
FAIRFAX
FINANCIAL HOLDINGS LIMITED

March 9, 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. 34-54888; File No. S7-20-06
Short Selling in Connection With a Public Offering

Fairfax Financial Holdings Limited ("Fairfax") is pleased to submit this letter in response to the Securities and Exchange Commission's (the "Commission") request for comment on its proposed amendments to Rule 105 of Regulation M. Fairfax appreciates the opportunity to provide the Commission with input from its perspective as both an issuer and a selling securityholder. As discussed more fully below, Fairfax strongly supports the Commission's continued efforts to protect the integrity of the securities markets' independent mechanism for pricing publicly offered securities.

Fairfax Background

Fairfax is a financial services holding company which, through its subsidiaries, is engaged in property and casualty insurance and reinsurance, investment management and insurance claims management. As at December 30, 2006, Fairfax had total assets of approximately \$26.5 billion, including approximately \$16.8 billion in portfolio investments, and common shareholders' equity of approximately \$2.86 billion, and its revenue for the twelve months ending December 30, 2006 exceeded \$6.8 billion.

Fairfax has strong commercial and financial connections with the United States – more than 5,000 of our 8,000 employees work throughout the United States – and its capital markets – Fairfax's shares, and the shares of its subsidiary, Odyssey Re Holdings Corp. ("Odyssey Re"), are listed on the New York Stock Exchange (NYSE: FFH and NYSE: ORH, respectively), and close to half of our shares and almost all of our bonds are held in the United States.

Comments on the SEC's Proposed Amendments to Rule 105 of Regulation M

As a general matter, Fairfax agrees with the principle put forward in the Cleary Gottlieb Steen & Hamilton LLP ("Cleary") comment letter that short selling provides the market with at

least two benefits: market liquidity and pricing efficiency. However, in fairness to issuers and in order to preserve the integrity of the capital raising process, investors should not be permitted to close any short positions established during the restricted period using securities purchased in the public offering. Fairfax respectfully supports strong measures to prevent manipulative activity by those short sellers who inappropriately reap economic gains to the detriment of issuers and selling shareholders who receive reduced public offering proceeds.

The Managed Funds Association objects in its comment letter to its members being forced to choose between "selling a security short during the restricted period and purchasing the security in an offering." To the contrary, Fairfax submits that this tradeoff is appropriate during Rule 105's brief restricted period in order to ensure that issuers and selling shareholders benefit from market prices and offering prices that are unencumbered by artificial or manipulative forces. Fairfax recommends that during the restricted period investors should be limited to either shorting an issuer's securities or buying the issuer's securities in the offering, and not be allowed to trade on both sides of the market to the direct detriment of issuers and selling shareholders.

Fairfax strongly supports the views set forth in the comment letter by New York Stock Exchange Regulation, and concurs with its observations about the persistence of manipulative trading strategies that violate the spirit, if not the technical language, of Rule 105 in its current form. Fairfax urges the Commission to use this rulemaking opportunity to tighten the persistent loopholes, which harm issuers and also selling shareholders, by reducing offering proceeds and undermining confidence in the integrity of the capital markets.

In addition, we have provided below brief responses to certain of the Commission's direct requests for comment:

1. Ability to buy in an offering after covering a restricted period short sale

Fairfax submits that closing out a short position after the announcement of a public offering, but in advance of the pricing of securities in such offering, should not cleanse such transaction, or related series of transactions, by a person obtaining securities in the offering if the intent is to manipulate the security's price downward, thereby depriving the issuer and any selling shareholders of offering proceeds they otherwise would receive. As the Commission has noted, "[w]here the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership, and/or little or no market risk, that transaction may be a sham transaction."¹

Moreover, covering restricted period short sales in advance of pricing would not necessarily cure any manipulative impact of the short sales if the covering purchases have no

¹ See Release No. 34-50103, 60 FR 48008, 48021 (Aug. 6, 2004) (Regulation SHO adopting release).

mitigating effect on an underwriter's decision to lower an offering's price (e.g., if the purchase is made immediately prior to pricing such that there is no opportunity for market reaction to the purchase in order to dissipate any downward impact from the short sale).

2. Extension of restriction to derivative securities and other strategies

When Regulation M was proposed, the National Association of Securities Dealers, Inc. "expressed concern about permitting bids for and purchases of derivative securities in the case of a distribution of an underlying security, because trading in derivative securities can have a significant impact on the underlying security."² At the time, the Commission declined to extend the application of Regulation M to transactions in derivative securities, noting that attempts to use a transaction in derivative securities to manipulate the price of an underlying security would be covered by the Commission's arsenal of general anti-manipulation rules, including Exchange Act Sections 9(a)(2) and 10(b) and Rule 10b-5 thereunder.³ Nevertheless, short sellers intent on manipulating an issuer's securities have used a variety of synthetic shorts, married puts and sham transactions to accomplish indirectly what Rule 105 prohibits directly. Commission guidance and pronouncements about the applicability of the general anti-manipulation rules has not been sufficient to end these manipulative practices. Accordingly, Fairfax respectfully requests that the Commission specifically prohibit short sales of, and equivalent transactions in, derivative securities from Rule 105.

3. Length of the restricted period

Fairfax agrees with the comment letters of both Sullivan & Cromwell LLP ("Sullivan") and Cleary that the restricted period should commence no earlier than the date of public announcement of the offering. Sullivan rightly points out that shelf offerings often publicly launch and price in less than five days. However, both Sullivan and Cleary failed to point out that some offerings, particularly offerings on Form S-1, require longer than five days between public announcement and pricing. Fairfax recommends that, instead of the current pre-set five day restricted period, the restricted period should be the lesser of ten days and the period between public announcement and pricing. It is during this time period when a security is most vulnerable to manipulation.

