

The Finnish Foundation for Share Promotion  
(*Suomen Pörssisäätiö sr*)  
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## Written response to a shareholder's question from Fortum Corporation's Extraordinary General Meeting held on 23 November 2022

On 23 November 2022, Fortum Corporation's (hereinafter "**Fortum**" or the "**Company**") extraordinary general meeting (hereinafter the "**EGM**") resolved, in accordance with the proposal by the Board of Directors, on a directed share issue without payment to Solidium Oy (hereinafter "**Solidium**") as part of the bridge financing arrangement agreed with the State of Finland.

The representative of the shareholder Finnish Foundation for Share Promotion, Jesse Collin (ballot no. 1875) has at the EGM in connection with agenda item 6 (*Resolution on a directed share issue without payment*), requested the Company, pursuant to Chapter 5, Section 25(1) of the Finnish Limited Liability Companies Act (624/2006 as amended, hereinafter the "**Companies Act**") under the shareholder's right to request information, to provide more detailed information on the evaluation of the especially weighty financial reason in connection with the directed share issue without payment. In addition to the oral responses provided at the EGM, the Company noted at the meeting that it will issue a written response within two weeks pursuant to Chapter 5, Section 25(2) of the Companies Act.

The Company hereby provides the following information as requested at the EGM for the evaluation of the matter, however, without repeating everything that has already earlier been announced or stated at the EGM and on the matter in general.

### 1 The Context of the Directed Share Issue Without Payment

A case-by-case basis assessment must be carried out as part of a directed share issue without payment to assess whether it is in the shared interest of the company and all its shareholders. The following briefly recaps why the additional financing has been, and still is, necessary, why Fortum has decided to enter into the bridge financing arrangement with Solidium, and why the terms of the bridge financing arrangement are exceptional.

#### 1.1. Need for Financing

Fortum announced on 6 September 2022 that it had agreed with the State of Finland on a bridge financing arrangement with which the Company aimed to ensure sufficient liquidity resources if power prices and, with it, collateral requirements continued to rise significantly particularly on the Nordic commodities exchange Nasdaq.

Russia's war of aggression in Ukraine has plunged Europe into an energy crisis, which has had a significant and multifaceted effect on Fortum and other operators in the energy sector. One of its consequences has been

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that the trading volume on the Nordic electricity derivatives market decreased significantly over the course of autumn 2022, and the price formation of the positions on the stock exchange was not based on a normally functioning market.

The market hedging practices are based on mandatory regulation: so-called EMIR regulation, i.e. the European Market Infrastructure Regulation (Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories). The implementation of hedging practices requires the issuance of cash collaterals, which guarantee the performance of contractual obligations over the entire agreement period. When energy is sold in advance and the prices go up strongly, the collateral requirements of Fortum and equivalent producers rise rapidly. If, on the other hand, the prices go down, the collateral requirements decrease. The collateral requirement ceases to exist when the energy provided for in the agreement has been supplied.

The amount of cash collaterals varies particularly in case of a market disturbance in a manner that is difficult to foresee. Fortum is not able to influence the amount of the tied-up collaterals and therefore prepare in the short term for large changes of unprecedented nature. Although the Company had, and still has, sufficient liquid funds to meet the collateral requirements, and although the strongest price fluctuation has stabilised after the peak at the end of August 2022, the Company must still prepare itself for great uncertainty and significant price fluctuation in the electricity market and a possible need to tie up a significant amount of working capital with short notice to meet the collateral requirements under the regulation.

In Fortum’s case, the turbulent market and record-high prices in August 2022 meant a rise in the collateral requirements of Fortum’s subsidiary Fortum Power and Heat Oy (operating e.g. nuclear business) by more than EUR one (1) billion per week. At its highest, the amount of cash tied up in collaterals of the Fortum Group amounted to approximately EUR five (5) billion.

The electricity futures prices for the year 2023 prior to Russia’s war of aggression in Ukraine first doubled during the spring and summer of 2022, and subsequently the futures prices rose by over seven times during the end of summer 2022. The price per megawatt hour on the derivatives market has historically fluctuated during the previous fifteen years between EUR 20 and EUR 70 in such a manner that the price per megawatt hour for the following year has typically been approximately EUR 40. During the end of summer and early autumn, the futures price for the following year rose abruptly and profusely, being at times over EUR 280 per megawatt hour, and there was no information available as to when the rise would end. There is also no information available on whether the futures price will rise to equivalent or even higher levels again during the upcoming winter.

The collateral requirements are reviewed daily, and any deposits must be made in a matter of hours. At its peak in August 2022, Fortum had to provide additional collateral in the amount of more than EUR 500 million to the Nordic derivatives exchange during a single day.

