

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER COPELAND, on behalf of  
himself and all others similarly situated,

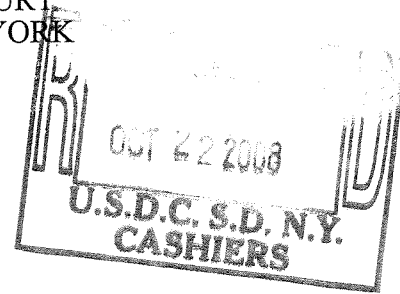
Plaintiff,

v.

FORTIS, FORTIS BANK S.A./N.V.,  
FORTIS NV, HERMAN VERWILST,  
JEAN-PAUL VOTRON, and MAURICE  
LIPPENS,

Defendants.

CASE NO.



CLASS ACTION COMPLAINT FOR  
VIOLATION OF THE FEDERAL  
SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff, Christopher Copeland ("Plaintiff"), individually and on behalf of all others similarly situated, by Plaintiff's undersigned attorneys, alleges upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the public documents and announcements made by defendants, Securities and Exchange Commission ("SEC") filings, and press releases regarding Fortis, Fortis S.A./N.V., Fortis NV (collectively, "Fortis" or the "Company") as follows:

**NATURE OF THE ACTION**

1. This is a securities fraud class action brought on behalf of investors in the securities of Fortis between January 28, 2008 and October 6, 2008 inclusive (the "Class Period").

2. During the Class Period, the Company and the individual defendants falsely portrayed the Company as relatively immune from the effects of the global credit crisis and stated that the Company's capital position remained strong and loan portfolio was solid. In actuality, the Company was practically insolvent at all relevant times and needed to sell assets at fire-sale prices and raise capital at extraordinarily high rates to remain viable. Moreover, the

Company's balance sheet was impaired by billions of dollars of poorly performing assets the Company acquired when it purchased ABN AMRO in October 2007.

3. The magnitude of the Company's severe liquidity crisis first became apparent on September 29, 2008, when the governments of three separate countries (Netherlands, Belgium, and Luxembourg), agreed to bail-out the Company so long as it would sell its troubled stake in ABN AMRO. Published reports indicated that Fortis's sale of ABN AMRO would net considerably less than Fortis had paid for it just months ago. The deal would have given the three European nations a 49% stake and forced defendant Lippers to resign. The emergency infusion was in the form of 11.2 billion euros (\$16.9 billion). This unprecedented move and turn of events, however, was not enough to stem Fortis's continued decline.

4. On Saturday, October 4, 2008, it was reported that the Dutch government took over Fortis's operations for 16.8 billion euros (\$23 billion) in a deal that came less than a week after the Netherlands, Belgium, and Luxembourg had agreed to invest 11.2 billion euros in Fortis, as detailed above on paragraph 3. News that the famed financial giant was in ruins and required nationalization further punished Fortis's already bruised stakeholders.

5. On October 14, 2008, Fortis traded on the Brussels exchange at the lowest levels that it had ever seen since it was formed 18 years ago, after selling most of its operations to three governments and BNP Paribas SA. Fortis, which resumed trading after a six-day suspension, declined 78 percent to 1.22 euro, valuing the Company at 2.86 billion euros (\$3.91 billion).

6. Following the sale of its Dutch and Belgian insurance and banking businesses, Fortis is left with a 66 percent stake in a portfolio of structured products and its international insurance unit. "The shareholders are left out in the cold," said Yolande van den Dungen, an equities manager at SPF Beheer BV in Utrecht who helps oversee about \$2.5 billion, including

Fortis shares. "All the businesses that stood a chance have been sold." Indeed, over the last 12 months the Company stock had declined from as high as \$29 in per share in April 2008 to ostensibly zero.

### **JURISDICTION AND VENUE**

7. The claims alleged herein arise under sections 10(b) and 20(a) of the Securities and Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. Section 78(i)(b), 78(t) and 78t-1(a) and pendent common law claims.

8. Jurisdiction over the subject matter of this action is conferred upon this Court by Section 27 of the Exchange Act, 15 U.S.C. Section 78aa, 28 U.S.C. Section 1331 and 28 U.S.C. 1307.

9. This Court has personal jurisdiction over this action because Fortis does business in this District and its stock trades as American Depositary Shares on the over the counter market.

10. Also, In connection with the acts alleged herein, the defendants directly or indirectly, used the means and instrumentalities of interstate commerce, including the U.S. mails and facilities of a national securities exchange. Fortis's securities trade as American Depositary Shares (as evidenced by American Depositary Receipts) on the over the counter market.

### **PARTIES**

11. Plaintiff purchased shares of Fortis securities during the Class Period, as per the annexed certificate, on the over the counter market in the form of American Depositary Receipts.

12. Fortis trades in the United States over the counter as ADRs under the symbol "FORSY." It also trades on international exchanges under the following ticker symbols: (Euronext: FORA, Euronext: FORB, LuxSE: FOR, Brussels: FORB BB, OTC: FORSF).

13. Fortis is a banking, insurance, and investment management company. In 2007, it was the 20th largest business in the world by revenue. The Benelux countries were Fortis's home base and its strength. Fortis's banking operations included network (retail), commercial, and merchant banking; its insurance products included life, health, and property/casualty lines. Products were sold through independent agents and brokers, financial planners, and through Fortis Bank branches. It is listed on the US over the counter exchange, Euronext Brussels, Euronext Amsterdam, and Luxembourg stock exchanges.

14. Fortis came into being in 1990, as the result of a merger of AMEV, a large Dutch insurer and VSB, a Dutch Banking Group; these were joined later that same year by AG, a Belgian insurer.

15. The Individual Defendants are HERMAN VERWILST, JEAN-PAUL VOTRON, and MAURICE LIPPENS and each is liable as a direct participant in, and a co-conspirator with respect to the wrongs complained of herein. As senior officers and directors, each was a controlling person within the meaning of section 20(a) of the Exchange Act and had the power to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, each was able to and did, directly or indirectly, control the conduct of Fortis's business.

16. Defendant Votron is the Company's former Chief Executive Officer and member of the Board of Fortis, a leading European financial group. He was replaced by Verwilst as of July 11, 2008.

