US Offer (the “**Restricted Period**”) will commence on the day the Consortium’s Offer Document is first disseminated to US holders of ABN AMRO Shares and end upon expiration of the acceptance period for the US Offer, which on the current time table is not expected to be until at least mid-October 2007. Accordingly, the Restricted Period for the RBS Ordinary Shares will last for a minimum of 20 U.S. business days but will likely be substantially longer.

Given that RBS will be considered an “issuer” and its subsidiaries will be considered “affiliated purchasers” of the issuer, as defined in Rule 100 of Regulation M, their market activities will be subject to Rule 102 throughout the Restricted Period. As a member of the Consortium, Fortis may be considered an “affiliated purchaser” of RBS. Therefore, its market activities will be subject to Rule 102 throughout the Restricted Period. As such, we request relief for the market activities of Fortis and its affiliates described in this letter under Rule 102.<sup>8</sup>

Under Rule 102, Fortis would not be permitted to bid for or purchase, or attempt to induce any person to bid for or purchase, RBS Ordinary Shares during the Restricted Period, except to the extent that one of the specified exceptions in the rule is available. There are no exceptions available under Rule 102 that would permit Fortis and its affiliated purchasers to engage in the market activities

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<sup>8</sup> If Fortis were viewed as an “affiliated purchaser” of RBS and also a “distribution participant” as defined in Rule 100 of Regulation M, its market activities would be subject to Rule 101 throughout the Restricted Period. As such, Fortis could claim the exception provided by Rule 101(c)(1) because the Ordinary Shares of RBS would qualify as actively-traded securities. In that case, the provisions of Rule 101 would not apply to Fortis. Nevertheless, Fortis has assumed for the purpose of this request that it will be subject to the provisions of Rule 102, and respectfully requests the relief described in this letter.

described in this letter. Therefore, without the requested exemptive relief, Fortis would not be permitted to engage in such activities for an extended period of time, which is expected to last for a number of months.

Fortis believes that its withdrawal from the market for RBS Ordinary Shares, which are among the most actively traded in the United Kingdom, for such an extended period of time could have harmful effects on Fortis' customers and the ordinary business of Fortis and its affiliates. Fortis may also be unable to execute asset-management related or unsolicited brokerage orders submitted by its customers in the normal course, thereby forcing its customers to take their orders elsewhere or to refrain from trading. We note that the Insurance Companies have a fiduciary duty to the purchasers of their respective insurance products to oversee the investments in a manner that is in the best interests of those purchasers. Accordingly, the Insurance Companies may not refrain from, or engage in, trading in RBS Ordinary Shares as a result of investment instructions received from Fortis, unless such action is in the best interests of the purchasers of those policies. We also note that the Asset Managers have a fiduciary duty to oversee the Managed Funds in a manner that is in the best interests of the investors in those funds and that the Asset Managers are generally prohibited by law from taking into account any factors other than the best interests of the Managed Funds' beneficiaries when making investment decisions. The principal trading, derivatives trading and hedging, asset management, insurance and unsolicited brokerage activities described in this letter are also important aspects of Fortis' business as a major financial institution in Europe and elsewhere. Therefore, interrupting those activities for such an extended period could also have an adverse impact on Fortis' business, including its ability to properly manage its risks.

In addition, the Offer is being conducted, and trading by Fortis and its respective affiliates in RBS Ordinary Shares during the Offer is subject to and will be conducted, in accordance with applicable Dutch law and its interpretations by the AFM in relation to the Offer, the laws of the United Kingdom and Belgium, and other applicable non-US law. As discussed in greater detail below, applicable Dutch law, and its interpretations by the AFM in relation to the Offer, and the laws of the United Kingdom and Belgium provide important safeguards against the type of risk of abuse that Regulation M was designed to prevent. Furthermore, it is our understanding that if the maximum number of shares targeted in the Offer were tendered, the RBS Ordinary Shares expected to be issued pursuant to the Offer globally and in the United States would represent approximately 5.9% and 0.9%, respectively, of the RBS Ordinary Shares outstanding prior to the Offer.

Finally, Fortis believes that the risk of market manipulation under the Offer is limited by the "Chinese Wall" procedures and fiduciary duties described above, the fact that the market activities that are the subject of this request for exemptive relief are the ordinary course customer-driven market activities of Fortis rather than activities commenced or managed in contemplation of the Offer, and the

fact that the jurisdictions in which Fortis operates have laws that prohibit market manipulation (as further discussed below).

