FAIRFAX
FINANCIAL HOLDINGS LIMITED

June 17, 2009

Florence E. Harmon
Deputy Secretary
United States Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Re: Release No. 34-59748; File No. S7-08-09;
Amendments to Regulation SHO

Dear Ms. Harmon:

We sincerely appreciate the efforts of the Securities and Exchange Commission (SEC or the Commission), through its Proposed Amendments to Regulation SHO, to further curb the potential abuses of short selling while preserving the vital role that lawful short selling plays in the U.S. capital markets. As the SEC considers these amendments, we are pleased to respond to the Commission's invitation to the public to provide comments on its initiative to improve Regulation SHO and to help restore investor confidence.

Fairfax continues to applaud the Commission's recent enforcement initiatives directed at curbing abusive short selling practices and market manipulation. As explained in our prior comments on Regulation SHO and as elaborated on in section (a) below, we feel strongly that meaningful public disclosure of short positions should be required, and that such public disclosure should be equivalent to the current requirements for long position disclosure. In its comment letters filed with the Commission over the last three years[1], Fairfax has consistently advocated for increased market transparency and other important steps to address abusive short selling while retaining its importance and vitality as a price discovery mechanism.

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[1] Letters dated September 19, 2006 (http://sec.gov/comments/s7-12-06/s71206-262.pdf), May 22, 2007 (http://www.sec.gov/comments/s7-12-06/s71206-1020.pdf), September 12, 2007 (http://www.sec.gov/comments/s7-19-07/s71907-252.pdf),July 28, 2008 (http://www.sec.gov/comments/s7-19-07/s71907-1234.pdf),October 16, 2008 (http://www.sec.gov/comments/s7-31-08/s73108-2.pdf),October 31, 2008 (http://www.sec.gov/comments/s7-31-08/s73108-39.pdf) and December 16, 2008 (http://www.sec.gov/comments/s7-31-08/s73108-44.pdf).

Fairfax Background

Fairfax is a financial services holding company that is listed on NYSE Euronext ("NYSE"), under the symbol "FFH", as well as the Toronto Stock Exchange. Through its subsidiaries, Fairfax is engaged in property and casualty insurance and reinsurance and investment management.

Our revenue for the year ended December 31, 2008 was $7.9 billion and our earnings for the same period were $1.4 billion. As at December 31, 2008, Fairfax and its subsidiaries had portfolio investments in excess of $18 billion.

As part of its investment activities, Fairfax regularly engages in short selling and files all requisite reports with the SEC. Fairfax also has been the victim of abusive short selling attacks[2] and clearly understands the need for greater transparency of short and short-equivalent positions and the importance of a level playing field with respect to the public disclosure of both long and short positions. Fairfax recognizes that it would itself be required to comply with any new rules requiring enhanced transparency and disclosure with respect to short positions and it is prepared to do so.

Proposed Amendments to Regulation SHO

The SEC has put forth a number of temporary and permanent rules and proposals over the last few years that go a long way toward addressing some of the most glaring short selling abuses. The Commission is faced with an historic task -- and an opportunity --, not seen since the Great Depression and the enactment of modern securities regulation, to help to put in place a truly rational and even-handed regulatory framework that serves the best interests of the investing public and the issuers in which they invest and serves the important function of helping to restore investor confidence.

Fairfax, in its dual role as a substantial investor in the U.S. capital markets and as a public company whose securities are listed on the NSYE, strongly supports amending Regulation SHO and other statutory and regulatory provisions, as necessary, as outlined below:

(A) Disclosure of Short Positions

In the fall of 2008, the SEC adopted, on a temporary basis, a rule requiring that institutional investment managers who are required to report their long positions on a quarterly basis on Form 13-F also report their short sales and short positions on a weekly basis on Form SH. After adopting the temporary rule, the SEC amended it to provide that the disclosures on Form SH would not be made available to the public. This effort, while well-intended, is contrary to the values of transparency and disclosure in the public markets that the SEC is charged with promoting.

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[2] See Fairfax Financial Holdings Limited, et al. v. S.A.C. Capital Management, et al., New Jersey Superior Court, No. MRS-L-2032-06.

We have long believed that the lack of parity between public disclosure of long and short positions under the securities laws and regulations is a critical flaw in the U.S. disclosure regime. We agree with Professor Angel's view that better transparency with respect to short selling would enhance the market's reputation for integrity, and that it is problematic that under the current disclosure regime the "public does not have the information to make its own determination" concerning the activities of short-sellers in the public markets.[3] This disclosure disparity only serves to hide short positions taken by large money managers and hedge funds behind a wall of secrecy; effectively making long position disclosures entirely misleading because, among other things, managers may hold a small long position in stocks in which they are primarily short -- rendering the limited required disclosures meaningless at best.

Section 13(f) of the Securities Exchange Act of 1934, as amended (Exchange Act) requires institutional investment managers to disclose long positions in stocks and options, but does not require any disclosure at all of short positions held by those same managers. For example, a manager might report that he or she is "long" 1000 shares of Company ABC stock, but would not be required to reveal that he or she is also in fact "short" 100,000 shares of the same security (this is a common scenario with hedge funds and other institutional managers). Moreover, a manager is permitted to conceal both long and short positions in non-equity securities. Needless to say, such a partial disclosure presents a grossly misleading view of a manager's positions to the markets, and provides a vehicle for mischief in manipulating disclosure to conceal specific positions.

While we are encouraged by the SEC's willingness to begin requiring reporting (but not public disclosure) of short positions, we believe that, because the reporting is confidential rather than public, this first step falls short of providing the necessary rationality, evenhandedness and transparency that is missing from the SEC's disclosure regime. In order to provide truly relevant information, the SEC should require full public disclosure of long and short positions (in equities as well as all derivatives).

