

## **FORTIS SA/NV**

Société Anonyme/Naamloze Vennootschap

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### **SPECIAL REPORT BY THE BOARD OF DIRECTORS TO THE SHAREHOLDERS**

#### **on the use and purpose of the authorized capital**

prepared in accordance with Article 604 of the Belgian Companies Code

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This report assumes that the restructuring of own funds and capital reductions, provided for in the agenda submitted to the Extraordinary General Meeting of Shareholders of Fortis SA/NV of 28 April 2009 has been approved with the required majority and that the *par value* of the Fortis SA/NV share has been reduced to EUR 0.42

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This report is drawn up in accordance with Article 604 of the Belgian Companies Code, to support the proposal that will be made to the Extraordinary General Meeting of Shareholders of 28 April 2009:

- to cancel the unused balance of the authorized capital mentioned in article 9 a) of the articles of association of Fortis SA/NV (also referred to as the "Company"), existing on the date of the publication in the Belgian State Gazette of the amendments to the Company's articles of association resolved by the Extraordinary General Meeting of Shareholders of 28 April 2009, and
- to grant to the Board of Directors the authorization to increase the share capital of the Company with a maximum amount of EUR 210,000,000, enabling the issue of 500,000,000 shares. The Board of Directors proposes that this authorization will be granted for a period of three years with effect as from the date of publication in the Belgian State Gazette of the resolution of the Extraordinary General Meeting of Shareholders approving this proposal.

#### **AUTHORIZATION TO INCREASE THE SHARE CAPITAL OF FORTIS SA/NV WITH A MAXIMUM AMOUNT OF EUR 210,000,000**

##### **1. *Authorized capital granted on 29 April 2008***

On 29 April 2008, the Extraordinary General Meeting of Shareholders granted to the Board of Directors of the Company the authorization to increase the share capital of the Company with a maximum amount of EUR 2,022,048,000 enabling the issue of 472,000,000 shares, out of which:

- 236,000,000 shares can be issued to cover commitments entered into in the context of the issue of certain financial instruments; and
- 236,000,000 shares can be issued for general purposes as described in the special report of the Board of Directors dated 25 January 2008.

The Board of Directors has made use of the authorized capital to carry out the issue

- on 2 July 2008 of 150,000,000 shares in the context of a capital increase as part of an accelerated book building offering, without any public offering, and
- on 16 October 2008 of 61,751 shares in the context of an exercise of stock options issued in 2003.

## **2. Authorization requested from the Extraordinary General Meeting of Shareholders on 28 April 2009**

### **2.1. Rationale**

The main reasons for having recourse to the authorized capital procedure are the flexibility and rapidity that this procedure offers to enable the Company to meet its contractual obligations under a number of outstanding financial instruments as further described below.

In accordance with the provisions regulating the twinning of the shares of the Company with those of Fortis N.V., the Board of Directors aims to be able to use this technique in the most flexible way, in the interest of the Company and with the option of waiving the preferential subscription right of the existing shareholders.

The circumstances and objectives within which the Board of Directors may use the authorized capital lie within this essential context of preserving and developing the corporate interests of Fortis SA/NV and its subsidiaries.

### **2.2. Objectives**

Under the terms of the financial instruments described below, Fortis SA/NV and Fortis N.V. have committed themselves to use all reasonable efforts to ensure that they have sufficient available authorised capital to meet their contingent obligations in respect of the payment of coupons on such instruments through the issue of new shares (the so called Alternative Coupon Satisfaction Method - "ACSM").

This ACSM obligation arises in certain circumstances as set out in the relevant terms and conditions of the following outstanding capital instruments<sup>1</sup>:

- (1) *EUR 1,000,000,000 6.50% Redeemable Perpetual Cumulative Coupon Debt Securities issued by Fortis Bank in September 2001.*

The ACSM obligation is triggered in the event of certain solvency events affecting Fortis Bank.

Fortis SA/NV and Fortis N.V. have undertaken to use all reasonable efforts to have access to sufficient authorized capital at all times to cover the payment through the ACSM of one annual coupon.

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<sup>1</sup> In the following overview, "Fortis Group" refers to the group consisting of Fortis SA/NV, Fortis N.V. and their subsidiaries.