For the foregoing reasons, Fortis asks the Staff to provide an exemption from Regulation M that would allow Fortis to continue to engage in principal trading, derivatives trading and hedging<sup>9</sup>, asset management, insurance and unsolicited brokerage activities in the ordinary course of its businesses described above during the Restricted Period, as permitted under market practice and applicable law in the relevant jurisdictions.

## 5 The Dutch Regulatory Market

The DFSA contains the regulations that apply to the financial markets and their supervision in the Netherlands. The AFM is the body responsible for regulating behavior on the securities markets in the Netherlands.

The DFSA governs, among other things, rules for offering securities, rules for holding a market in financial instruments, rules for disclosure and rules for insider trading and market abuse. Currently, the rules relating to public offers are almost exclusively regulated by the SMSD while the regulation of exemptions for public offers ("Temporary Regulation") is conducted by the Minister of Finance. Upon the implementation of the act for the implementation of the Thirteenth EU-Directive on mandatory offer rules (*Wet tot invoering van de dertiende richtlijn*) ("Act"), the rules relating to public offers will be amended and incorporated into a decree regarding public offers ("Decree") pursuant to the DFSA.<sup>10</sup>

The AFM is responsible for market supervision, monitoring compliance, investigating violations and imposing disciplinary measures. The DFSA considers any violation of the rules on market manipulation and any dissemination of misleading information to be a criminal offense under Dutch law.

Pursuant to Article 5:56 of the DFSA, natural and legal persons<sup>11</sup> are prohibited from using inside information while performing or effecting a transaction:

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<sup>9</sup> Derivatives on RBS Ordinary Shares generally would not be "covered securities" under Rule 100 of Regulation M. See, e.g., Release 34-38067 (Dec. 20, 1996), 62 FR 520, 524. Derivative market activities by Fortis affiliates, however, might, in some cases, be regarded as involving inducements to purchase RBS Ordinary Shares. To avoid uncertainty, the activities covered by this request for exemption include the derivatives trading and the derivatives hedging and other activities in RBS Ordinary Shares described in this letter.

<sup>10</sup> It is expected that this implementation will occur at some point in the summer of 2007.

<sup>11</sup> The natural and legal persons referred to include:

(i) persons who have inside information at their disposal due to the fact that they determine the day-to-day policies or supervise the policies and the general course of events of an issuer to which the inside information relates;

- (i) in or from the Netherlands or a non-EU Member State in financial instruments admitted to trading on a regulated market, or an unregulated market in financial instruments in the Netherlands, or for which admission to any such trading has been requested;
- (ii) in or from the Netherlands in financial instruments admitted to trading on a regulated market in another EU Member State or admitted to trading on a market in financial instruments established and permitted by the authorities in a non-EU Member State, or in financial instruments for which admission to any such trading has been requested;
- (iii) in or from the Netherlands or a non-EU Member State in financial instruments that are not covered under (i) or (ii) above yet determine their value by relying on the financial instruments discussed in (i) or (ii) above; or
- (iv) in or from another EU Member State in financial instruments admitted to trading on an unregulated market in financial instruments.

It is also prohibited for these persons to:

- (i) perform or effect a transaction or order to trade in financial instruments that give, or are likely to give, false or misleading signals about the offer, demand or price of those financial instruments, unless the party that performed or effected the transaction or order to trade proves that its motive for performing or effecting the transaction or order to trade is justified and that the transaction or order to trade conforms with customary practice in the relevant market;
  - (ii) perform or effect a transaction or order to trade in financial instruments in order to secure the price of those financial instruments at an artificial level, unless the party that performed or effected the transaction or order to trade proves that its motive for performing or effecting the transaction or order to trade is justified and that the
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- (ii) persons who have inside information at their disposal due to the fact that they have at their disposal a qualifying holding in the issuer that has issued financial instruments as meant in the first subsection under (iii), to which the inside information relates;
  - (iii) persons with access to information of a precise nature relating directly or indirectly to an issuer of financial instruments, or to trading in those financial instruments, which information has not been made public and which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments or on the prices of related derivative financial instruments in the normal course of the exercise of their work, profession or duties;
  - (iv) persons having inside information at their disposal due to involvement in offenses; and
  - (v) any person not belonging to (iv) but who is aware, or should reasonably suspect, that it has inside information at its disposal.

transaction or order to trade conforms with customary practice in the relevant market;

- (iii) perform or effect a transaction or order to trade in financial instruments employing deception or contrivance; or
- (iv) disseminate information that gives, or is likely to give, false or misleading signals about the offer, demand or price of financial instruments, where the disseminator of such information knows or should reasonably suspect that such information is false or misleading.