The only contravening interest to broad disclosure is a special interest that some short-sellers purport to have in their trading that they claim is greater than the proprietary interests of those holding long positions. That interest, such as it is, will be just as easily protected by a delayed public disclosure as currently applied to long holdings. There is no basis other than economic self-interest for certain market participants to advocate for continuing the disparity in reporting long and short positions, and what is eminently clear is that the full public reporting of short positions is necessary to provide meaningful disclosure and transparency in the markets. At minimum, we support the NIRI's suggestion that short sale positions and associated stock lending information should be provided to issuers, as supported by 96% of the NIRI's members recently surveyed in April 2009[4]. We believe that the SEC's temporary rule takes an important step, and we propose that the permanent rule provide for disclosure of both long and short positions in

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[3] Prof. James Angel, Professor of Finance, Georgetown University, Comments at May 5, 2009 Roundtable.
[4] May 29, 2009 Jeffrey D. Morgan, National Investor Relations Institute (http://www.sec.gov/comments/s7-08-09/s70809-2836.pdf).

a timely manner, perhaps monthly (certainly more than once a quarter), by all managers who have positions (long and short) of a value of $100 million or greater.

(B) PriceTest/Circuit Breaker

We support the SEC's investigation and ultimate implementation of effective "price test" and "circuit breaker" mechanisms. Although the SEC relied on a large amount of economic data to rescind Rule 10a-1 and the prior uptick rule, those studies relied on economic data gathered during periods of market exuberance and did not give an accurate picture of the role that a brake on short selling, such as through a price test or circuit breaker, can have during a rapidly declining market.We believe along with the NYSE[5], the over 5,000 people surveyed by The Street.com[6] and the 91% of the 4,000 NIRI members surveyed in April 2009[7], that a price test restriction ensures some modicum of protection against abusive short selling while not reducing market efficiency.

The implementation of mechanisms of this type serve the salutary purpose of tapping the brakes to temporarily slow the abrupt movement of a security that is being subjected to the overwhelming cascade of selling pressure that has been brought about by the swift trading that is now possible in today's markets. That trading speed, combined with the exceedingly slow pace of settlement of those trades, suggests that measured efforts to check the pace of trading will be helpful to the stability and efficiency of the markets. It may very well be that the most efficient thing to do for the short term, and in order to avoid unintended consequences, is to simply reinstate the tick test previously applied in 2007. However, we do agree with Professor Angel, that as with all new regulation, the SEC should consider the realities of today's fast-paced, automated markets in developing and implementing a truly meaningful and effective circuit breaker.

In addition to the foregoing, we commend the SEC for its efforts to address the failure-to-deliver issue, or so-called "naked" short selling -- that is, selling securities into the market and then failing to deliver those securities to the purchaser. While defenders of naked short selling contend that the practice provides valuable "liquidity" to the markets, it is clear that this practice is subject to abuse and that the "liquidity" provided by selling something you neither own nor have any intention of owning is often beneficial only to the fraudulent seller. The implementation -- and enforcement -- of delivery requirements should be made permanent and, indeed, the time for delivery should be shortened to reflect the speed of trading in today's markets. In addition, where there is a failure to deliver, that failed position should be required to be closed out promptly. Moreover, for securities that are chronically undelivered (such as those securities identified on the Regulation SHO threshold lists, we suggest that the SEC should implement a market-wide restriction on naked short sales in that security,

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[5] Larry Leibowitz, Executive Vice President and Head of Global Technology and U.S. Execution, Comments at May 5, 2009 Roundtable.

[6] Jim Cramer, Eric Oberg and Scott Rothbort from TheStreet.com.

[7] May 29, 2009 Jeffrey D. Morgan, National Investor Relations Institute (http://www.sec.gov/comments/s7-08-09/s70809-2836.pdf).

requiring that no shares may be sold unless they are held by the seller or a bona fide and enforceable written agreement to borrow the securities has been entered into by the seller.

(C) Enhanced Enforcement

We encourage the SEC to continue its previously-announced examination of rumor-mongering and abusive short selling, and to publicly report when such investigations are opened with respect to trading in the securities of any issuer as well as of course publicly reporting the results of those investigations. We applaud the SEC's initial efforts and encourage the SEC to expand such efforts, including considering a task force constituted specifically to address manipulative and abusive short selling and related market activity. The SEC also adopted Rule 10b21 under the Exchange Act, a new anti-fraud provision that specifically targets short-sellers who engage in deceptive practices concerning their intention to deliver shares in connection with their short sales. While this supplements existing anti-fraud provisions, we support the Commission's important statement through its rulemaking action that deception in connection with short selling and intentional failures to deliver are covered by Exchange Act section 10(b) and rule 10b-5 thereunder. As with any anti-fraud provision, its value lies entirely in its effective enforcement and we encourage the SEC to vigorously pursue market participants who violate this new rule through fraudulent activity.

(D) Whistleblower Protection

We believe that in an effort to further its investigation into securities fraud, the SEC should implement regulations and seek legislation that will provide whistleblower protection for employees of all companies that are engaged in, or hold themselves out as being engaged in, securities trading and investing. This will provide protection for insiders who become aware of financial fraud at non-public financial institutions and encourage employees of those institutions to come forward should they become aware of fraudulent conduct, including market manipulation, securities fraud, and the operation of "Ponzi" or similar schemes.

The Commission has taken important steps in these trying times to address the acknowledged problem of abusive short selling and market manipulation. We hope that this will present an opportunity to implement -- and enforce -- a rational disclosure and enforcement system that will serve to renew the faith and trust of all market participants in our capital markets.

Thank you again for your continued time, effort and commitment to these issues.

Yours truly,

Paul Rivett
Vice President and
Chief Legal Officer