



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 08-21
December 5, 2008
No-Action
Division of Market Oversight

Edward J. Rosen, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006-1470

Re: Request for No-Action Relief with Regard to Commodity Exchange Act
Section 4a and Commission Regulation 150.4, Aggregation of Positions

Dear Mr. Rosen:

This is in response to your letter dated December 3, 2008 to the Division of Market Oversight (Division) of the Commodity Futures Trading Commission (CFTC or Commission).¹ By this correspondence, and related email on that same date, you request, on behalf of your client, BNP Paribas (BNPP), that the Division confirm that it will not recommend that the Commission initiate enforcement action against BNPP or Fortis Bank S.A./N.V. (Fortis) or their respective affiliates, for violation of Commission or exchange speculative position limits, to the extent any such violation results from the application of the Commission's aggregation policy and rules to the acquisition by BNPP of Fortis. (no-action request).

You represent that it is anticipated that BNPP will acquire approximately 55 percent of the stock of Fortis from the Belgian State on or about December 4, 2008, and is expected to acquire an additional approximately 20 percent of Fortis on or about December 19, 2008, resulting in an aggregate equity interest in Fortis of 74.94 percent. You represent that these acquisitions are a critical component in the rescue of Fortis, acquired by the Belgian State on an emergency basis.

You represent that both BNPP and Fortis and their respective affiliates may own or control positions in U.S.-listed commodity futures and options and that, given the circumstances surrounding the Fortis acquisition and the speed at which it has progressed, BNPP and Fortis have not had sufficient time to assess the application of the Commission's speculative position limit aggregation policy and related rules in the context of the proposed acquisition. While neither BNPP nor Fortis is aware of a position limit violation that would, absent remedial steps, result from the acquisition, BNPP and Fortis are unable to evaluate their compliance with

¹ Letter from Edward J. Rosen, Esq., Cleary Gottlieb Steen & Hamilton LLP, to Richard A. Shilts, Director, Division of Market Oversight, Commodity Futures Trading Commission (December 3, 2008).

applicable speculative position limits in the context of the potential for aggregation of the futures positions owned or controlled by BNPP, Fortis and their respective affiliates nor, as a result, to identify the specific steps, if any, that may be necessary to assure compliance with applicable speculative position limits immediately following consummation of the transaction.

Finally, you represent that both BNPP and Fortis intend to act promptly following the acquisition to verify compliance with applicable limits or to identify and implement within a reasonable period any measures that may be necessary to ensure such compliance prospectively.

Based specifically upon the representations made by BNPP in support of its no-action request and subject to compliance with the condition stated below, the Division will not recommend that the Commission institute enforcement action against BNPP, Fortis, or their respective affiliates, for violation of Section 4a of the Commodity Exchange Act or Commission Regulation 150.4 resulting from aggregated positions created by the acquisition by BNPP of Fortis. Specifically, the Division will not recommend that the Commission institute enforcement action against BNPP, Fortis, or their respective affiliates, for violation of Commission or exchange speculative position limits, to the extent any such violation results from the application of the Commission's speculative position limit aggregation policy and related rules to the acquisition by BNPP of Fortis. This no-action position applies only to aggregated positions created by the acquisition by BNPP of Fortis and is subject to the following conditions: (1) BNPP and Fortis must proceed promptly following the acquisition to verify compliance with applicable limits or to identify and implement, not later than January 15, 2009, any measures that may be necessary to ensure compliance prospectively with applicable limits, and (2) BNPP and Fortis must not, following the acquisition and prior to January 15, 2009, further add to any aggregated positions found not to be in compliance with Commission or exchange speculative position limits.

The no-action position taken herein is taken by the Division only and does not necessarily reflect the views of the Commission or any other unit or member of the Commission's staff. Because this position is based upon the representations contained in BNPP's no-action request, it should be noted that any materially different, changed, or omitted facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions regarding this correspondence, please contact David P. Van Wagner, Chief Counsel, Division of Market Oversight, at dvanwagner@cftc.gov or by phone at (202) 418-5481.

Sincerely,

Richard A. Shilts
Director

cc: Mr. Dean Payton, CME Managing Director & Chief Regulatory Officer
Mr. William O'Brien, ICE Futures U.S., Market Surveillance