Certain exemptions apply to the prohibitions enumerated above.<sup>12</sup>

The disclosure rules under the DFSA relate to the disclosure of information by issuers and the notification of shareholdings. The rules on the disclosure of shareholdings are applicable to: (i) issuers of securities, (ii) shareholders and other parties with voting rights with regard to changes in control and share capital interest and (iii) directors and supervisory directors. Changes of 1% or more in the issued share capital of the issuer must be notified immediately to the AFM. Furthermore, within eight days of the end of the previous quarter, the issuer must notify the AFM of any additional changes in its issued share capital that were not part of any notification to the AFM during any aforementioned change of 1% or more in the company's issued share capital. An obligation for a shareholder to disclose its interest in an issuer arises if the shareholder is holding a percentage of shares and/or voting rights,

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<sup>12</sup> The exemptions are for:

- (i) a monetary policy, an exchange-rate policy or a public debt-management policy;
- (ii) a buy-back program as described in Chapter II of Regulation 2273/2003 of the Commission of the European Communities of December 22, 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programs and stabilization of financial instruments (OJ L 336);
- (iii) stabilization as described in Chapter III of Regulation 2273/2003 of the Commission of the European Communities of December 22, 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programs and stabilization of financial instruments (OJ L 336);
- (iv) granting financial instruments to employees pursuant to an employee plan;
- (v) effecting a transaction that is required in order to be able to fulfill the obligation to transfer shares or depositary receipts;
- (vi) entering into an agreement in the course of a public offer, pursuant to which a holder of financial instruments commits to tender the financial securities to which the public offer relates to the bidder as long as the amount of financial securities is set out in a written statement to the bidder;
- (vii) entering into an agreement whereby the holder of the financial instrument commits itself prior to an issuance or replacement of such financial instruments to irrevocably purchase such financial instruments, as long as the amount of financial instruments or the value thereof has been set out in a written declaration to the issuer issuing or replacing such financial instruments;
- (viii) issuing or obtaining shares or depositary receipts by way of dividend (other than a choice dividend);
- (ix) despite having inside information only relating to the trading, acting in good faith by an agent in the course of servicing its clients;
- (x) performing transactions by employees of an issuer who has insider knowledge, *provided* that, the employees performing the transaction only have insider knowledge as far as the trading is concerned; and
- (xi) any further exceptions that may be provided by Ministerial Decree.

directly or indirectly, which reaches, exceeds or falls below 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95% of the total issued and outstanding shares and voting rights of the issuer. A director or supervisory director must notify the AFM immediately of a change in the shares or voting rights in the issuer or affiliated issuers. These disclosures can be found in a public register which is accessible through the website of the AFM.

In addition, pursuant to Clause 9p of the SMSD, the offeror, the executive directors and supervisory directors of the offeror, and the executive directors and supervisory directors of the target company must, at the time of the public announcement of the filing of the offer document, provide a statement to the AFM of the transactions in the securities issued by the offeror that have been carried out by them, their spouses or registered partners, their children if they are minors and by legal persons controlled by these persons, during the six months preceding the first public announcement regarding the initial offer announcement. Furthermore, the offeror, the executive directors and supervisory directors of the offeror, and the executive and supervisory directors of the target company shall also, at the time of publication of the offer document provide a detailed statement to the AFM of the number and type of securities issued by the target company that are held by them, their spouses or registered partners, their children if they are minors and by legal persons controlled by these persons.

## **6      The Regulatory Market in the United Kingdom**

The Financial Services and Markets Act 2000 (“FSMA”) contains the main body of rules relating to the financial markets in the United Kingdom. The Financial Services Authority (“FSA”) is an independent body that regulates the financial services industry in the United Kingdom. The FSA is responsible for market supervision and has a powerful enforcement armory, including powers to investigate, publish information, censure, suspend the marketing of securities and, above all, impose unlimited fines on both companies and individuals who have engaged in market abuse or required or encouraged another person to do so. Part VIII of the FSMA gives the FSA power to impose penalties upon any person who has engaged in market abuse or has required or encouraged another person to do so. Behavior caught by the market abuse regime falls into categories such as dealing on the basis of inside information or disseminating misleading information.