17. Defendant Verwilst is a member of the Fortis board and has served Fortis in several other capacities. He was Managing Director of AG 1824 (now Fortis Insurance Belgium) from 1997 to 1998; CEO of Fortis Belgium from 1997 to 1998; and Managing Director of Fortis

(B) from 1997 to 2000. After Fortis acquired Générale de Banque in 1998, he headed Banking activities as Chairman of Fortis Bank.

18. As Chief Operating Officer (appointed 2004), Verwilst has Fortis-wide (Banking and Insurance) responsibility for Human Resources, Risk, Information Services & Technology, Operations, Legal & Compliance, and Facility & Purchasing. In addition to his responsibilities as COO, Verwilst has also been Fortis's Deputy CEO since 2000 and Chairman of the Management Committee of Fortis Bank since its creation in 1998. Filip Dierckx replaced Verwilst as CEO and Chairman of Fortis Bank on September 27, 2008.

19. Defendant Lippens, also referred to as "Count Lippens" was the chairman of the Company until he was forced to step down in September. He was chairman of Fortis since 1990 and remains on the board.

### **SUBSTANTIVE ALLEGATIONS**

#### **The ABN AMRO Acquisition**

20. On October 8, 2007, Fortis (part of the consortium with Royal Bank of Scotland Group and Banco Santander) announced that an offer for 86% of outstanding ABN AMRO stock had been accepted, making way for the largest ever bank takeover in history. On November 1, 2007, a shareholder meeting was held to change ABN AMRO's management. Mark Fisher from RBS took over as CEO. At that meeting, the consortium stated that 97% of all shares were in their hands.

21. By all accounts, Fortis's decision to participate in the acquisition was a mistake and was one of the primary reasons why the financial giant failed. Defendants, however, strained to portray the acquisition as strategically important from the outset. They then issued a series of materially false statements designed to cover-up the true state of affairs stemming from the ill-fated decision to acquire ABN AMRO.

22. The *Financial Times* has published a series of detailed articles analyzing the situation. On September 28, 2008, it reported that “the roots of the Belgo-Dutch group's troubles can be traced directly to its decision, in spring 2007, to participate in the break-up bid for ABN AMRO, its larger Dutch rival.”

23. Fortis had been a medium-sized European banking and insurance group in a rapidly consolidating industry. “By participating in the ABN AMRO deal, it hoped to transform itself into one of the largest financial institutions in northern Europe.”

24. The *FT* reported that “[f]or Maurice Lippens, Fortis's mercurial chairman, and Jean-Paul Votron, its hyperactive chief executive, the opportunity to take control of ABN AMRO was just too tempting to pass up.”

25. Indeed, national pride was the impetus for the transaction. “The idea of a largely Belgian institution taking charge of the bank of the Dutch establishment also carried enormous symbolism in a part of the world where the Belgians are still the butt of many Dutch jokes.”

26. Nevertheless, this is not simply a case of mismanagement. It concerns defendants' concerted efforts to conceal the truth about the transaction's negative ramifications, want of synergies, and how the Company spiraled into a dangerous liquidity squeeze that left it mortally wounded.

### **Class Period Statements**

27. The Class Period begins on January 28, 2008, the first day of trading following the January 27, 2008, press release issued by the Company stating it “confirms sound capital solvency position and unchanged dividend policy.” The release was issued to quell “market speculation.” The release further touted the Company's prospectus, solvency position, risk metrics, and implementation of the ABN AMRO business. It states in pertinent part, as follows:

**Fortis Bank end-of-year solvency well above 8%.**

Fortis end-of-year solvency is expected to surpass regulatory requirements and Fortis Bank tier 1 ratio would be, even under the most stringent coverage assumptions simulated below, well above 8%.

**Fortis intends to keep its dividend policy unchanged.**

Fortis management will recommend to the Board of Directors meeting of 6 March 2008 to propose to the General Shareholders Meeting of 29 April 2008 that the cash dividend is maintained at the same level as last year, i.e. a final 2007 dividend of EUR 0.59 pre share.

**Capital and solvency requirements will be met, even in very stringent scenarios on the impact of the sub prime CDO portfolio.**

Fortis is reviewing the value of its sub prime CDO portfolio on an ongoing basis. Different scenarios are used in this assessment. Even under very stringent coverage assumptions based on the most recent and presently available market information and data, Fortis's capital and solvency requirements would still be met.

The CDO sub prime gross exposure remained unchanged compared with the disclosure at the time of the presentation of the 3rd quarter financial results early November, 2007.

Applying the Fortis valuation model at year end would lead today to impair 40% of the Mezzanine super senior CDO tranches and 15% of the High Grade super senior CDO tranches. These impairments would result in a Net Profit before divestments – and barring unforeseen circumstances – of around EUR 4.0 billion (i.e. EUR 5.0 billion including the EUR 1 billion of the Caifor sale). These aforementioned indications of Fortis Net Profit are excluding the positive profit contribution of ABN AMRO.

Since January 2008 a number of peers applied substantially higher coverage ratios. Fortis therefore simulated the impact of provisions taken through the Profit & Loss Accounts, leading to a coverage ratio of 60% of its mezzanine super senior CDO tranches (gross exposure of EUR 4.6 billion) and 45% of the high grade super senior CDO tranches (gross exposure of EUR 0.6 billion). If these scenarios were to be applied to the closing of the accounts of 2007 – which would be subject to approval by the Board of 6 March 2008 – the net profit of Fortis is estimated to be around EUR 2.0 billion – barring unforeseen circumstances. This is before the impact of the divestment of the participation in the

Spanish joint-venture Caifor, i.e. it would be EUR 4.0 billion including the EUR 1 billion of the Caifor sale. These indications of Fortis Net Profit do not include the positive profit contribution of ABN AMRO.

**Loan loss provisions in line with earlier guidance**

Fortis confirms that the loan loss provisions of the remaining part of the portfolio (including the asset backed credit portfolio, but excluding the impairments of the sub prime CDO portfolio) are expected to remain within the guidance given in the previous communications (10-15bp). Fortis will provide further details on the full portfolio, including its assets backed credit portfolio of EUR 51 billion, at the announcement of the annual results on 7 March 2008.

