

July 22, 2009

Ms. Elizabeth M. Murphy
Federal Advisory Committee Management Officer
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release Nos. 33-9049 and 34-60260; and Release Nos. 33-9037, 34-60032 and IC-28757; File No. 265-25
Securities and Exchange Commission Investor Advisory Committee

Dear Ms. Murphy:

Fairfax Financial Holdings Limited ("Fairfax") commends the Securities and Exchange Commission ("SEC" or "Commission") for establishing the SEC Investor Advisory Committee (the "Committee") as a mechanism for providing the Commission with the views of a broad range of investors on their priorities concerning the Commission's regulatory agenda. Fairfax particularly applauds the Commission's decision to focus on "investor views of possible refinements to the disclosure regime" as the discussion topic for the Committee's first meeting.¹

Fairfax's Background

Fairfax participates in the U.S. securities markets as both an issuer and an investor. 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.

¹ Notice of Meeting of SEC Investor Advisory Committee, Nos. 33-9049 and 34-60260 (July, 2009), available at <http://www.sec.gov/rules/other/2009/33-9049.pdf>.

As part of its investing activities, Fairfax regularly engages in short selling and is subject to short sale and short position reporting on Form SH, as required by interim final temporary Rule 10a-3T under the Securities Exchange Act of 1934. As an issuer, Fairfax has been the subject of spurious rumors and abusive short selling attacks.² These events have informed Fairfax's views on the importance of, and need for, greater transparency concerning short positions and short sales, notwithstanding the fact that, as an institutional investment manager, Fairfax would be subject to additional reporting obligations. Fairfax consistently has been on the record in support of greater transparency of short and short-equivalent positions.³

The Committee's Objectives

The Committee's charter states that its objective is to provide the Commission with the views of a broad spectrum of investors on their priorities concerning the Commission's regulatory agenda, including:

1. advising the Commission regarding matters of concern to investors in the securities markets;
2. providing the Commission with investors' perspectives on current, non-enforcement, regulatory issues; and
3. serving as a source of information and recommendations to the Commission regarding the Commission's regulatory programs from the point of view of investors.⁴

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.

³ See, e.g., Letter regarding Release No. 34059748; File No. S7-08-09; Amendments to Regulation SHO (June 17, 2009), available at <http://www.sec.gov/comments/s7-08-09/s70809-3722.pdf>; Letter regarding Release No. 34-58785; File No. S7-31-08; Supplemental Comments on Interim Final Temporary Rule Concerning Disclosure of Short Sales and Short Positions by Institutional Investment Managers (December 16, 2008), available at <http://www.sec.gov/comments/s7-31-08/s73108-44.pdf>. and Letter regarding Follow-up to Meeting of October 17, 2008 (October 31, 2008), available at <http://www.sec.gov/comments/s7-31-08/s73108-39.pdf>.

⁴ See United States Securities and Exchange Commission Investor Advisory Committee Charter (June 24, 2009), available at <http://www.sec.gov/spotlight/invadvcomm/invadvcomm-charter.pdf>

On July 10, 2009, the U.S. Treasury Department proposed draft legislation (the “Investor Protection Act of 2009”), which, among other things, would add new Section 38 to the Securities Exchange Act of 1934 (“Exchange Act”) to make the Committee permanent.⁵ In addition to the objectives and scope of activities set forth in the Committee’s charter, the Investor Protection Act of 2009 would also charge the Committee with responsibility for advising the SEC on:

1. regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;
2. initiatives to protect investor interest; and
3. initiatives to promote investor confidence in the integrity of the market place.

Parity in Public Disclosure

Fairfax believes that public disclosure of short positions and short sales on par with public disclosure of long positions fits squarely within the purpose of the Committee as set forth in the draft Investor Protection Act of 2009 and is an issue that the Committee should take up seriously in its discussions and deliberations.

As the securities laws are currently implemented by the SEC, investment managers are not only permitted, but required, to make a partial and selective public disclosure of their securities positions on Form 13F. This selective reporting has led to a disclosure regime that is, at best, of minimal utility and can, at worst, result in public reporting that materially misleads the investing public concerning an investment manager’s true interest in a publicly-traded security. For example, the current selective reporting may lead the public to assume that an institutional investment manager is long-only and bullish on a public company (because of its long position disclosure), when in fact the manager is bearish (because it is actually net short the company’s securities but this fact is not disclosed).

Mandated public disclosure of investment managers’ short positions, together with their reporting of long positions, would provide a much-needed rationality to the system of disclosure and would result in less distortive, and potentially manipulative, information being disseminated to the marketplace. Implementing long-short parity in public reporting will make the information currently reported by institutional investment managers pursuant to Section 13(f) of the Exchange Act much more accurate and meaningful and will foster greater investor confidence in the market, including information reflected in stock prices and issuer financial statements.

⁵ See Investor Protection Act of 2009, available at <http://www.ustreas.gov/press/releases/docs/tg205071009.pdf>

As the SEC has previously stated, “[t]he information required on Form 13F can be of value to the marketplace and investors in evaluating the demand for a stock and assessing the motivations of those holding or recommending a stock.”⁶ That strong policy interest in full and transparent disclosure applies with no less weight and force to the disclosure of short positions in a security in order to evaluate the interests and motivations of those holding or recommending such short positions.

Conclusion

Thank you for this opportunity to comment on the SEC’s establishment of the Committee. I would be pleased to discuss Fairfax’s views and with the Commission and the Committee.

Yours truly,


Paul Rivett
Vice President and Chief Legal Officer

⁶ See *In re Cabot Money Mgmt., Inc.*, Release No. 34-37,573 (August 15, 1996), available at <http://www.sec.gov/litigation/admin/ia1577.txt> .