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January 27, 2009

Via Email and First Class Mail

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
U.S. Securities and Exchange Commission
Division of Investment Management
100 F Street, N.E. Washington, DC 20549

Re: Fortis Investment Management SA – No-Action Request

Dear Mr. Scheidt:

As discussed, our inquiry arises from the sudden nationalization of Fortis Group, an international banking, insurance and financial services company headquartered in Europe, over the week of September 28 to October 5, 2008. We are writing on behalf of various SEC-registered investment advisers[1] affiliated with Fortis Investment Management SA ("FIM") that serve as advisers and/or subadvisers to clients that include registered open and closed-end management investment companies. These investment advisers (collectively the "FIM Advisers") request assurances from the staff of the Securities and Exchange Commission's Division of Investment Management (the "Staff") on their own behalf and on behalf of registered management investment companies for which they serve as adviser or subadviser in respect of the matters described below.

This letter supplements our discussions with you and other members of the Commission's staff, together with representatives of FIM and of counsel to certain of the registered investment companies involved, via telephone on October 9 and October 27, 2008. As we indicated then,

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1 Cadogan Management LLC; Montag & Caldwell Inc.; River Road Asset Management LLC (solely with respect to the Aston Funds); Veredus Asset Management LLC; and Fortis Investment Management USA, Inc. Further information about these advisers and their advisory relationships is provided in the "background" section below.

we believe the participation of multiple sovereign governments in these nationalization transactions, together with their stated goals of economic stabilization, present serious public policy issues that warrant your consideration.

Background

The FIM Advisers

FIM is the autonomous global asset management arm of Fortis Group ("Fortis"). As of June 30, 2008, FIM had over 40 investment centers, 600 investment professionals worldwide, more than 2000 employees in over 30 countries, and €209b in assets under management. One of FIM's wholly-owned subsidiaries is Fortis Investment Management, USA, Inc. ("Fortis USA"), an SEC-registered investment adviser. Fortis USA or its parent, Fortis Bank SA/NV, also owned during the relevant September / October 2008 period focused on below interests in four other SEC-registered investment advisers: a 75% interest in Cadogan Management LLC ("Cadogan"); a 100% interest in Montag & Caldwell Inc. ("Montag"); a 45% interest in River Road Asset Management LLC ("River Road"); and a 50% interest in Veredus Asset Management LLC ("Veredus").[2]

The FIM Advisers serve as investment adviser or subadviser to institutional and high net worth individual clients around the world, as well as to one or more SEC-registered investment companies (collectively, the "Advised RICs"). SEC-registered money market funds representing approximately $2.2 billion in assets under management comprised a substantial portion of the assets of the Advised RICs as of the same September / October 2008 period.

The Nationalizations

During September 2008, Fortis, headquartered in Belgium and the Netherlands, was deeply affected by spreading global financial turmoil and had reached a crisis point whereby local government regulators feared that investors and depositors had lost confidence in Fortis, meaning a collapse was inevitable. Concerned about the potential losses to thousands of small depositors in Fortis branches across Europe, the governments of Belgium, Holland, and Luxembourg, working closely with Fortis senior management, collectively sought to broker an emergency sale of Fortis to a private buyer; when those negotiations failed, on September 28, 2008, the three governments took the following actions (the "September 28 Nationalization"):

- The Dutch government invested €4.0 billion in Fortis Bank Nederland (Holding) N.V. in return for a 49.9% stake in its common equity;
- The Belgian government invested €4.7 billion in Fortis Bank SA/NV in return for a 49.9% stake in its common equity; and
- The government of Luxembourg invested €2.5 billion in Fortis Banque Luxembourg in the form of a mandatory convertible loan, which, upon conversion, will equate to a 49.9% stake in that entity.

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[2] At the date of this letter FIM (or any Fortis affiliate) no longer holds an ownership interest in River Road or Veredus.

These transactions resulted in the ownership of FIM changing from 100% indirect ownership by Fortis Group to approximately 50.1% indirect ownership by Fortis Group and 49.9% indirect ownership by the Belgian government.[3] The stated aim of the September 28 Nationalization was to provide temporary relief to Fortis in the form of cash infusions and a signal to the marketplace that Fortis would not be allowed to fail; this would stabilize Fortis sufficiently to complete ongoing negotiations with interested private-sector buyers of the business. The goal was to broker such a sale as quickly as possible, but not at a "fire sale" price.