Regarding 2008:

**Fortis does not need to and is not considering to issue common stock or dilutive equity linked capital instruments.**

Fortis is fully on track in completing its EUR 24 billion financing plan for the acquisition of selected activities of ABN AMRO. At the end of 2007 around EUR 20 billion of capital has been secured. The remaining EUR 4 billion additional solvency will be mainly raised by divestments of non-core assets and possibly alternative financing. Divestments include, as communicated to the market, a further sale of non-core assets of acquired activities of ABN AMRO and of Fortis in the course of this year. It includes amongst others the sale of certain commercial banking activities in the Netherlands as imposed by the European Commission. Alternative financing is possible including the issue of Core Tier 1 instruments, but excluding the issue of common stock or any dilutive equity linked capital instruments, even under the stringent assumptions mentioned above.

**Fortis focuses on the implementation of its strategic plans, in particular the integration of the ABN AMRO businesses.**

The underlying performance of Fortis' stand-alone business and the acquired ABN AMRO activities have demonstrated their resilient nature in the fourth quarter of 2007 and also in the first weeks of 2008.

The preparation of the integration of the acquired ABN AMRO activities is progressing according to plan, in terms of detailing separation and integration plans, launching first customer oriented

initiatives, clarifying the headquarters offices future use, building joint teams, and specifying IT platforms.

28. On January 31, 2008, the Company touted its successful “separation and integration process.” Detailing “milestones”, defendant Votron stated:

We’re on track. This is a major step forward and a key milestone in the integration process of the ABN AMRO activities that will join us. The subsequent combining of the two entities will see the formation of a world-class asset manager with impressive solutions of offering and a truly global footprint.

29. On February 21, 2008, in a press release entitled “*Fortis takes advantage of Market Opportunity and strengthens solvency with non-dilutive Core Tier 1 Capital*” the Company touted its keen insight and ability to take advantage of market opportunities.

Specifically the press release states as follows:

Fortis launched on Monday 18 February 2008 a Core\* Tier-1 capital transaction (“NITSH” or “Non-Innovative Tier-1 Hybrid Securities”). The transaction is non-dilutive, in line with Fortis’s announcement of 27 January 2008.

**Fortis successfully placed an amount of USD 750 million, carrying a cash coupon of 8.25% at the tight end of the marketing range, after marketing the transaction to institutional intermediaries in Asia and Europe, who will subsequently place the securities with their individual high net worth and retail clients.**

This instrument is a non equity-linked, perpetual and subordinated debt, callable as of 2013 and without incentive to redeem. The securities are qualified as “non-innovative Tier-1”, not subject to a 15% regulatory limit. In the Belgian regulatory environment, this transaction benefits from a pioneer regulatory treatment and sets a precedent of this type.

In current turbulent markets, capital raising opportunities are limited and capital is a scarce resource. The *Asian Retail* market currently offers an attractive investor base for issuers to raise solvency. **Fortis has decided to act quickly and on a preemptive basis to take full advantage of this opportunity, as the availability and liquidity of this market has in the past proved to be limited. This innovative step in the *Asian Retail* market**

**allows Fortis to strengthen its capital ratios at a tax deductible cost while efficiently diversifying its investor base.** (Emphasis added)

30. On February 28, 2008, the Company issued a press release entitled "*Fortis-acquired ABN AMRO activities deliver strong performance in 2007*" the Company issued its preliminary financial results for fiscal year 2007. Commenting on the results, Fortis CEO Jean-Paul Votron stated as follows:

Despite the volatile market conditions at the end of 2007 and uncertainty during the period of the bidding process itself, our ABN AMRO colleagues delivered an extremely robust financial performance in 2007. ABN AMRO maintained strong customer momentum during this period, with minimal client attrition and higher customer satisfaction levels reported. **This performance validates our strong conviction that the combination of Fortis and ABN AMRO represents a compelling proposition for both our employees and our clients, and it is clear from these results that we have a strong base from which to grow in the future.** We are fully on track with the integration of ABN AMRO's activities and expect the asset management integration process to be completed over the coming weeks, followed by private banking by the end of the year and retail banking and commercial/corporate activities by the end of 2009. (Emphasis added)

31. On March 7, 2008, the Company issued a press release entitled "*Fortis's full-year profit at EUR 4.0 billion on continued strong commercial activity in banking and insurance,*" detailing its final results for fiscal year 2007 in an art. The press release, which also revealed a proposed dividend of EUR 0.59 commented on the ABN AMRO transaction as follows:

**Underlying net profit of acquired ABN AMRO activities up 17% to EUR 1,355 million.** The net contribution of these activities to Fortis's results amounted to EUR 179 million for the 76 days we consolidated. The transition and integration process is fully on track, assumptions regarding synergies and profit contribution have been confirmed. (Emphasis in original)

Defendant Jean-Paul Votron commented on the results as follows:

This past year has been an extraordinary one for Fortis. Most observers will of course associate 2007 with the consortium

acquisition of ABN AMRO, a move that allows us to accelerate our strategy. Yet, as CEO, I am also particularly pleased that we continued to implement our growth plans in 2007 despite difficult market conditions. Fortis, though, was not immune to the impact of the turmoil in global credit markets, and, as highlighted in January, our financial results carry the burden of impairments on our subprime CDO portfolio. **But the continued focus on the fundamentals of our businesses as well as selective divestments allow us to confirm our confidence in our solvency and liquidity position.**

Fortis has successfully focused on delivering tangible value for its customers, as evidenced by a strong commercial performance in 2007. My thanks to the 65,000 employees around the world who delivered these results despite the unstable environment. Focusing on the customer helped us to increase client-driven revenues, to keep net interest income robust and to achieve strong growth momentum in commissions, fees and insurance premiums.