Part V of the Criminal Justice Act 1993 prohibits insider dealing. There are three offenses: (i) dealing, (ii) encouraging another person to deal and (iii) disclosing information. These offenses can only be committed by individuals. However, any act on the part of a corporate body will almost inevitably be taken on its behalf by a director, officer or employee. In addition, the offense of encouraging can be committed if the recipient of the encouragement is a corporate body. There are also some general defenses to these offenses such as a reasonable belief that the information had been disclosed widely enough or evidence that the individual would have acted the same even without the information.

However, the principal source of law relating to market manipulation in the United Kingdom is the European Union Market Abuse Directive (the “**Directive**”), as implemented by the FSMA. Section 118 of the FSMA specifies five types of behavior that are considered to be market abuse:

- (i) insider dealing – where an “insider” (as defined below) deals or attempts to deal in securities on the basis of “inside information” (as defined below);
- (ii) improper disclosure – where an insider discloses inside information to someone else other than in the proper performance of their duties;
- (iii) manipulating transactions – where a transaction gives a false or misleading impression to the market of the supply, demand, price or value of a security or secures the price of a security at an artificial level (unless the transaction is carried out for a legitimate reason and in conformity with an “accepted market practice”);
- (iv) manipulating devices – where a transaction employs a fictitious device or other form of deception or contrivance; and
- (v) misleading dissemination – where false or misleading information is knowingly or negligently disseminated to the market.

In addition, there are two residual categories that cover types of behavior not caught by one of the above categories but which involve either:

- (i) the misuse of relevant information that is not generally available to the market or
- (ii) other forms of misleading behavior or market distortion,

in each case, that a regular user of the market in question would consider to be a failure to observe reasonable standards of behavior.

“Inside information” is defined as information of a precise nature that is not generally available but which, if made generally available, would be likely to have a significant effect on the price of the company’s securities. Information is deemed likely to have a significant effect on price “if and only if it is information of a kind which a reasonable investor would use as part of the basis for his investment decisions”. In relation to the insider dealing and improper disclosure offenses of the market abuse regime, the definition of inside information is extended to include information that is indirectly related to the company as well. This extends the definition to include, for example, information, such as a change in tax treatment, which relates to a particular business sector that could impact the share price of all companies in that sector equally, in addition to information that relates solely to a specific issuer.

An “insider” is a person who has inside information as a result of: (i) membership of the administrative, management or supervisory board of a company that has securities admitted to trading;

(ii) holding securities in such a company; (iii) his employment, profession or duties; (iv) any criminal activities; or (v) other means, but where he knows, or could reasonably be expected to know, that he holds inside information.

Two safe harbors are expressly provided under the Directive for: (i) price-stabilizing activities and (ii) repurchases of one's own shares.

In addition, the Code of Market Conduct published by the FSA sets out conclusive descriptions of types of behavior that will not amount to market abuse. These include:

- (i) dealing with the benefit of trading information, for example, where the inside information one holds is the knowledge that one is planning to deal;
- (ii) takeover activity, including stakebuilding, the seeking of irrevocable undertakings and the making of arrangements to issue securities or offer cash as part of a takeover offer;
- (iii) disclosure of inside information that is required by the Listing Rules, Disclosure Rules or Prospectus Rules; and
- (iv) behavior conforming with certain express provisions of the City Code on Takeovers and Mergers (the “**Code**”), *provided* that, the behavior also conforms with the General Principles under the Code.

## 7 The Regulatory Market in Belgium

The principal source of law relating to market abuse in Belgium is the Directive, as implemented by the Law of 2 August 2002 on the supervision of the financial sector and on financial services (the “**Law of 2 August 2002**”).

The CBFA is responsible for market supervision and has a powerful enforcement armory, including powers to investigate, publish information, censure, suspend the marketing of securities and, above all, impose fines on both companies and individuals who have engaged in market abuse or required or encouraged another person to do so.