With the decline in market confidence in Fortis continuing unabated, the Dutch government announced on October 3, 2008 that it would buy out the remaining 50.1% of Fortis Bank Nederland (Holding) N.V., including its stake in ABN Amro, for €16.8 billion. While this transaction did not directly affect the ownership of FIM, on October 5, 2008 the governments of Belgium and Luxembourg responded with the following actions (the "October 5 Nationalization"):

- The Belgian government bought the remaining 50.1% stake in Fortis Bank SA/NV;
- A portfolio of structured products with fair value of €10.4 billion was transferred by Fortis Bank to a separately managed entity jointly owned by the Fortis Group (66%), the Belgian government (24%) and BNP Paribas (10%);
- The Belgian government reached an agreement with BNP Paribas ("BNP") on the subsequent transfer to BNP of 75% of Fortis Bank SA/NV and the Luxembourg government reached an agreement with BNP on the subsequent transfer of 16% of Fortis Banque Luxembourg (the "BNP Sale"); and
- BNP Paribas agreed to acquire 100% of Fortis Insurance Belgium for a total consideration of €5.73 billion in cash, subject to final closing adjustment.

Following the October 5 Nationalization, FIM is now ultimately 100% owned by the Belgian government. Following the closing of the BNP Sale and the exercise of Luxembourg's mandatory convertible loan, FIM ultimately will be owned 75% by BNP Paribas, 21% by the Belgian government, and 4% by the Luxembourg government. (The BNP Sale was scheduled to close December 2008, but is delayed as a result of a shareholder lawsuit.)

Applicable Law

Section 15(a) of the Investment Company Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser (which term includes a subadviser) to a registered investment company or portfolio thereof except pursuant to a written agreement that has been approved by shareholders. Section 15(a)(4) requires that advisory agreements provide,

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[3] Upon exercise of their conversion option, the Luxembourg government would have gained an approximate 7.5% indirect stake in FIM, evenly diluting the stakes of Fortis Group and the Belgian government and resulting in ownership percentages of approximately 46.26% by Fortis Group, 46.24% by the Belgian government, and 7.5% by the Luxembourg government. These future ownership percentages are, however, rendered moot by the subsequent October 5 Nationalization.

in substance, for their automatic termination in the event of assignment. Section 205(a)(2) of the Investment Advisers Act requires similar provisions in the advisory agreements of U.S. registered investment advisers. Each of Section 2(a)(4) of the Investment Company Act and Section 202(a)(1) of the Investment Advisers Act defines "assignment" to include any direct or indirect transfer of an agreement by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. The various agreements involved here contain the required provisions.

Section 15(c) of the Investment Company Act requires that an investment advisory agreement with a registered investment company may be "entered into, renewed or performed" only if the terms of the agreement and any renewal thereof have been approved by a majority of the company's independent directors voting in person at a meeting called for the purpose of voting on such approval.

Rule 15a-4 under the Investment Company Act permits an investment adviser (which again includes a sub-adviser) to serve temporarily, after advisory agreements are terminated, under interim agreements entered into as a result of a change in control of the adviser, subject to certain conditions that are designed for the protection of fund shareholders. Such conditions include that each fund's board of directors, including a majority of the non-interested directors, must have voted in person to approve the interim contract in advance of the termination of the shareholder-approved "previous contract," and that the interim contract may not have a duration longer than 150 days following the date on which the previous contract terminated. Rule 15a-4(b)(1)(ii), as to a specified class of these registered investment company "interim advisory agreements," allows the necessary approval of the company's directors for such an agreement to be obtained at a meeting in which the directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting (in other words, under that provision of the rule, directors may meet via teleconference as opposed to in-person). The Staff also has provided relief from aspects of Rule 15a-4 under certain circumstances, as noted below.