If collateral cannot be provided within the set timetable, the procedures laid down in the stock exchange regulation will be triggered to close out the clearing member’s positions and transfer them to other clearing members. The inability of an operator such as the Fortum Group and its electricity-generating (e.g. through nuclear power) subsidiary Fortum Power and Heat Oy to provide the required collaterals would be unprecedented in the market and would be likely to have severe consequences for the entire Nordic electricity market. Thus, the bridge financing arrangement is not in place only to ensure Fortum’s operations but to ensure

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the functioning of the Finnish and Nordic energy security. Averting an unprecedented systemic crisis has been and continues to be in the interests of all responsible parties.

It is in the strategic interests of the State of Finland to ensure that Fortum can carry out its role in the security of supply without interruptions and that its operative and investing abilities are secured.<sup>1</sup> With the bridge finance arrangement the State of Finland strived to ensure that the Company can carry out its function i.e. produce electricity in Finland without interruption and sufficiently in all circumstances and therefore ensure the Finnish security of electricity.<sup>2</sup> Fortum held discussions with a wide variety of representatives of government entities, such as the Ministry of Labour and Industry, the Ministry of Finance, and the Prime Minister’s Office. Discussions were also held with other Nordic authorities regarding the market regulation and ensuring the operation of the market.

The purpose of the bridge financing arrangement has been the State of Finland’s interest to ensure the liquidity resources of a company, critical for the functioning of society, operating on the electricity derivatives market.<sup>3</sup> In a similar interest, the State of Finland has agreed on a support programme of a more general nature amounting to EUR 10 billion in order to secure the liquidity needs of companies, which are critical for the functioning of society, operating in the electricity derivatives market.<sup>4</sup> Similar support programmes have been established by many other countries.

Securing Fortum’s financing in all circumstances was — and continues to be — of critical importance not only to Fortum and all its shareholders but also for the energy security of the entire society.

## 1.2. Why Was the Financing Arrangement Entered into with Solidium

Fortum carefully examined, through several extensive discussions conducted also with the help of advisors, different alternatives for obtaining financing for the possible rise of collateral requirements. The subjects of the investigations were various debt-based arrangements, such as commercial papers, loans from financial institutions, bonds, hybrid financing and so-called high-yield finance sources, as well as equity-based arrangements (differing share issue alternatives, including a share issue based on the pre-emptive rights of shareholders). There has not been, nor is there now, an alternative to the bridge financing arrangement available to Fortum that would be similar in terms of amount, more favourable to Fortum and viable from the point of view of timing when it comes to the terms of the financing. Fortum, like several other European energy companies, does not, in the prevailing circumstances, have normal access to the financing market.

Fortum negotiated with the State of Finland on the possibility of the Finnish State to provide additional financing to Fortum in late summer and early autumn 2022 for the purpose of the above-described collateral requirements. A wide variety of government entities, such as ministries and other instances, took part in the discussions. From the State of Finland’s side, Solidium, an investment company wholly owned by the State of Finland, was chosen as the provider of the financing because, to the understanding of the Company, there were no other equally suitable financing channels connected to the State of Finland when taking into consideration

<sup>1</sup> Please see further e.g. the press release by the Prime Minister’s Office on 21 September 2022.

<sup>2</sup> Please see further e.g. the press release by the Prime Minister’s Office on 6 September 2022.

<sup>3</sup> Please see further e.g. the press release by the Prime Minister’s Office on 6 September 2022.

<sup>4</sup> Please see further e.g. the government proposal for the third additional budget proposal of 2022 (HE 121/2022).

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the set timetable and the amount of financing required. The bridge financing was agreed upon to ensure the Company's possible financing needs but in accordance with the timetable and terms and conditions set out by the State of Finland.

The Company did not have access, within the set timetable, to financing of the same magnitude through other channels. The financing provided by Solidium was the last option for the Company to cover any possible needs arising from a rapid and significant rise in the collateral requirements.

### 1.3. Why are the Terms of the Bridge Financing Exceptional

The key terms and conditions of the bridge financing are described in Fortum's stock exchange release announced on 6 September 2022. The first tranche of a minimum of EUR 350 million had to be drawn on 30 September 2022 at the latest in order for the financing arrangement to remain effective after the end of September 2022.

The Company announced on 26 September 2022 that it had decided to draw down the tranche of EUR 350 million and that further drawdowns would be subject to liquidity needs for collaterals. Drawing the first tranche would ensure that Fortum had access to the financing arrangement should the collateral requirements increase again during the winter.

As part of the commercial compensation related to the arrangement, drawing on the loan included a right for the lender to subscribe for new shares in the borrower (Fortum) in an amount corresponding to one per cent of all the shares in the borrower upon completion of the share issue. Fortum's Board of Directors has not resolved on the share issue. However, because of the necessary decision to draw on the loan, Fortum's Board of Directors had to propose to Fortum's General Meeting that the share component included in the financial terms of the bridge financing arrangement be directed to Solidium. If the directed share issue without payment had not been approved by the General Meeting with a two-thirds majority of the votes cast and shares represented at the meeting, the State of Finland would have had the right to accelerate the repayment of the loan.