- (2) *EUR 1,250,000,000 Undated Floating Rate Equity-linked Subordinated Hybrid ("FRESH") Capital Securities issued by Fortifinlux in May 2002, with Fortis SA/NV and Fortis N.V. as Co-Obligors.*

The ACSM obligation is triggered in the event that Fortis SA/NV and Fortis N.V. do not pay an aggregate dividend (i.e. interim and final dividend taken together) in relation to any financial year with a yield of at least 0.5%.

Fortis SA/NV and Fortis N.V. have undertaken to use all reasonable efforts to have access to sufficient authorized capital at all times to cover the payment through the ACSM of four quarterly coupons.

- (3) *EUR 1,000,000,000 4.625% Directly Issued Perpetual Securities issued by Fortis Bank in October 2004.*

The ACSM obligation is triggered in the event of certain solvency events affecting Fortis Bank.

Fortis SA/NV and Fortis N.V. have undertaken to use all reasonable efforts to have access to sufficient authorized capital at all times to cover the payment through the ACSM of one annual coupon.

- (4) *EUR 500,000,000 5.125% Perpetual Securities issued by Fortis Hybrid Financing in June 2006 ("HYBRONE").*

The ACSM obligation is triggered in the event of certain solvency events affecting Fortis Group.

Fortis SA/NV and Fortis N.V. have undertaken to use all reasonable efforts to have access to sufficient authorized capital at all times to cover the payment through the ACSM of one annual coupon.

- (5) *EUR 2,000,000,000 8.75 per cent. Mandatory Convertible Securities issued by Fortis Bank Nederland (Holding) N.V. in December 2007, with Fortis Bank, Fortis SA/NV and Fortis N.V. as Co-Obligors ("MCS"), due in December 2010.*

The ACSM obligation is triggered in the event of an accelerated conversion of the securities before the maturity date pursuant to article 10 of the terms and conditions of the instrument.

Fortis SA/NV and Fortis N.V. have undertaken to use reasonable endeavours to have access to 40,000,000 shares of authorized capital at all times to cover the remaining coupons due until maturity.

- (6) *EUR 3,000,000,000 Convertible and Subordinated Hybrid Equity-linked Securities ("CASHES") issued by Fortis Bank in December 2007, with Fortis SA/NV and Fortis N.V. as Co-Obligors.*

The ACSM obligation is triggered in the event that Fortis SA/NV and Fortis N.V. do not pay an aggregate dividend (i.e. interim and final dividend taken together) in relation to any financial year with a yield of at least 0.5% as well as in the event of certain solvency events affecting Fortis Bank or Fortis Group.

Fortis SA/NV and Fortis N.V. have undertaken to use all reasonable efforts to have access to sufficient authorized capital at all times to cover the payment through the ACSM of four quarterly coupons.



(7) US\$ 750,000,000 8.25% Perpetual Securities issued by Fortis Hybrid Financing in February 2008 ("NITSH I").

The ACSM obligation is triggered in the event of certain solvency events affecting Fortis Group.

Fortis SA/NV and Fortis N.V. have undertaken to use all reasonable efforts to have access to sufficient authorized capital at all times to cover the payment through the ACSM of two semi-annual coupons.

(8) EUR 625,000,000 8.00% Perpetual Securities issued by Fortis Hybrid Financing in May 2008 ("NITSH II").

The ACSM obligation is triggered in the event of certain solvency events affecting Fortis Group.

Fortis SA/NV and Fortis N.V. have undertaken to use all reasonable efforts to have access to sufficient authorized capital at all times to cover the payment through the ACSM of one annual coupon.

It is to be noted that, in respect of part of these instruments, the issuing entity (and the evolution of its solvency) are no longer under the control of Fortis SA/NV and Fortis N.V., which has an impact on the risk of the ACSM being triggered.

At a Fortis share price of EUR 1.00 and assuming a Euribor rate of 1.75%, the maximum number of shares to be issued by Fortis SA/NV and Fortis N.V. if the ACSM were triggered simultaneously on all aforementioned capital instruments is approximately 420 million shares per annum. Of these, 151 million shares would need to be issued under the CASHES and FRESH in the event that no (sufficient) dividend is paid on the Fortis shares (see 2.3 below), subject to the availability of sufficient authorised capital.