**The compelling strategic logic of our acquisition of the selected ABN AMRO businesses has become even more relevant during this period. Not only are these activities delivering a better-than-expected 17% rise in underlying profits, they are providing additional distribution power, increasing our retail funding capacity and, last but not least, providing us with a large and very predictable earnings stream and lowering the overall risk profile of our company.**

As expected, we are making good progress with our plans for the integration of ABN AMRO. Clients have already begun to experience the benefit of a strengthened product capability. In January, for instance, we launched the first ABN AMRO investment product into the Fortis network. Fortis is now in a position to demerge ABN AMRO's asset management activities and subsequently integrate this business with Fortis Investments. With respect to the funding of the ABN AMRO transaction, we have slightly adjusted the targeted financing mix. Divestitures and outside participation in the capital of some of our businesses will form a substantial part of the completion of the financing and strengthening of our capital position. This is one of my key priorities for 2008. In addition to the announcements made in the past few weeks, we have been engaged in exclusive negotiations on another transaction that will further strengthen our solvency substantially. This envisaged transaction is fully in line with our already communicated strategy and vision regarding the development of our businesses and our markets.

Although I am pleased with the progress we are making, there is certainly no room for complacency. We expect the markets to remain challenging for the foreseeable future and, as a result, we will intensify our efforts to control costs, in line with our commitment to the operating leverage target, and focus on risk management. With respect to the subprime market, we have taken appropriate steps to curtail our CDO activities and have also taken the decision to apply a very stringent valuation model to super senior CDO's with subprime exposure, leading to relatively high coverage ratios but reducing our net profit before divestment to EUR 3.0 billion.

**Our underlying profit remains solid and our solvency strong. As a result, it is the Board's intention to propose to the General Shareholders' meeting a full-year dividend of EUR 1.18 per share (final 2007 dividend of EUR 0.59), despite the volatile environment.** For 2008, our objective and commitment is clear, regardless of external factors weighing on the financial sector: we will build on our current business momentum and will remain focused on delivering a strong performance for our customers and our shareholders, while successfully integrating ABN AMRO. (Emphasis added)

32. On March 31, 2008, the Company published its annual report for 2007 and reiterated the financial results described above.

33. On May 13, 2008, the Company issued a press release detailing its first quarter financial results. The Company reported a first quarter net profit of EUR 808 million driven by "resilient operational performance." Defendant Votron commented on the results as follows:

These continue to be highly challenging times, as reflected by the further deterioration of financial markets in the second half of March 2008. While it is clear that the US economy is suffering, it is still uncertain how the crisis will impact other economies, which in turn could affect commercial activity. We believe that the environment will continue to be challenging for the foreseeable future.

The increased volatility of capital markets in the first quarter resulted in additional write-downs on our structured credit portfolio. The net of tax impact of the credit market turmoil recorded in the first quarter was limited to EUR 380 million thanks to the stringent view taken at the time of our full-year results publication.

To address the impact of the changes in the environment, we already took various measures during the first quarter. Strict cost management, especially in non-staff related expenses, in combination with income growth at both the insurance and the banking operations resulted in a resilient operational performance illustrated by a net profit including the impact of the credit turmoil of EUR 808 million. **Our first-quarter results also reflect the benefits of our strategy of having a significant presence in the Benelux countries, a region with a very strong credit history and relatively low volatility in earnings.**

**At 1 April 2008, the asset management activities of ABN AMRO were transferred to Fortis, and the operational integration is proceeding according to plan.** We also announced a number of key appointments in recent weeks to facilitate the future integration of the retail, commercial & corporate and private banking activities. **Customers too are beginning to experience the benefit of the combined group, with several joint investment products already successfully launched in the market.** In respect of the announced sale of certain Dutch activities under the agreed EC remedies, we are making good headway.

The formation of Fortis Ping An Investments represents an important strategic development for the company, giving us greater access to the Asian markets, specifically China, and a significantly broader distribution platform for our products. The partnership will allow both parties to leverage each other's expertise, putting us in a position to accelerate our plans for the asset management business. Fortis is delighted, too, to welcome to its Board Louis Cheung, the CEO of Ping An, who will be an enormous asset in further understanding this huge market.

Our capital ratios were affected in the first quarter by the downturn in the equity markets. However, retained profit and the launch of non-dilutive instruments compensated for this development. **Core capital remains well above our target.** This surplus in core equity will decrease when the acquired ABN AMRO activities are transferred to Fortis during the course of 2008 and 2009, and consolidated for the first time. **Nevertheless, we remain on track to meet our stated capital objectives for 2009, through the retention of future profits, selective asset sales and the issuance of non-dilutive instruments as previously indicated.** The first-time publication of Fortis Bank's capital requirements under Basel II illustrates the moderate risk profile of our franchise and provides scope for future capital relief.

In summary, the environment remains challenging, but we will continue to take whatever steps are necessary to navigate successfully through the current crisis. At the same time, we remain firmly committed to delivering on our strategic business plans, including the successful integration of ABN AMRO and the development of our new partnership with Ping An. (Emphasis added)

34. On May 22, 2008, the Company issued a press release entitled “*Fortis reports strong progress in the integration of ABN AMRO.*” In pertinent part, the press release stated as follows:

Total synergies of EUR 1.3 billion, to be realised by the end of 2010, and related integration costs of EUR 1.5 billion, are confirmed today. The synergies are in line with the update given in September 2007. Total cost synergies are expected to be EUR 1.1 billion, or 83% of total synergies, and the revenue synergies targeted are EUR 0.2 billion, or 17% of total synergies. As for the timing, 26% of the synergies are expected to be realized in 2008, 55% in 2009 and 100% in 2010. Based upon the latest assessment, additional synergies may be realized as from 2011 onwards.

35. Defendant Jean-Paul Votron commented on the progress of ABN AMRO’s integration as follows:

We are just seven months into the process and have already made excellent progress on all fronts. We have hit each of the key milestones for this process, and even at this very early stage our customers are beginning to see the first benefits. **We acquired high quality businesses with a recurrent and predictable earnings stream. These businesses fit our strategic profile, allowing us to build on existing strengths. We are growing in markets that enjoy attractive economic and commercial fundamentals.** Customers are already experiencing the benefits of this transaction, for instance in the joint rollout of new investment products. The intention to take full control of ABN AMRO’s insurance activities, as announced on 20 May 2008, fits Fortis’s ambition to fully leverage its bancassurance skills to the ABN AMRO client base.