Sections 39 and 40 of the Law of 2 August 2002 specifies five types of behavior that are considered to be market abuse and which are criminally sanctioned when they relate to financial instruments (i) admitted to trading on a Belgian regulated market or on any other market or alternative trading system, or the admittance of which on such a market or trading system has been applied for, irrespective of whether the acts are performed in Belgium or abroad or (ii) admitted to trading on a foreign regulated market or on any other market or alternative trading system organized abroad and listed by the King upon the recommendation of the CBFA, or the admittance of which on such a

market or trading system has been applied for, insofar as the acts described below are performed in Belgium, irrespective of whether the transactions are carried out on the market concerned or outside it.

The criminal offenses are the following:

- (i) execution or attempted execution of transactions, placement or attempted placement of orders, dissemination or attempted dissemination of information or rumors that provide false or misleading indications regarding the supply, the demand or the price of a financial instrument;
- (ii) execution or attempted execution of transactions, placement or attempted placement of orders, dissemination or attempted dissemination of information or rumors that influence, or are capable of influencing, in an artificial or abnormal manner, activity on the market, the price of a financial instrument, the volume of transactions in a financial instrument, or the level of a market index (unless the transaction is carried out for a legitimate reason and in conformity with an “accepted market practice”);
- (iii) insider dealing where an “insider” deals or attempts to deal in securities *on the basis* of “inside information”<sup>13</sup>;
- (iv) recommendation by an insider to acquire or dispose of financial instruments, on the basis of inside information, to third parties or to have others acquire or dispose of the financial instruments or related financial instruments, which the former inside information concerns;
- (v) improper disclosure – where an insider discloses inside information to someone else other than in the normal exercise of his work, profession or function.

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<sup>13</sup> “Inside information” is defined as information of a precise nature that is not generally available but which, if made generally available, would be likely to have a significant effect on the price of the company’s securities. Information is deemed likely to have a significant effect on price “if and only if it is information of a kind which a reasonable investor would use as part of the basis for his investment decisions”. In relation to the insider dealing and improper disclosure offenses of the market abuse regime, the definition of inside information is extended to include information that is indirectly related to the company as well.

An “insider” is a person who has inside information as a result of: (i) membership on the administrative, management or supervisory board of a company that has securities admitted to trading; (ii) holding securities in such a company; (iii) his employment, profession or duties; (iv) any criminal activities; (v) in the case of a company or other legal entity, involvement in the decision process to approve a transaction or place an order for the account of the concerned legal entity; (vi) membership on the administrative, management or supervisory board of or employment with investment firms, debt investment firms and management companies of undertakings for collective investment, and awareness of inside information concerning a financial instrument in the portfolio of such firm, company or undertaking; or (vii) other means, where he knows, or could reasonably be expected to know, that he holds inside information and that he obtained the information from an insider.

The criminal offenses described above may be investigated by the CBFA and/or an examining magistrate but must be judged by a criminal judge. The criminal sanctions that may be inflicted consist in imprisonment from three months up to one year and a fine amounting from €275 to €55,000 (such amounts are subject to change - increase- from time to time). In addition, the convicted person may be condemned to pay an amount equal up to three times the financial advantage resulting from the offense.

In addition, Section 25 of the Law of 2 August 2002 imposes administrative sanctions on similar behaviors as those described above. The administrative sanctions on insider dealing are however broader as they apply to (i) anyone who knows or should reasonably know that he has access to inside information (and not only to insiders as defined above) and (ii) any transaction made by a person who has access to inside information even if he did not act *on the basis* of inside information.

The administrative sanctions consist in fines, which amount at least to €2,500 and at most to €2,500,000. However, if the offender obtained a financial advantage from his offence, that amount may be brought up to the double of that advantage (the triple in the event of repeat offense). The administrative offenses are investigated by the CBFA and the fines decided by the latter.

Two safe harbors are expressly provided under the Directive for: (i) price-stabilizing activities and (ii) repurchases of one's own shares. These apply to both criminally sanctioned and administratively sanctioned market abuse activities.