In a no-action letter granted to JP Morgan Chase ("JPM") and Bear Stearns Asset Management ("BSAM") dated March 16, 2008 (the "JPM – BSAM Letter"), the Staff, in response to the extraordinary circumstances surrounding the US government-brokered emergency sale of Bear Stearns Companies, Inc. to JP Morgan Chase & Co on March 16, 2008, stated that it:

> ...would not recommend enforcement action to the Commission under section 15(a) of the Act if BSAM acts or serves as investment adviser or sub-adviser to the Funds after the change in control and during the following ten-day period, without prior, in-person approval of the new written contracts by the Funds' boards of directors, provided that (a) each Fund board promptly acts in a manner consistent with rule 15a-4(b)(l)(ii) under the Act and (b) the provisions of rule 15a-4(b)(2) under the Act are otherwise complied with (other than rule 15a-4(b)(2)(ii)).

In no-action letters issued to Directed Services, Incorporated (available August 23, 1991) and Mutual Benefit Fund et. al. (available March 30, 1994) (together the "Mutual Benefit Life Letters"), the Staff granted relief under Section 15(a) in a situation where the Superior Court of New Jersey entered an Order appointing the Commissioner of Insurance of New Jersey as

Rehabilitator of the parent company of entities that served as adviser and/or principal underwriter to investment companies registered under the Investment Company Act. The Order granted the Rehabilitator "immediate exclusive possession and control of, and title to, the business and all of the assets, contracts, causes of action, books, records, bank accounts, certificates of deposit, funds, securities or other funds and all real or personal property of any nature of the parent company," and directed the Rehabilitator "to conduct the business of Mutual Benefit Life and to take such steps as he may deem appropriate toward removing the cause and conditions that have made rehabilitation necessary."

In an incoming letter to the Staff dated August 2, 1991, counsel for Mutual Benefit Fund argued that the circumstances of a government intervention in a business are unique and not of the type contemplated by Sections 15(a) or 2(a)(4) and, furthermore, that seeking shareholder consents describing technical regulatory procedures in the midst of an already inflamed situation is likely to be counterproductive, resulting in unnecessary and harmful redemptions rather than investor protections. In response, the Staff granted relief under Sections 2(a)(4), 15(a), and 15(b), allowing the advisers and underwriters to the registered investment companies to continue to perform under their respective investment advisory agreements and principal underwriting agreements without further interestholder vote.

Actions Taken by the FIM Advisers in Response to the Nationalizations

Recognizing the possibility that one or more stages of the nationalizations may have resulted in a change of control of FIM Advisers, an assignment of FIM Advisers' investment advisory agreements with the Advised RICs (each, a "RIC Advisory Agreement") within the meaning of Section 2(a)(4) of the Investment Company Act, and an automatic termination of the RIC Advisory Agreements pursuant to their terms and Section 15(a)(4) of the Act, each of the boards of directors of the Advised RICs (the "RIC Boards") met either in person or by teleconference within ten business days of the termination events in accord with the process set forth in Rule 15a-4(b)(1). At their meetings, the RIC Boards, including a majority of the independent directors, approved a continuance of the RIC Advisory Agreements with respect to the nationalizations (the "Continuances").

In connection with the BNP Sale (or other transaction in which a controlling interest is sold to a private buyer), the RIC Boards will meet in person in advance of the closing and are expected then to approve, for each current RIC Advisory Agreement, an interim agreement as contemplated under Rule 15a-4 (each, an "Interim Agreement"). Proxies will be prepared and solicited, and shareholder approval of the Interim Agreements will be voted on and obtained within 150 days of the initial stage of that transaction's closing. The Interim Agreements will be effected in accordance with all provisions of Rule 15a-4(b)(2).

Issues Raised/Relief Sought

The facts and circumstances set forth above raise several substantive legal issues. In particular, assuming for this purpose that the RIC Advisory Agreements terminated by virtue of a statutory assignment, each of the FIM Advisers, on its own behalf and on behalf of the Advised RICs, seeks assurances from the Staff that it will not recommend enforcement action to the SEC under Sections 15(a) or 15(c) if:

1. Any of the RIC Boards approved the Continuances at a telephonic meeting held in the manner set forth in Rule 15a-4(b)(1)(ii)[4]; and

2. Each of the Advised RICs does not seek shareholder approval of the Continuances.[5]

Analysis

Timing of RIC Board Meetings

If the September 28 and/or October 5 Nationalizations resulted in a statutory assignment of the RIC Advisory Agreements, those agreements terminated pursuant to their terms and pursuant to Section 15 of the Investment Company Act as early as September 28, 2008. In the instant case, given the speed of the transactions involved and the highly unusual circumstances attendant to the involvement of three different national governments, it was not reasonably practicable for the RIC Boards to meet in person to approve the Continuations prior to the possible termination of the RIC Advisory Agreements; instead, they each met either in person or via teleconference within ten business days in the manner contemplated by Rule 15a-4(b)(1)(ii).

