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**FAIRFAX**  
FINANCIAL HOLDINGS LIMITED

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July 20, 2009

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
Financial Industry Regulatory Authority  
1735 K Street, NW  
Washington, DC 20549

**Re: Regulatory Notice 09-29 (Origination and Circulation of Rumors)**

Dear Ms. Asquith:

Fairfax Financial Holdings Limited (“Fairfax”) thanks the Financial Industry Regulatory Authority (“FINRA”) for its continued efforts to curtail false rumor mongering. We appreciate the opportunity to comment on FINRA’s revised Rule 2030 and the proposed supplementary interpretative materials. We believe that continued regulatory, and self-regulatory, focus on curtailing false and misleading rumors relating to securities and their issuers is essential to the protection of investors and the maintenance of fair and orderly markets.

**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 investment in excess of \$18 billion.

As part of its investment 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 203T under the Securities Exchange Act of 1934. Fairfax has also been the

subject of spurious rumors and abusive short selling attacks,<sup>1</sup> and is on the record in support of greater transparency of short and short-equivalent positions.<sup>2</sup>

### **Discussion of Proposed FINRA Rule 2030**

Proposed new Rule 2030 would prohibit broker-dealers who are FINRA members from originating or circulating rumors concerning any security that the broker-dealer knows or has reasonable grounds for believing is false or misleading and is likely to influence the market price of such security. In addition, FINRA members would be required to report promptly to FINRA any rumor that it learns of where the member knows, or has reasonable grounds for believing, that such rumor was originated or circulated for the purpose of improperly influencing the market price of a security.

#### **1. Limitation to rumors that a broker-dealer knows or has a reason to believe are false or misleading AND are likely to influence the market price of such security**

The text of Rule 2030 as originally proposed by FINRA would have prohibited broker-dealers from intentionally spreading false or misleading rumors without regard to the broker-dealer's knowledge or belief that the rumor would likely influence the market price of the relevant security. It also would have barred broker-dealers from intentionally spreading rumors that would "improperly" influence the market price of a particular security. The proposed revision combines these two prongs to require that in order to demonstrate a violation of the rule, FINRA will have to demonstrate both that the broker-dealer knew or should have known that the rumor was false or misleading and that the broker-dealer knew or believed that the circulation of the rumor would have a market impact.

Fairfax respectfully submits that the prior rule text was preferable to the revised language not only because of its clarity, but also because the proposed revision would permit a member firm to disclaim any knowledge or belief that a particular rumor could have market impact, even if it concedes that it was aware of the rumor's falsity. This would present FINRA with the difficult burden of demonstrating to a trier of fact in an enforcement action that a broker-dealer knew or had reason to know that even a rumor that it concedes that it knew was false was "likely" to influence the market price of the subject security. Absent direct proof of intent, litigating this issue would likely involve a costly and time consuming battle of expert witnesses. Simply stated, a broker-dealer should not be permitted to knowingly or recklessly spread false and misleading rumors. We ask that FINRA revert to the originally proposed version of the rule,

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<sup>1</sup> See *Fairfax Financial Holdings Limited, et al. v. S.A.C. Capital Management, et al.*, New Jersey Superior Court, No. MRS-L-2032-06

<sup>2</sup> See 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>.

which would have applied the prohibition without regard to the broker-dealer's knowledge regarding the probable market impact on the price of the subject security.<sup>3</sup>

## **2. Importance of the proposed reporting obligation**

Fairfax continues its support for the requirement that broker-dealers promptly report to FINRA any rumor that the firm knows or has reason to believe was originated or circulated for the purpose of improperly influencing the market price of a security. Given the challenges to regulators of showing market manipulation, we believe that a reporting obligation is critical to regulators' enforcement efforts. Once this information is reported to FINRA, it would then be up to FINRA to decide whether to open an investigation itself or refer the information to another regulatory or governmental body.

## **Conclusion**

Consistent with our December 31, 2008 comment letter on Rule 2030, as originally proposed, Fairfax reiterates its request that FINRA continue its efforts, individually and in coordination with the SEC as well as other self-regulatory organizations, to address and combat manipulative activity through the spreading of false rumors.

Thank you for this opportunity to comment on the proposed rule and the important issues it addresses. I would be pleased to discuss Fairfax's views and past experiences with FINRA.

Yours truly,

  
Paul Rivett  
Vice President and Chief Legal Officer

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<sup>3</sup> To the extent FINRA has concerns about the second prong of the original proposal (barring the circulation of rumors that might have an "improper" influence on the market price of a security), Fairfax suggests that that prong could be further clarified by barring the dissemination of rumors that a member firm knows or has reasonable grounds for believing were originated or circulated for the purpose of improperly influencing the market price of a security, regardless of the member's knowledge of falsity.