The State of Finland (through Solidium) acted primarily in the capacity of a lender, not as a shareholder of the Company.<sup>5</sup> The terms of the arrangement are strict and drawing on the loan was the last option for the Company. The Company and its advisors sought to negotiate to the best of their ability the most favourable terms from the viewpoint of the Company with the State of Finland. However, it was evidently important for the State of Finland that the terms of the loan provided by Solidium to the Company were, to the extent possible, in line with the terms of the general, but a subsequently occurring support programme of the Ministry of Finance based on a separate decision by the Finnish Parliament.

If the Company had applied for a loan in accordance with the up to EUR 10 billion loan and guarantee scheme of the Ministry of Finance intended for companies active in the electricity derivatives market, it would have taken place later in the autumn. In addition, a loan under the support programme would have included the share component now in question, but it would also have included collateral arrangements that would have been difficult for a listed company and a prohibition on the distribution of dividends (see the Ministry of Finance's guidelines from 20 September 2022, VN/25242/2022). In this respect, the terms of the loan provided by

<sup>5</sup> Please see further e.g. the press release by the Prime Minister's Office on 6 September 2022.

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Solidium to the Company were more favourable from the viewpoint of the Company than the support package and are better in line with the shared interest of the Company and all its shareholders.

## 2 Assessments

The Company has closely reviewed the regulatory framework and terms governing the financing arrangement and the related directed share issue without payment. The Company has reviewed the regulatory framework relating to the matter — company law, state aid regulation, financing regulation, and other provisions — both independently with the assistance of its own experts and commissioned assessments from independent domestic and foreign advisors and professionals.

The Company was advised in the financing arrangement by international and domestic financial institutions and investment banks. In the review of the regulatory framework, third-party domestic and international legal counsel was employed. Furthermore, with respect to company law, the leading Finnish company law expert and professor of commercial law at the University of Helsinki, Professor Seppo Villa, was consulted on the matter. Based on the opinions and statements received, the Company considered that under the prevailing circumstances, the legal requirements for proposing the directed share issue without payment to the EGM are satisfied.

Additionally, the Ownership Steering Department of the Prime Minister’s Office together with its advisors has assessed that there are especially weighty reasons for the share issue. As the share component is a prerequisite for the financing arrangement, the State owner has deemed it justified that there is an especially weighty financial reason in the overall interests of Fortum and taking into account the interests of all the Company's shareholders for the share component.<sup>6</sup>

## 3 Essential Content of the Assessments: Evaluation of Especially Weighty Financial Reasons in a Directed Share Issue Without Payment

A resolution on a directed share issue without payment requires a decision by a qualified majority within the meaning of Chapter 5, Section 27 of the Companies Act. Additionally, preconditions for the deviation from the pre-emptive subscription right provided for in Chapter 9, Section 4(1) of the Companies Act must be met. The wording of the provision reads as follows:

“The pre-emptive right referred to in section 3 may be derogated from in a share issue (directed share issue), if there is a weighty financial reason for the company to do so. In the assessment of the permissibility of a directed share issue, special attention shall be paid to the relation between the subscription price and the fair price of the share. *A directed share issue may be a share issue without payment only if there is an especially weighty reason for the same both for the company and in regard to the interests of all shareholders in the company.*”

<sup>6</sup> Expert opinion by Maija Strandberg, Senior Ministerial Adviser, Financial Affairs (the Prime Minister’s Office, Ownership steering department) to the Ministry of Finance on 9 September 2022.

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Thus, deviating from the shareholders’ pre-emptive subscription right in a share issue is permissible if there is an especially weighty financial reason for this. Case law and legal literature do not specifically address the difference between a weighty financial reason and an especially weighty financial reason other than noting in general that an especially weighty financial reason must be significantly weightier than a weighty financial reason and that there must be an extraordinary circumstance in the company’s operations. A directed share issue without payment may however be permissible under such special circumstances where the share issue, regardless of being gratuitous, benefits all shareholders.

As a directed share issue, with or without payment, usually affects the relationships between shareholders, the requirement of a weighty or especially weighty financial reason is connected to the application of the principle of equal treatment (Chapter 1, Section 7 of the Companies Act). Deviating from equal treatment in a directed share issue has been deemed justified if the share issue as a whole is considered to benefit the company and all its shareholders.

There is case law concerning the matter.

Supreme Court of Finland decision 2018:19, paragraph 30 of the reasoning: “--- if there is a real weighty financial reason for the share issue in terms of the best interest of the whole company, the assumption may usually be that the issue does not infringe the principle of equal treatment either. An action that benefits the company also principally benefits all the shareholders.” (Italics added.)