Fairfax also agrees with the comment of Professor Angel that Rule 105 should be expanded to restrict hedging transactions, and not just short sales and covering, during the restricted period. Hedging strategies, including hedging by option market makers, should not be permitted in an issuer's securities during the restricted period if the hedging involves receiving securities purchased from the issuer in its public offering. Fairfax respectfully submits that if the

² See Release No. 34-38067, 62 FR 520, 524 (Jan. 3, 1997) (Regulation M adopting release).

³ *Id.*

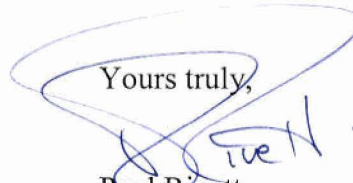
hedging is *bona fide* then any short covering can be done using open market purchases. There is no hedging justification that warrants encumbering issuers' capital realization or that sufficiently outweighs the issuer's need for market prices and offering prices that are unencumbered by artificial and manipulative forces.

4. Decline in value of offered securities

The Commission has referred to studies indicating a 3% decline in share prices when a public offering is announced and a further 1-3% decline five days prior to the offer. Fairfax has experienced a decline in the price of a security well in excess of 3% during the period between the public announcement of an offering and the pricing of such offering. As illustrated in the attached graphs analyzing price, volume and short volume, the decline in the price of Odyssey Re's shares between the date of the announcement of the public offering and the date of pricing of the offering was approximately 9%. Fairfax respectfully submits that if such price declines become commonplace, issuers and selling shareholders may lose confidence in the integrity of the U.S. capital markets.

* * * * *

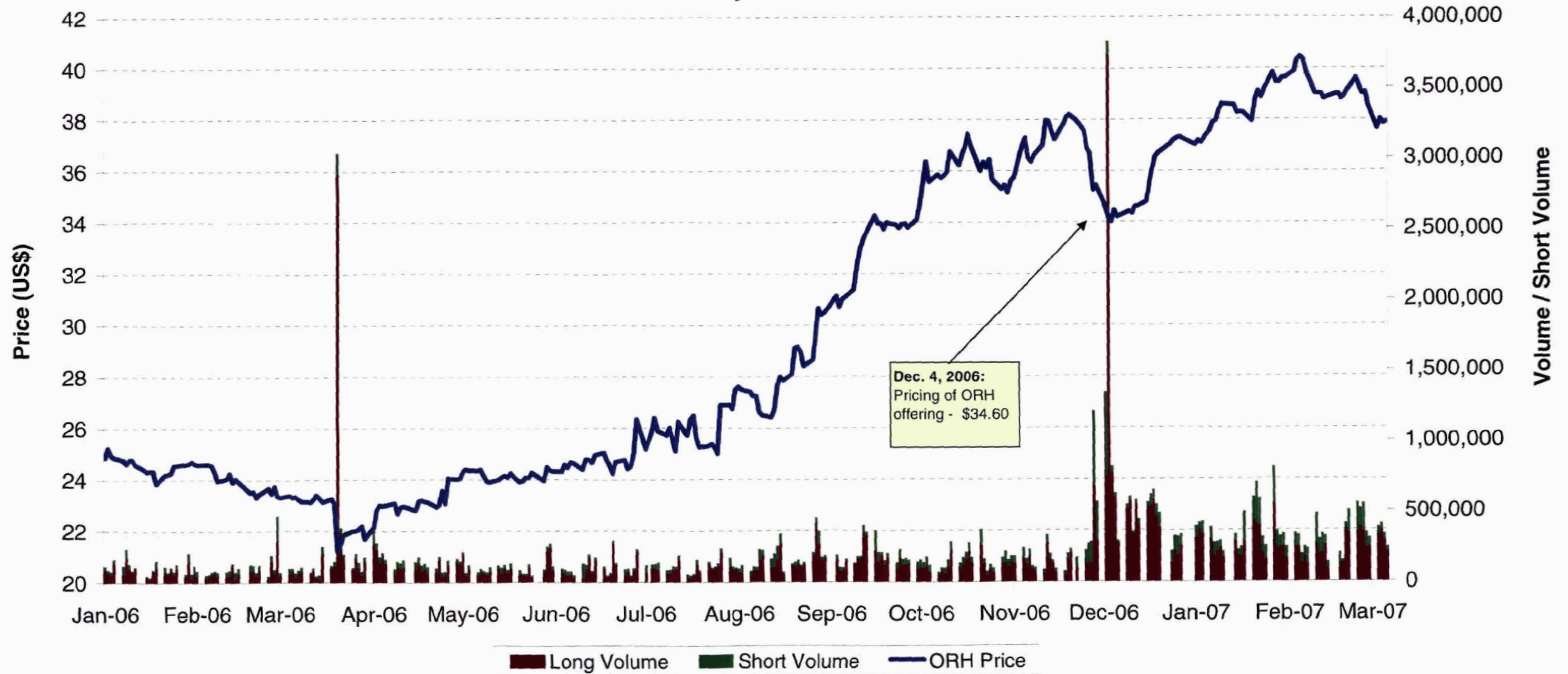
Thank you for the opportunity to comment on the proposed revisions to Rule 105. Fairfax appreciates the Commission's continued efforts to prevent the type of manipulative activity that this rule is intended to address.

Yours truly,

Paul Rivett
Vice President

OdysseyRe (ORH)

Price, Volume & Short Volume Analysis

January 2006 to Present



Odyssey Re (ORH)

Price, Volume & Short Volume Analysis

October 2006 to Present