\* \* \*

This acquisition is transforming Fortis into one of Europe’s most dynamic and sustainable financial services brands. We are

creating long-term value for our shareholders, career prospects for our staff, and a leading competitor in the markets we operate in. We're committed to further solidifying our leadership position in the Benelux, and internationally. (Emphasis added)

36. On May 23, 2008, the Company issued another press release announcing that it had successfully placed additional capital. The press release stated as follows:

Fortis today announces that it has successfully placed an amount of EUR 625 million through a Core Tier 1 capital transaction ("NITSH II" or "Non-Innovative Tier 1 Subordinated Hybrid Securities II"). The transaction carries a cash coupon of 8.00%.

Fortis announced the launch of NITSH II on 15 May 2008. The transaction was the second of its kind, was non-dilutive and euro-denominated, and mainly targeted retail and institutional investors across Europe.

Gilbert Mittler, Member of Fortis Executive Committee responsible for Finance, Risk and General Counsel comments: "Fortis is happy with this outcome. **We have reached our stated benchmark target, further solidifying Fortis's capital position.**"

The NITSH+ II was distributed by the mandated banks, including Fortis and ABN AMRO, through their retail networks and via institutional intermediaries in Europe.

This instrument is non-equity-linked, perpetual and subordinated debt, callable in year 5 (2013) at the issuer's option. As with the NITSH I launched in February 2008, the securities qualify as "non-innovative Tier 1" not subject to a 15% regulatory limit.

After the successful placement of NITSH I for an amount of USD 750 million - mainly in Asia - **this new transaction demonstrates the ability of Fortis to benefit from market opportunities to further strengthen its capital ratios, in line with its capital management policy.** (Emphasis added)

37. On June 26, 2008, Fortis issued a press release announcing that it was "accelerating the execution of its solvency plan." The release states it is not for distribution in the U.S., though it is readily available on the Company's website at

[http://www.Fortis.com/pressrelease\\_en.asp](http://www.Fortis.com/pressrelease_en.asp). The release is printed in English and stated in pertinent part as follows:

**Fortis accelerates the execution of its solvency plan**

**Equity raising of EUR 1.5 billion launched today; proposal for full year dividend paid in shares based on full-year profit and no interim dividend**

Fortis announces today its intention to accelerate its solvency plan. Fortis confirms that its current solvency is strong and that the commercial momentum of its business remains resilient. The decision to accelerate the plan is based on the expected outcome in the coming weeks of the imposed sale of some of the Dutch commercial banking activities under the European Commission (EC) remedies ruling, the planned acquisition of the remaining 51% stake in the Dutch insurance joint venture with Delta Lloyd, and anticipates a continued challenging market environment as well as taking a prudent stance on required capital in the current environment.

To achieve this acceleration, the Fortis Board of Directors has decided to take additional measures, some of which will have an immediate impact. These measures include:

- an equity raising of approximately EUR 1.5 billion by means of an accelerated bookbuilding offering, starting today. This increase is well within the mandate given by shareholders to the Board to issue new shares.
- The decision not to pay an interim 2008 dividend. This will preserve solvency as the interim dividend was expected to impact second quarter solvency by EUR 1.3 billion. A proposal to pay the full-year 2008 dividend in shares will be made to the Annual General Meetings of Shareholders in March 2009.

Current exception circumstances necessitate these exception measures. The Board of Directors of Fortis has decided that under the current circumstances it is more prudent to strengthen the capital base and not pay an interim dividend. Fortis intends to resume its practice of paying dividend in cash, probably as early as the interim 2009 dividend.

In addition, the updated solvency plan now includes:

- a capital relief programme and a sale and lease-back transaction of real estate, for around EUR 1.5 billion
- the issuance of non-dilutive capital instruments up to EUR 2 billion
- additional disposals of mature non-core assets, which are expected to lead to a total solvency uplift of around EUR 2 billion

The updated solvency plan is expected to result in more than EUR 8 billion of additional solvency in total in the short to medium term. The capital raising of approximately EUR 1.5 billion will broadly offset the future impact on solvency of the EC remedies and the intended acquisition of the Dutch insurance joint venture. These measures will increase the core Tier 1 ratio of Fortis Bank, which at the end of the first quarter stood at 8.5%, and will – considering full consolidation of the acquired ABN AMRO assets – enable Fortis to keep the core Tier 1 ratio well above 6% by year-end 2009 (under Basel I).

\* \* \*

### **Solvency plan**

At the end of the first quarter, Fortis Bank's core Tier 1 ratio amounted to 8.5% (based on Basel I), well above its target of 6%. As previously communicated, this surplus will gradually decrease in 2008 and 2009 as the acquired ABN AMRO activities are transferred to Fortis and consolidated. Assuming full consolidation of the acquired activities of ABN AMRO and execution of the announced transactions as well as the additional measures announced today, the year-end 2009 look-through Bank core Tier I ratio will be well above 6% (based on Basel I). Organic solvency generation is expected to accelerate as from 2010, when most of the integration costs will have been absorbed and the announced EUR 1.3 billion synergy benefits will emerge in full.

38. On July 11, 2008, the Company announced a management shake-up. Defendant Votron's "mandate" was terminated (he was summarily fired). The release failed to detail the reasoning behind the abrupt termination. It simply states that Defendant Venwilst (deputy CEO) would assume the CEO position going forward.

39. On July 15, 2008, the Company issued a press release designed to calm the markets and the Company's shareholders:

### **Fortis Statement on market speculation**

In response to exceptional market speculation, Fortis feels it necessary to issue the following statement.

On Friday 11 July, the Fortis Board discussed and re-confirmed the adequacy of the measures as disclosed on 26 June and did not envisage any additional capital increase.

The Board further requested, unanimously, that Count Maurice Lippens continues to serve as Chairman of the Board.

The Dutch market regulator AFM (Autoriteit Financiële Markten) has today sent to Fortis a request for information in the frame of decisions disclosed on 26 June and 11 July 2008. Fortis will obviously cooperate with the authorities and respond to this request for information.

In addition, Fortis reaffirms its earlier statements made on 26 June about its operational performance for the second quarter of 2008. Details on these results will be published on 4 August 2008.

40. On August 1, 2008, Fortis issued a press release, annexing letters written to institutional shareholders purportedly responding to specific issues raised by those shareholders.