Supreme Court of Finland decision 2018:19, paragraph 31 of the reasoning: “Benefit is usually not unjustified if a shareholder benefits from actions carried out solely in the interest of the company. As stated in the government proposal of the Companies Act described in paragraph 21, *adhering to the principle of equal treatment does not prevent the application of the majority rule, but it does prevent favouring the majority shareholders to the disadvantage of the minority. Thus, equal treatment is not an unconditional principle that always weighs more than the interests of the company and all the shareholders.* The specific purpose of the principle of equal treatment is not that a single shareholder could, solely for its own benefit outside the company, prevent an action that would benefit the whole company.” (Italics added.)

Therefore, the Supreme Court of Finland’s decision 2018:19 also confirms that the shared interest of the company and all its shareholders supersedes the ability of a single shareholder to efficiently invoke an infringement of the equal treatment principle. Benefit gained by a shareholder is not considered unjustified if the shareholder benefits from actions carried out solely in the interest of the company.

Thus, equal treatment is not an unconditional principle that always weighs more than the interests of the company and all its shareholders, even when it comes to a directed share issue without payment. The specific purpose of the equal treatment principle is not that a shareholder could, solely for its own benefit, prevent an action that would benefit the whole company. The evaluation of a weighty financial reason must be carried out on a case-by-case basis, taking into consideration the relationship between the principle of equal treatment and the shared interest of the company and all its shareholders. Each case must always be evaluated comprehensively on a case-by-case basis, taking into consideration the significance of the share issue for the business and interests of the company.

The government proposal regarding the Companies Act provides examples of the reasons that could, based on a case-by-case and company-specific evaluation, be considered weighty financial reasons based on which the pre-emptive right of the shareholder could be deviated from. The list of examples is not exhaustive. These include, among other things, securing the company’s financing. Securing the continuity of the company’s business is also one of the justifications that can be considered to meet the requirement of an especially weighty financial reason. The underlying idea behind the requirement of an especially weighty financial reason is that

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a share issue, regardless of being gratuitous, promotes and strives for the best interest of the company and all its shareholders. Obtaining the necessary financing for the company and ensuring the continuity of the business must be considered an acceptable especially weighty financial reason from the viewpoint of the shared interest of the company and all its shareholders.

It should be especially noted that the interests of the shareholders are evaluated from the viewpoint of the interests of the shareholders as a collective. The interests of the shareholders as a collective, again, is evaluated through the best interests of the company. Thus, the provision of the third sentence of Chapter 9, Section 4(1) of the Companies Act does not lay out that the especially weighty financial reason should benefit each shareholder subjectively. The decision on a directed share issue is made by a qualified majority pursuant to Chapter 5, Section 27 of the Companies Act. When accepted, the requirement of a qualified majority, for its part, supports the acceptability of the share issue.

The evaluation of an especially weighty financial reason in the present case comes down to whether carrying out a directed share issue without payment is in the best interest of the company, whether the especially weighty reason can be financially justified, and how the said reason relates to the company's business and its ability to conduct business on a going-concern basis in accordance with the shared interests of the company and all its shareholders. The evaluation comes back to whether there are acceptable financial reasons for the share issue from the viewpoint of the business of the company. If the share issue relates to and supports the execution of the purpose of the company's business, it can be deemed to be financially justified. The scale from a weighty to an especially weighty financial reason is objective and takes into consideration the best interest of the whole company.

As stated, the justifications for a directed share issue without payment must be financial. It has been justified for Fortum to ensure that it has sufficient liquid assets available to be used in a situation where electricity prices and thus collateral requirements would rise again significantly. There has not been, nor is there now, an alternative to the bridge financing arrangement available to Fortum that would be similar in terms of amount and more beneficial to Fortum when it comes to the terms of the financing. Obtaining the funds ensures the continuity of the Company's business and the execution of the purpose of the Company's business. There are weighty economic reasons for ensuring the financing arrangement, as there is a risk that the Company could end up in a liquidity and business crisis and imminent insolvency, if the Company would be unable to meet the collateral requirements of the electricity derivatives. In the Company's view, the present situation and circumstances are highly extraordinary, which justify directing the share issue without payment.

There is an indisputable need to ensure additional financing. The above-described directed share issue without payment to the lender (Solidium) is a commercial requirement set by the lender for the financing arrangement. As a directed share issue without payment to the lender ensures that the above-described financing is obtainable in the amount and time frame and under the described terms, the Company is of the view that there is an especially weighty financial reason for the directed share issue without payment, taking into consideration the best interest of the Company and all its shareholders.

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In Espoo, 7 December 2022

Fortum Corporation

Markus Rauramo

President and CEO

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