The FIM Advisers believe that these facts are substantially similar to those in the situation surrounding the JPM – BSAM Letter and therefore believe that no-action relief under Sections 15(a) and 15(c) of the Investment Company Act is also appropriate in this instance. In both cases, the potential transactions that triggered the possible assignment of the RIC Advisory Agreements were emergency measures brokered by sovereign states in an effort to prevent the collapse of a major financial institution and stem the financial crisis that has gripped worldwide financial markets for much of 2008. Each transaction was hastily arranged and, indeed, closed on a Sunday in an attempt to calm financial markets before they opened the following Monday morning.

No Shareholder Approval of the Continuances

We likewise believe that the facts and circumstances at hand warrant extending to the FIM Advisers and the Advised RICs similar relief regarding fund shareholder meetings under Section 15(a) as was extended by the Staff under the Mutual Benefit Life Letters – specifically, that notwithstanding the possibility that the September 28 and October 5 Nationalizations may have constituted a statutory assignment of the RIC Advisory Agreements, those agreements may be continued solely by action of the relevant RIC Boards as described above. Both involve situations where a governmental entity temporarily seized a business, while leaving its

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4 For the avoidance of doubt, the only aspect of Section 15(c) as to which this letter seeks relief is the section's requirement that a registered investment company's directors approve the company's investment advisory contract at a meeting held in person and prior to the termination of the agreement.

5 All references to the Advised RICs for purposes of this latter item of relief are limited to those seeking such relief, which are as follows: Aston/Fortis Investor Money Market Fund, Fortis Government Money Market Fund, Fortis Institutional Prime Money Market Fund, Fortis Tax-Exempt Money Market Fund, Fortis Treasury Money Market Fund, Cadogan Opportunistic Alternatives Fund and Undiscovered Managers Multi-Strategy Fund.

management personnel and structures in place, with the stated aim of restoring confidence in the business and returning it to the private sector.

As already described, we believe (as did the applicants in the Mutual Benefit Life Letters) that solicitation of mutual fund shareholder proxies for the purpose of approving the Continuances could serve to damage the funds by confusing an already nervous investor base and would, unfortunately, do so to further a technical application of the relevant laws. Moreover, we view the circumstances at hand as even more pressing from a public policy perspective than were the company-specific events described in the Mutual Benefit Life Letters. This is because of the involvement of non-U.S. national governments and the considerably more far-reaching scope of the present economic crisis and related news coverage and shareholder concern. Indeed, Fortis' situation received widespread publicity which, unfortunately, nearly precipitated a "run on the bank."

Therefore, the FIM Advisers respectfully submit that a proxy statement describing this type of termination of advisory agreements could, under the uncertain circumstances here, contribute to thoughtless and needless redemptions that may not be in the best interests of the investment companies or their shareholders. In addition, in the instant case, the FIM Advisers believe that the costs associated with soliciting proxies and holding a shareholder vote far outweigh any potential benefits to shareholders of taking such actions, as the Nationalizations have not resulted in any substantive changes to the terms of the RIC Advisory Agreements or the day-to-day personnel providing services under those Agreements, and the relevant Advised RICs have provided their shareholders with information about the Nationalizations either by supplementing the prospectuses or by a letter. The FIM Advisers further emphasize that a proxy statement will be prepared, and shareholder votes will be obtained, in connection with the BNP Sale (or other transaction in which a controlling interest in FIM is sold to a private buyer).

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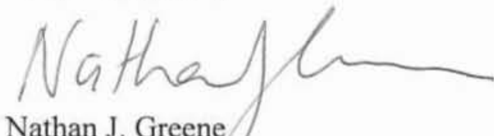
Should you have any questions or wish to discuss these or any other related issues further, please call me at 212-848-4668.

Very truly yours,



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