The responses state in pertinent part, the following:

Dear Sirs,

We write with reference to your letters of 27 June, 1 July and 10 July 2008 as well as to your request, formulated via the press, to modify the Fortis structure in response to the communication by Fortis on 26 June 2008 concerning the accelerated execution of the solvency plan.

The answers to your questions are summarized in this letter and were discussed with you at today's meeting which was held at your request in Utrecht.

Your questions of 27 June 2008:

**On what did Mr. Votron base his statement that the balance sheet was in good shape at the end of the April 2008 and that it would not need to be strengthened?**

**If the balance sheet was in good shape at the end of April, why does Fortis suddenly need to accelerate the execution of its solvency plan?**

**What events or circumstances have taken place since April 2008 that have had a significant impact on Fortis's balance sheet ratios?**

The decision to accelerate the execution of the solvency plan was based on a combination of factors which manifested themselves mainly in the month of June. At the end of April, as well as at the time of publication of the figures for the first quarter on 13 May 2008, negotiations were still ongoing on the sale of parts of ABN AMRO that had been demanded by the European Commission. Fortis had moreover not yet announced its intention of acquiring the remaining interest in the joint venture with Delta Lloyd. It is important to note here that the insurance remains a very important activity for Fortis from both a strategic and commercial perspective. Having full control of ABN AMRO Insurance, in combination with our extensive knowledge in the field of bancassurance, puts Fortis in a unique position to strengthen its activities in this area in the Netherlands. In addition, the deterioration of the equity markets in June, expectations of a continuation of the challenging market conditions and the need in such a climate for a prudent approach to the capital required, inspired by the various stakeholders, together led to the decisions that were communicated on 26 June.

The solvency plan announced on 26 June combines measures already announced (such as the issue of non-dilutive capital instruments, the implementation of a capital relief programme and controlled growth of our capital requirements in 2008 and 2009) with a number of new measures (such as the share issue and non-payment of an interim dividend).

\* \* \*

**Does Fortis expect any new (significant) write-downs or losses on its loan portfolio?**

**Can shareholders trust that all information regarding Fortis's solvency and liquidity has now been disclosed and that they will no longer be faced with any further surprises in the future?**

Information given in a press release is always based on all available information at that moment and on an assessment of possible future developments.

As regards the write-downs on the structured credit portfolio, we announced on 26 June that there would be additional write-downs, but that these would be lower than in the previous quarter.

Fortis will provide further information on the quality of the loan portfolio when it publishes its half year results on 4 August.

Fortis also announced on 26 June that the continued fall in the equity markets and the resultant reduction in the value of our equity portfolio was likely to have an impact of EUR 400 million on shareholders' equity and therefore on solvency. As reported on 26 June, Fortis has taken measures to mitigate its sensitivity to movements of the equity markets.

On 15 July, Fortis also announced that the Board of Directors, held on 11 July, discussed and reaffirmed the adequacy of the measures announced on 26 June, and that an additional capital increase was not anticipated.

\* \* \*

**Did the Board of Directors have information before 26 June 2008 concerning the financial position of Fortis which it did not make public, and did the Board publish communications which contradicted that information?**

The Board of Directors has always acted to the best of its knowledge and ability, naturally taking as its starting point the requirement that all relevant rules should be observed.

\* \* \*

***What facts in your possession led to the radical change of position and justify the particular urgency of the measures, given that these will only affect solvency in 2009?***

The decision to accelerate the execution of the solvency plan was based on a combination of factors which manifested themselves mainly in the month of June. At the end of April, as well as at the time of publication of the figures for the first quarter on 13 May 2008, negotiations were still ongoing on the sale of parts of ABN AMRO that had been demanded by the European Commission. Fortis had moreover not yet announced its intention of acquiring the remaining interest in the joint venture with Delta Lloyd. It is important to note here that insurance remains a very important activity for Fortis from both a strategic and commercial perspective. Having full control of ABN AMRO Insurance, in combination with our extensive knowledge in the field of bancassurance, puts Fortis in a unique position to strengthen its activities in this area in the Netherlands. In addition, the deterioration of the equity markets in June, expectations of a continuation of the challenging market conditions and the need in

such a climate for a prudent approach to the capital required, inspired by the various stakeholders, together led to the decisions that were communicated on 26 June.

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\* \* \*

***Are you planning any further write-downs in the short term (three to six months)?***

***Has the Auditor (KPMG) expressed a view recently on whether sufficient asset write-downs have been performed – particularly with regard to the structured credit portfolio, the fair value of which was estimated at EUR 43.3 billion at the end of the March 2008 and the equity investments (fair value of EUR 13.1 billion)/***

Information given in a press release is always based on all available information at that moment and on an assessment of possible future developments.

As regards the write-downs on the structured credit portfolio, we announced on 26 June that there would be additional write-downs, but that these would be lower than in the previous quarter.

Fortis will provide further information on the quality of the loan portfolio when it publishes its half year results on 4 August 2008.

Fortis also announced on 26 June that the continued fall in the equity markets and the resultant reduction in the value of our equity was likely to have an impact of EUR 400 million on shareholders' equity and therefore on solvency. As reported on 26 June, Fortis has taken measures to mitigate its sensitivity to movements of the equity markets.

On July 15, Fortis also announced that the Board of Directors, held on 11 July, discussed and reaffirmed the adequacy of the measures announced on 26 June, and that an additional capital increase was not anticipated.

The auditor (KPMG) issues a report on the annual results once a year, when the annual report is published. The quarterly figures are adopted in liaison with the auditor.

41. On August 4, 2008, the Company issued its results for half-year 2008.

Commenting on the results, Defendant Verwilst stated as follows:

**CEO Herman Verwilst:**

In the first half of 2008, our business, including the acquired ABN AMRO activities, performed satisfactory in turbulent market conditions. Most of the commercial activities were still able to grow underlying revenues. At the same time, costs were well controlled. But we observe that the environment is becoming more difficult on different fronts.

