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**FAIRFAX**  
FINANCIAL HOLDINGS LIMITED

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September 12, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Dear Ms. Morris:

**Re: Release No. 34-56213 (August 7, 2007); File No. S7-19-07  
Amendments to Regulation SHO (the "Proposing Release")**

Fairfax Financial Holdings Limited ("Fairfax") applauds the Securities and Exchange Commission's ("SEC's" or "Commission's") continued efforts to address short selling abuses, particularly manipulative activity associated with persistent fails to deliver ("FTDs"). As originally expressed in our September 19, 2006 and May 22, 2007 letters, Fairfax continues to endorse the elimination of the options market maker exception and to support the need for additional FTD transparency.

**Fairfax Background**

Fairfax is a financial services holding company that is listed on the New York Stock Exchange ("NYSE"), under the symbol "FFH", as well as on the Toronto Stock Exchange.

Through its subsidiaries, Fairfax is engaged in property and casualty insurance and reinsurance, investment management and insurance claims management. As at June 30, 2007, Fairfax had total assets of approximately \$26.8 billion and total shareholders' equity of approximately \$3.1 billion. Our revenue for the twelve months ended December 31, 2006 was approximately \$6.8 billion.

**Comments on the SEC's Proposed Amendments to Regulation SHO**

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 NYSE, strongly supports amending Regulation SHO, as outlined below:

**(a) Proposal to Eliminate the Options Market Maker Exception**

Fairfax continues to support eliminating the options market maker exception in Rule 203(b)(3)(ii) of Regulation SHO because of its detrimental impact on issuers and their

shareholders and also because such exception is susceptible to significant abuse.

The Commission has stated that the Proposing Release "...strikes the appropriate balance between reducing large and persistent fails to deliver in threshold securities while still allowing participants some flexibility in conducting their hedging activities."<sup>1</sup> It is respectfully submitted that issuers and their shareholders should not bear the financial burden of artificially inflated share volumes and reduced share prices in order to subsidize "flexibility" for options market makers and their derivative purchasers. Rather than artificially increasing the supply of an issuer's stock in the marketplace by selling short without any intention of delivering stock during the term that put options are outstanding, options market makers should factor the cost of borrowing stock and selling short into the price of the put options being sold. This is not an argument against market maker flexibility or derivative liquidity; it is an argument for full and fair pricing. If options market makers wish to hedge the risk of selling put options they should simply include the hedge costs in the option pricing. Anything less than full and fair pricing of options is detrimental to issuers and their shareholders to the direct benefit of derivative market participants.

As demonstrated by the American Stock Exchange's ("Amex's") recent disciplinary actions against two former Amex members,<sup>2</sup> the existing options market maker exception continues to be abused. In those cases, options market makers were able to maintain impermissible short positions in a number of threshold securities for a virtually unlimited period of time. The abusive conduct resulted in unprecedented monetary sanctions totaling \$8 million. Fairfax is encouraged by recent efforts by the Amex, as well as the Chicago Board Options Exchange, to remind their members and member organizations of the requirements of Regulation SHO and particularly the scope of the options market maker exception, but we continue to believe that for the reasons enunciated above, absent empirical support demonstrating the need for this exception, it should be repealed.<sup>3</sup>

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<sup>1</sup> The Proposing Release at page 27, available at [www.sec.gov/rules/proposed/2007/34-56213.pdf](http://www.sec.gov/rules/proposed/2007/34-56213.pdf)

<sup>2</sup> *In re Scott H. Arenstein and SBA Trading, LLC* (July 20, 2007), available at [http://www.amex.com/atamex/regulation/discipline/2007/SArensteinSBA\\_Decision\\_072007.pdf](http://www.amex.com/atamex/regulation/discipline/2007/SArensteinSBA_Decision_072007.pdf) and *In re Brian A. Arenstein and ALA Trading, LLC* (July 20, 2007), available at [http://www.amex.com/atamex/regulation/discipline/2007/BArensteinALA\\_Decision\\_072007.pdf](http://www.amex.com/atamex/regulation/discipline/2007/BArensteinALA_Decision_072007.pdf).

<sup>3</sup> CBOE Regulatory Circular RG 07-87 available at <http://www.cboe.org/publish/RegCir/RG07-087.pdf>; and Amex Notice REG 2007-35, available at <http://www.amex.com/amextrader/?href=/amextrader/tdrInfo/data/axNotices/2007/reg07035.html>.

**(b) Need for Comprehensive Solution for Resolving Persistent Fails**

In addition to repealing the options market maker exception, Fairfax urges the SEC to develop a comprehensive solution for addressing FTDs, which we believe has two components.

First, as Fairfax previously commented, the SEC should make real-time aggregate, daily FTD information available to the public. Fairfax's securities were included on the NYSE's Threshold List for more than two years. During this time, we repeatedly sought data regarding FTDs. The only means available to public investors and public companies, such as Fairfax, for obtaining FTD information was, and continues to be, the Freedom of Information Act ("FOIA") process, which, as previously noted to the Commission, resulted in incomplete and delayed information, despite numerous requests. For example, Fairfax filed, seriatim, seven different FOIA requests with the SEC. These requests took weeks and sometimes months to be processed. The FTD information that was eventually received was incomplete: for the 561 trading days from April 12, 2004 through June 30, 2006, we obtained FTD data for only 475 trading days and received a response of "N.A." for the remaining 86 trading days. We believe that a daily reporting requirement with respect to the aggregate volumes of fails in securities included on the relevant Threshold List would be an important first step in increasing transparency with respect to FTDs.

Second, and as we also discussed in our previous correspondence to the Commission, we believe that the SEC should undertake a comprehensive study of persistent FTDs. Such a study would be consistent with the Commission's determination, last March, to extend the comment period on its proposed amendments to the options market making exception largely to address certain commenters' concerns that the Commission had not provided sufficient empirical data to support its proposals.<sup>4</sup> Although the Commission does request in the Proposing Release various information relating to the operation of the options market making exception, we believe that the information elicited should be made available as a basis for the public to comment on the proposals, rather than made available after the Commission reaches a decision on whether to eliminate or amend the options market maker exception.

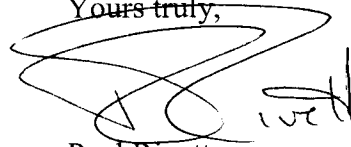
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<sup>4</sup> See Release No. 34-55520, 61FR 15079 n. 2 (Mar. 30 2007) (citing among others, the comments of Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, American Bar Association (September 27, 2006) ("stating that 'without the benefit of knowing the information relied upon by the Commission in analyzing the cause or causes of the current fails to deliver and the likelihood that the proposed changes will reduce those fails to deliver, commenters are deprived of the opportunity to opine on the significance of the examination results or the Commission's interpretation of such information'").

**Conclusion**

Thank you for the opportunity to comment further on the Commission's efforts to address FTDs and other short selling abuses. Fairfax appreciates the Commission's continued efforts to strike the right balance in regulating short sales and related activity.

Yours truly,

A handwritten signature in black ink, appearing to read "Paul Rivett", written over a large, circular scribble.

Paul Rivett  
Vice President and Chief Legal Officer