*In terms of number of shares and taking into account the inherent uncertainty of the above estimate linked to unknown variables such as the Fortis share price and the level of Euribor, the authorized capital required to fulfil the commitments made in the context of the issue of the aforementioned financial instruments is proposed to be set at 500,000,000 shares, which corresponds to an authorized capital of EUR 210,000,000 (based on a new par value of the Fortis SA/NV share of EUR 0.42, which for the purposes of this special report is presumed following approval by the shareholders of the proposed capital restructuring of Fortis SA/NV, at the Extraordinary General Meeting of 28 April 2009).*

### 2.3. Consequences of the no dividend payment

Due to the expected EUR 22,506,376,781 losses carried forward at the end of 2008 (statutory accounts Fortis SA/NV under Belgian GAAP end 2008), Fortis SA/NV currently does not have sufficient distributable reserves to allow the Board to propose the declaration of a dividend for the financial year 2008.

In order to restore the possibility for the Board to propose the declaration of a dividend to the shareholders, the Extraordinary General Shareholders Meeting of Fortis SA/NV of 28 April 2009 is requested to approve a double capital reduction aimed at re-creating a sufficient level of distributable reserves at the level of Fortis SA/NV.

A first capital reduction is proposed to eliminate the expected EUR 22,506,376,781.48 of losses carried forward (statutory accounts Forts SA/NV under Belgian GAAP end 2008) through the following series of steps (the "First Capital Reduction"):

- reduction of the distributable reserves by an amount of EUR 5,357,718,878.08
- reduction of the share premium reserve by an amount of EUR 9,239,682,069.75.
- reduction of the legal reserves by an amount of EUR 660,385,483.55
- reduction of the subscribed capital by an amount of EUR 7,248,590,350.10.

This series of steps is subsequently to be followed by a second capital reduction pursuant to which the Company's subscribed capital will be further reduced by an additional amount of EUR 2,475,574,860.76 and this amount shall be added to the distributable reserves (the "Second Capital Reduction" and, together with the First Capital Reduction, the "Capital Reductions").

Once approved and implemented (following the expiry of a compulsory waiting period of two months), the Second Capital Reduction will restore Fortis SA/NV's capacity to distribute dividends in the future. In addition, it should also re-allow the Board of Directors to make use of the authorized capital by reducing the par value of the Fortis SA/NV shares, as further explained below.

Under the terms of the CASHES and FRESH, all coupon payments due after the announcement that no dividend shall be declared by Fortis SA/NV and Fortis N.V. must be satisfied by Fortis SA/NV and Fortis N.V. through the issue of Fortis shares (so-called "Alternative Coupons") until such time as Fortis will again announce an intention to declare a (sufficient) dividend. This obligation is however subject to the availability of sufficient authorised capital at the level of both Fortis SA/NV and Fortis N.V.

Fortis SA/NV and Fortis N.V. are contractually obliged to use all reasonable efforts to ensure that authorised capital equal to one year of Alternative Coupons is at all times available and has undertaken to propose for approval by the shareholders, at each general shareholders meeting of Fortis SA/NV and Fortis N.V., such resolutions as appropriate to secure the availability of such number of authorised shares.

However, under article 606 2° of the Belgian Code of Companies, the Board of Directors of Fortis SA/NV is legally barred from using the authorised capital granted by the shareholders in circumstances where the value of the Fortis SA/NV share (equal to half the Fortis share price) is lower than its par value. The par value is currently fixed at EUR 4.284 and will be at EUR 1.403 after approval by the shareholders of the First Capital Reduction. This is still higher than the market price of the Fortis SA/NV share on the date hereof (i.e. EUR 0.63 at a closing price of the Fortis share of EUR 1.26).

The Second Capital Reduction as described above will lower the par value of the Fortis SA/NV share to EUR 0.42. This proposed par value is below the current (deemed) value of the Fortis SA/NV share and is equal to the nominal value of the Fortis N.V. share.