Fortis continued to be impacted by the credit market turmoil. **However, the capital position of Fortis remains sound.** Our core equity of EUR 24.6 billion was EUR 4.0 billion above the target level on 30 June. The accelerated capital plan announced on 26 June is being executed step by step. Divestment of non core Fortis and ABN AMRO assets, the EC remedies and the creation of joint ventures are part of this plan to further strengthen our capital ratios. The resulting capital gains and losses of these exceptional events are expected to have a substantial impact on reported results. This will lead to increased volatility of the reported results in the second half of 2008. Execution of the capital plan will enable us to absorb the full consolidation of the ABN AMRO activities planned for end of 2009, and develop our business further. (Emphasis added)

The priorities for me and the senior management team are straightforward:

- Diligent and full execution of the capital plan of 26 June, including the announced divestments
- Disciplined and focused implementation of our present strategy, including the swift integration of the ABN AMRO businesses
- Sustain commercial momentum and step-up cost saving efforts.

I consider it crucial to strengthen the communication with our stakeholders and will update the market in full transparency on progress made.

42. On September 16, 2008, the Company issued a statement blaming others for volatility in its share price:

### **Fortis Statement on Market Speculation**

Fortis notes that speculation regarding its share price is being exacerbated by emails spreading misinformation regarding a possible imminent rights issue. Fortis categorically denies this rumour.

Fortis confirms that there are no new elements to announce.

43. On September 25, 2008, the Company issued an additional statement claiming that there were no pertinent issues necessitating a response, absent detailing the reasons why silence was the better course of action:

Fortis firmly denies rumours currently in the market and confirms its earlier statements.

44. On September 26, 2008, Fortis, again, reiterated that there were no pending, material issues that should alarm stockholders or that necessitated a response:

### **Fortis clarified commercial and financial situation**

In response to continued market rumours and questions, Fortis provides an update on its financial situation.

- **Fortis customer deposit flows:** Above all we underline the solid position of the bank. In a challenging environment of market turmoil, of negative coverage on Fortis triggering many questions from our customers, of very sharp competitive environment, customer moves have remained limited. Compared to January 1<sup>st</sup> 2008, these moves represent less than 3% of its total Benelux retail and private banking customers assets excluding market impact. This is thanks to longstanding customer loyalty, an increased effort of the Fortis staff to provide the appropriate information and answers to the questions of customers and the positive result of continuous targeted commercial efforts, such as the e-savings account in Belgium launched in July.
- **Fortis liquidity:** Fortis currently disposes of a diversified funding base of more than EUR 300 billion (from institutional investors, retail and private deposits, Central banks and corporates) allowing to fully fund operations. In addition Fortis has a collateral buffer.
- **Fortis solvency** is solid and well above the regulatory minimum. Fortis' capital plan which will support the

consolidation at the end 2009 of all acquired ABNAMRO business, is being further developed.

45. On September 27<sup>th</sup>, 2008, Verwilt pleaded with investors to have confidence, saying that the Fortis's financial position would become much clearer by December, now that Fortis had fast tracked EURO 5-10 billion in assets. Defendant Verwilt was removed as CEO and replaced by Filip Dierckx later the same day.

46. The statements detailed above were false and misleading for myriad reasons, as described below.

47. Fortis's balance sheet was weaker than represented because it benefited from a generous definition of regulatory capital. Fortis's capital cushion was, in fact, not robust. In actuality, the Company set aside reserves for unrealized losses on available-for-sale – securities, saying it will hold them until maturity.

48. Defendants misrepresented the Company's liquidity position and the actual reasons why it needed to raise capital. In actuality, the Company's capital solvency position was materially impaired from the purchase of ABN AMRO and huge amounts of capital were required in order to sustain the Company as a viable enterprise.

49. The Company's CDO portfolio was impaired by excessive sub prime exposure.

50. The Company misrepresented that it maintained sufficient loan loss provisions.

#### **THE TRUTH BEGINS TO EMERGE**

51. On September 29, 2008, it was widely reported that during the course of the preceding weekend into that Monday morning in Europe, Fortis became the latest target of a government rescue. According to *Reuters*, Belgian Prime Minister Yves Leterme, Finance Minister Didier Reynders, Belgian-Dutch financial services group Fortis Chief Executive Filip Dierckx and Dutch Finance Minister Wouter agreed that the governments of Belgium,

Luxembourg and the Netherlands, the three countries in which Fortis operates, would inject €11.2 billion (\$16.37 billion) into the bank.

52. The need for government intervention arose after France's BNP Paribas SA and Dutch financial firm ING walked away from talks to acquire the Company over the weekend.

53. Fortis said it will sell most of the ABN AMRO Holding NV assets it acquired for €24 billion last year. The sale excluded ABN AMRO'S Asset Management unit, which was already transferred in the second quarter of 2008.

54. Mr. Dierckx stated the move would "ensure the financial strength and stability of our company going forward." Moreover, Fortis stated it expected to write down €5 billion of impaired value in ABN, lost tax credits and losses on its derivatives portfolio. The Company said it has written down 78% of the value of collateralized debt obligation it wrote - packages of loans such as mortgages, bundled and sold like bonds.

55. Fortis further stated it expected further impairments on "the remainder of the structured credit portfolio" -- CDOs it owns but didn't create -- but did not state how big that portfolio is or how large the impairments would be.

56. Pursuant to the terms of the bailout Defendant Lippens resigned and will be replaced by a candidate from outside the Company.

57. European Central Bank President Jean-Claude Trichet met Sunday afternoon with Belgian Prime Minister Yves Leterme to discuss the Fortis situation, said a spokesman for Mr. Leterme. Mr. Leterme also called Belgium's government ministers to an emergency meeting Sunday evening to present the range of solutions being discussed. This, however, did not stem the crisis.

58. On October 3, 2008, Fortis announced that the government of the “Netherlands acquired Fortis Bank Nederland (Holding) N.V., including the participation in RFS Holdings, that represents the acquired ABN AMRO activities, Fortis Verzekeringen Nederland N.V., and Fortis Corporate Insurance N.V. for a total consideration of EUR 16.8 billion.” The transaction replaced the previously announced investment of EUR 4 billion in Fortis Bank Nederland Holding N.V.

59. Pursuant to the plan, the Dutch government will buy most of the bank's assets in the country for €16.8 billion (\$23 billion). The deal followed the failed €11.2 billion rescue for Fortis funded by the governments of Belgium, Luxembourg and the Netherlands announced just days prior. It was necessary because Fortis’s clients and other banks backed away from the Company.