## **8 Relief Requested**

As discussed above, Fortis respectfully requests that the Commission grant exemptive relief from Rule 102 of Regulation M to permit Fortis and its affiliates to continue to engage in the principal trading, derivatives trading and hedging, asset management, insurance and unsolicited brokerage activities in RBS Ordinary Shares as described in this letter during the Restricted Period. Fortis and its affiliates would conduct these activities in the ordinary course of their respective businesses and in accordance with applicable Dutch law and its interpretation by the AFM in relation to the Offer, the laws of the United Kingdom and other non-US laws, all as described in this letter. Fortis also asks for relief to permit Fortis Securities and Fortis Clearing to engage in unsolicited brokerage activities in RBS Ordinary Shares in the normal course of business in the United States, as described in this letter.

As a condition to the relief being requested, Fortis would undertake to include disclosure in each Offer Document that will be distributed to US holders of ABN AMRO Shares. The disclosure would be substantially similar to the following:

- since the announcement of the Offer, Fortis and certain of its affiliates, have engaged and intend to continue to engage in various dealing and brokerage activities involving RBS Ordinary Shares;

- certain asset management companies and insurance companies that are affiliates of Fortis have purchased and sold, and intend to continue to purchase and sell, RBS Ordinary Shares as part of their ordinary investing activities. Fortis has also engaged, and intends to continue to engage, in the issuance, purchase and sale of derivatives (such as options, warrants and other instruments) relating to RBS Ordinary Shares for Fortis' account and the accounts of Fortis' customers, as well as in purchases and sales of RBS Ordinary Shares for the purpose of hedging the positions established in connection with the derivatives activities relating to RBS Ordinary Shares entered into by Fortis and its customers. Fortis, through its brokerage affiliates, has also engaged, and intends to continue to engage, in unsolicited brokerage transactions in RBS Ordinary Shares with Fortis' customers. These activities occurred and are expected to continue to occur, in the United Kingdom the Netherlands, elsewhere in Europe and elsewhere outside the United States;
- Fortis Securities and Fortis Clearing have also engaged and may continue to engage in unsolicited brokerage transactions in RBS Ordinary Shares in the United States; and
- all of these activities could have the effect of preventing or retarding a decline in the market price of the RBS Ordinary Shares. Fortis has sought and received from the SEC certain exemptive relief from Regulation M under the Exchange Act in order to permit Fortis and certain of its affiliates to engage in the foregoing activities during the Offer.

As a further condition to the relief being requested, Fortis will undertake to keep records (the “**Records**”) of the date and time when any RBS Ordinary Shares are purchased or sold, the market in which the purchase or sale is effected, the amount of RBS Ordinary Shares purchased or sold and the price of the purchase or sale, for each purchase or sale of RBS Ordinary Shares made during the Restricted Period. Fortis will maintain Records for a period of two years following the completion of the Offer. Upon the written request of the Director of the Division of Market Regulation of the Commission, Fortis will make a copy of the relevant Records available at the Commission’s offices in Washington, D.C.

In connection with the relief requested by Fortis in this letter, please note that substantially similar exemptive relief from Rule 101 and Rule 102 of Regulation M was granted with respect to market-making, derivatives market-making and hedging, asset management, insurance and unsolicited brokerage activities to Santander by letter dated September 10, 2004<sup>14</sup> and to Banco Bilbao Vizcaya

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<sup>14</sup> Letter from James A. Brigaglano, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, to Nicholas A. Kronfeld, Esq., Davis Polk & Wardwell (Sept. 10, 2004).

Argentaria, S.A. by letter dated June 25, 2007,<sup>15</sup> and that substantially similar exemptive relief from Rule 102 of Regulation M was granted with respect to market-making, derivatives hedging and unsolicited brokerage activities to Allianz SE by letter dated March 23, 2007.<sup>16</sup>

If you have any questions about this request, please do not hesitate to contact Larry E. Bergmann (202-202-1103) or Kathleen Johnson (202-303-1157). We appreciate your assistance in this matter.

Sincerely,



Larry E. Bergmann

cc: Elizabeth Sandoe, Esq.  
Joan Collopy, Esq.  
Securities and Exchange Commission

Fortis

Gregory Astrachan  
Jon Lyman  
Willkie Farr & Gallagher LLP

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<sup>15</sup> Letter from Josephine J. Tao, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, to John K. Knight, Esq., Davis Polk & Wardwell (Jun. 25, 2007).

<sup>16</sup> Letter from James A. Brigaglino, Associate Director, Division of Market Regulation, Securities and Exchange Commission, to Nikolaos G. Andronikos, Esq., Sullivan & Cromwell LLP (Mar. 23, 2007).