An announcement that it is currently impossible for the Board to propose the declaration of a dividend will trigger the ACSM obligations of Fortis SA/NV and Fortis N.V. under the CASHES and FRESH. The financial impact of approving or not approving the resolutions proposed can be summarized as follows:

1. *First scenario: the shareholders approve both Capital Reductions and the renewal of the authorised capital as proposed in this Special Report*

In that case, the legal capacity for the Board to propose the declaration of a dividend will be restored.



Following the expiry of the two months waiting period and to the extent that the Fortis SA/NV share price remains above EUR 0.42 (corresponding to a Fortis share price of EUR 0.84), the Board would be obligated under the terms of CASHES and FRESH to make immediate use of the authorised capital to issue shares to settle any quarterly coupon payments due after the announcement that no dividend be declared until such time as Fortis SA/NV and Fortis N.V. announce the intention to declare a dividend at the minimum yield of 0.5%.

Based on a Fortis share price of EUR 1.00 and the coupon level on both CASHES and FRESH (assuming an Euribor rate of 1.75%), the expected dilutive impact on Fortis shareholders is currently estimated at 151 million shares per annum or approximately 6% of current capital.

2. *Second scenario: the shareholders approve both Capital Reductions but not the renewal of the authorised capital as proposed in this Special Report*

In that case, the legal capacity for the Board to propose the declaration of a dividend will have been restored.

In the absence of a new authorised capital of 500 million shares granted for a new period of three years and pending the renewal or increase of such authorised capital at a future shareholders meeting and to the extent that the Fortis SA/NV share price remains above EUR 0.42 (corresponding to a Fortis share price of EUR 0.84), Fortis SA/NV and Fortis N.V. will be obliged to use the remaining available authorised capital of 321,938,249 shares (available for a remaining period of two years) to pay Alternative Coupons to the holders of CASHES and FRESH until all such authorised shares have been utilized.

Any shortfall in the payment of Alternative Coupons under CASHES or FRESH in the event of insufficient authorised capital will be deferred ("Postponement Event") until the shareholders approve resolutions for a new authorised capital, at which time the shares will be issued at the then current market price (with an additional but unquantifiable dilution).

In accordance with its contractual obligations, the Board will resubmit a proposal for a renewal of authorised capital to the annual shareholders meeting in April 2010.


3. *Third scenario: the shareholders approve the First Capital Reduction but not the Second Capital Reduction*

In such case, the proposal for a new authorised capital will not be submitted to be voted on (as the request for such authorisation assumes a par value of EUR 0.42 which would not have been approved).

The Board would not be legally capable of proposing the declaration of a dividend until new distributable reserves would become available.

The obligations of Fortis SA/NV and Fortis N.V. to issue shares under the ACSM in both CASHES and FRESH would be deferred (a so-called "Postponement Event").

Provided that the current authorised capital (valid until April 2011) will not have expired by then, this Postponement Event would last until such time as the Fortis SA/NV share price would climb to the level of the new par value of EUR 1.403 (corresponding to a Fortis share price of EUR 2.80). The latter assumes that there are no earlier approvals by the shareholders of the proposed Second Capital Reduction and/or renewal of authorised capital.



On the expiry date of the Postponement Event, Fortis SA/NV and Fortis N.V. would be obliged to utilize the remaining authorised capital to pay Alternative Coupons (and hence issue ordinary shares) at the then current market price.

In such case, the dilutive impact on Fortis shareholders (using the same Euribor assumption as under 1 above) would be around 52 million shares per annum.

In accordance with its contractual commitments under both CASHES and FRESH, the Board will then resubmit the Second Capital Reduction as well as the proposed renewal of authorised capital for approval to the annual shareholders meeting in April 2010.

4. *Fourth scenario: the shareholders do not approve either of the Capital Reductions*

In such case, the proposal for a new authorised capital will not be submitted to be voted on (the request for such authorisation assumes a par value of EUR 0.42 which would not have been approved).

The Board would not be legally capable of proposing the declaration of a dividend and the obligations of Fortis SA/NV and Fortis N.V. to issue shares under the ACSM in both CASHES and FRESH would be deferred (a so-called "Postponement Event").