60. On October 6, 2008, Fortis announced that the Belgian government acquired the remaining share (50% + one share) of Fortis Bank SA/NV. Also, the Belgian government reached an agreement with BNP Paribas on the subsequent transfer of a majority interest in Fortis Bank SA/NV. Furthermore, Fortis announced that BNP Paribas would acquire 100% of Fortis Insurance Belgium. “As a result of this transaction, the Fortis Group is exiting the banking business and the Belgian insurance business,” stated Mr. Dierckx. The details of the transaction are as follows:

- The Belgian state bought the remaining 50% + one share of Fortis Bank from Fortis SA/NV for a total consideration of EUR 4.7 billion in cash;
- A portfolio of structured products with fair value of EUR 10.4 billion was transferred by Fortis Bank to a separately managed entity jointly owned by the Fortis Group (66%), the Belgian State (24%) and BNP Paribas (10%);
- The Belgian government reached an agreement with BNP Paribas on the subsequent transfer of 75% of Fortis Bank

SA/NV; the Belgian State will continue to own the remaining 25% of the company; and

- BNP Paribas will acquire 100% of Fortis Insurance Belgium for a total consideration of EUR 5.73 billion in cash, subject to final closing adjustment.

61. On October 6, 2008, Fortis stock declined approximately 57% on the over the counter market on the disclosure that the tripartite government bailout failed and that the Netherlands would have to nationalize the Company and sell it off in pieces.

### **CLASS ACTION ALLEGATIONS**

62. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons who, during the Class Period purchased Fortis securities on the over the counter market (the "Class"). Excluded from the Class are the defendants, all of the officers, directors, employees and partners thereof, members of their immediate families and their legal representatives, heirs, predecessors, successors and assigns and any entity in which any of the foregoing has a controlling interest.

63. The members of the Class are so numerous that joinder of all members is impracticable. As of October 2008, , the Company had more than 2 billion shares of its stock outstanding. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes there are, at a minimum, thousands of members of the Class located throughout the United States. Throughout the Class Period, Fortis securities were actively traded over the counter and exchanges throughout the world.

64. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether the federal securities laws were violated by defendants' acts and omissions as alleged herein;

b. Whether statements made by defendants to the investing public during the Class Period misrepresented and/or omitted material facts about the financial condition of Fortis;

c. Whether defendants acted knowingly or recklessly in making materially false and misleading statements during the Class Period;

d. Whether the market prices of the Company's stock and options were artificially inflated or distorted during the Class Period because of defendants' conduct complained of herein; and

e. Whether the members of the Class have sustained damages and, if so, the proper measure of damages.

65. Plaintiff's claims are typical of the claims of the members of the Class as they and members of the Class sustained damages arising out of the defendants' wrongful conduct in violation of federal securities laws as complained of herein.

66. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members

individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

**PRESUMPTION OF RELIANCE:  
FRAUD ON THE MARKET DOCTRINE**

68. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

(a) defendants made false and misleading statements of material fact, and failed to disclose material facts, during the Class Period;

(b) the misstatements and omissions were material;

(c) the securities and options of the Company traded in efficient and open markets (excluding the effects of fraud): the Company was followed by numerous major analysts; the Company's securities met the requirements for listing, and was listed and actively traded on the NYSE; and

(d) the misstatements and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities.

69. Plaintiff and members of the Class purchased their Fortis stock and call options, or sold their Fortis put options, between the time defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the omitted facts.

70. Based upon the foregoing, Plaintiff and other members of the Class are entitled to a presumption of reliance upon the integrity of the market price for the Company's securities.

**COUNT I**

**Violation Of Section 10(b) Of The Exchange Act And  
Rule 10b-5 Of The Securities And Exchange Commission**

71. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

72. This Count is asserted against all defendants and is based upon section 10(b) of the 1934 Act, 15 U.S.C. 78j(b), and Rule 10b-5 promulgated thereunder.

73. During the Class Period, defendants directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which it knowingly or recklessly engaged in acts, practices, and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class, and made various deceptive and untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiff and the other members of the Class. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiff and the other members of the Class to purchase Fortis securities during the Class Period at artificially inflated prices.

74. During the Class Period, defendants, pursuant to said scheme, plan, and unlawful course of conduct, knowingly and recklessly issued, caused to be issued, participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to the investing public as particularized above.

75. As a result of the dissemination of the false and misleading statements set forth above, the market price of Fortis securities was artificially inflated during the Class Period. In ignorance of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by said defendants, Plaintiff and the other members of the Class relied, to their detriment, on the integrity of the market price of the stock in purchasing Fortis securities. Had Plaintiff and the other members of the Class known the truth, they would not have purchased said shares or would not have purchased them at the inflated prices that were paid.

76. Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

77. By reason of the foregoing, defendants directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that it: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class in connection with their purchases of Fortis securities during the Class Period.

## **COUNT II**

### **For Violation Of Section 20(a) Of The Exchange Act (Against the Individual Defendants)**

78. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

79. The Individual Defendants acted as controlling persons of the Company within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, participation in and/or awareness of the Company's operations, and/or intimate knowledge of the Company's products, sales, accounting, plans and implementation thereof, he had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that Plaintiff contends are false and misleading. The Individual Defendants was provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after

these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

80. In particular, The Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular statements giving rise to the securities violations as alleged herein, and exercised the same.

81. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to section 20(a) of the Exchange Act. As a direct and proximate result of the wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

WHEREFORE, Plaintiff, on its own behalf and on behalf of the Class, prays for judgment as follows:

A. Declaring this action to be a proper class action and certifying Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and the other members of the Class against the Defendants for the damages sustained as a result of the wrongdoings of the Defendants, together with interest thereon;

C. Awarding Plaintiff the fees and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys, and experts;

D. Granting extraordinary equitable and/or injunctive relief as permitted by law, equity and federal and state statutory provisions sued on hereunder, including attaching, impounding, imposing a constructive trust upon or otherwise restricting the proceeds of

Defendants' trading activities or their other assets so as to assure that Plaintiff has an effective remedy; and

E. Granting such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

DATED: New York, New York  
October 22, 2008

**WOLF HALDENSTEIN ADLER  
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