Provided that the current authorised capital (valid until April 2011) will not have expired by then, this Postponement Event would last until such time as the Fortis SA/NV share price would climb to the level of the current par value of EUR 4.284 (corresponding to a Fortis share price of EUR 8.568). The latter assumes that there are no earlier approvals by the shareholders of the proposed Capital Reductions and/or renewal of authorised capital.

On the expiry date of the Postponement Event, Fortis SA/NV and Fortis N.V. would be obliged to use the remaining authorised capital to pay the postponed Alternative Coupons (and hence issue ordinary shares) at the then current market price.

In such case, the dilutive impact on Fortis shareholders (using the same Euribor assumption as under 1 above) can be estimated at around 18 million shares per annum.

In accordance with its contractual commitments under both CASHES and FRESH, if the proposed resolutions are not adopted, the Board will be obliged to resubmit the Capital Reductions as well as the proposed renewal of authorised capital for approval to the annual shareholders meeting in April 2010.

**2.4. Amount requested**

Therefore, and on the assumption of the prior approval by the shareholders of the Capital Reductions at the Extraordinary General Meeting of Shareholders of Fortis SA/NV of 28 April 2009, the proposal is made to the Extraordinary General Meeting of Shareholders to grant to the Board of Directors the authorization to increase the share capital of Fortis SA/NV, in one or more transactions, with a maximum of EUR 210,000,000.

The Board of Directors proposes that this authorization will be granted for three years, with effect as from the date of publication in the Belgian State Gazette of the resolutions of the Extraordinary General Meeting of Shareholders approving this proposal.

It is further proposed that any capital increase pursuant to the requested authorization may be achieved, amongst other means, by contributions in cash or in kind, by the incorporation with or without the issue of new shares, of available or non-available reserves, share premium accounts, claims, the issue of bonds convertible into shares or bonds with subscription rights, and subscription rights which may or may not be attached to another transferable security.



## CORRESPONDING AMENDMENTS TO THE ARTICLES OF ASSOCIATION

In the event that the Extraordinary General Meeting of Shareholders decides affirmatively upon the request mentioned above, the following amendments would be made to Article 9 of the Articles of Association:

Paragraph a) would be amended as follows (*unofficial English translation*):

*a) Subject to the Twinned Share Principle, the board of directors is authorized to increase the Company capital, in one or more transactions, with a maximum amount of two hundred and ten million (210,000,000) euro. This authorization is granted to the board of directors for a period of 3 years starting on the date of the publication in the Belgian State Gazette of the amendment of the articles of association of the Company resolved by the extraordinary general meeting of shareholders of 28 April 2009.*

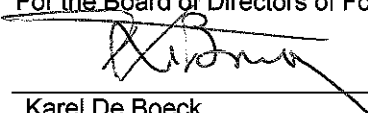
As a result of these amendments, Article 9 of the Articles of Association would read as follows (*unofficial English translation*):

"ARTICLE 9 : Authorized capital

- a) Subject to the Twinned Share Principle, the board of directors is authorized to increase the Company capital, in one or more transactions, with a maximum amount of two hundred and ten million (210,000,000) euro. This authorization is granted to the board of directors for a period of 3 years starting on the date of the publication in the Belgian State Gazette of the amendment of the articles of association of the Company resolved by the extraordinary general meeting of shareholders of 28 April 2009.*
- b) Any capital increase decided by the board of directors within the limits of the above mentioned authorization may take the form, inter alia, of contributions in cash or in kind, of the incorporation, with or without issue of new Twinned Shares, of available and non-available reserves, issue premiums and claims, and of the issue of convertible bonds or bonds carrying subscription rights, as well as of subscription rights which may or may not be attached to another transferable security.*
- c) Any issue premium will be entered to a non-available account entitled "issue premium". This will constitute, on an equal footing with capital, the guarantee towards third parties and may be reduced or withdrawn only by a decision of the general meeting under the conditions regarding quorum and majority laid down by article 612 of the Company Code and subject to the power of the board of directors to incorporate all of part of this issue premium into capital."*

Brussels, 12 March 2009

For the Board of Directors of Fortis SA/NV

  
Karel De Boeck  
Chief Executive Officer

  
Jozef De Mey  
Chairman