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BY OVERNIGHT MAIL & ELECTRONIC MAIL

Hon. Arlen Specter, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510
Attn: Barr Huefner

RE: Hearing of the Senate Judiciary Committee on "Hedge Funds and Independent Analysts: How Independent is Their Relationship?"

Dear Chairman Specter:

I am writing in response to your letter enclosing written questions from Judiciary Committee members arising out of the above-referenced hearing. My responses are below. I would also like to take this opportunity to thank the Committee again for its invitation to testify concerning these important issues, and to offer my continuing assistance in the Committee's efforts.

1. *Aside from the Overstock.com and Biovail cases, are you aware of other instances of hedge fund short selling involving the use of alleged phony research reports on publicly traded companies? How widespread are these activities in the capital markets?*

Yes. After our firm filed the civil action on behalf of Biovail, alleging collusion between certain powerful hedge funds and supposedly independent analysts, we were approached by a number of other companies who had similar experiences. In a number of instances, the companies were concerned about adverse publicity and, as a consequence, were unwilling to discuss their experiences publicly. In other instances, the companies asked us to undertake investigations of their situations, and a number of those investigations are ongoing.

In another egregious situation that has forced a public company to take action, our firm this week filed a lawsuit on behalf of Fairfax Financial Holdings Ltd. and an affiliated company (together "Fairfax"). Fairfax's lawsuit describes a shocking campaign of disinformation and harassment by a number of powerful hedge funds and their operatives, in collusion with securities analysts covering Fairfax, that was explicitly intended to destroy Fairfax and its business. For the Committee's information, I have enclosed a copy of the detailed complaint that was filed in New Jersey Superior Court.

Based on our investigations and information we have received from market participants, we believe that abusive and collusive use of securities analysis by hedge funds is a significant issue in the public markets. While we have no interest in painting with an overly broad brush, the evidence we have seen indicates that short-selling attacks on companies like Biovail and Fairfax are not isolated incidents and we believe that further investigation will disclose other instances of such wrongdoing.

2. *If it is so widespread, why then don't public companies file more suits? Are there impediments to public companies and investors defending themselves against these attacks?*

Based on our discussions with our clients and other market participants, we have learned that many public companies believe that they have been subject to attacks by short-selling hedge funds, but are unwilling to come forward publicly with that information. The reasons are several. First, companies know that coming forward publicly does not always serve to halt the attack. In many instances, public discussion of an attack by short-sellers subjects the target company to accusations that it is attempting to blame its troubles on others, and that such accusations are only made by "bad companies." Second, the hedge funds that engage in these attacks are extremely wealthy and powerful. Prosecuting an action against such formidable parties is very expensive, and fraught with risk. Many companies simply decide that the cost/benefit analysis suggests that they should not pursue such actions, and hope that they survive the attack and that it passes. In many instances, it is only when a company believes that its very existence is in jeopardy, that it is willing to take the risks associated with publicly discussing an attack on the company.

3. *How much weight do independent research analysts carry in the marketplace? How common do negative reports from independent analysts affect a company's stock price?*

"Independent" analysts can have great importance in the markets, particularly when they are writing on a company that is not heavily covered by Wall Street analysts. In many instances, however, the effect that an independent analyst has is different from that of a Wall Street analyst. While reports and ratings issued by prominent Wall Street analysts often have direct and immediate market-moving power, reports and ratings by independent analysts often have a more "viral" influence on the markets that can be gradual, but no less significant. Reports, ratings and commentary from independent analysts can take weeks, and even months, to infiltrate into the markets, being picked up and rebroadcast by journalists, market participants and other analysts. Therefore, in addition to a direct effect on a stock price, it is this viral effect of independent analysis that can, over time, have a serious effect -- positive or negative -- on a company's stock price and, ultimately, its business and future.

Respectfully,

Marc E. Kasowitz

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Enclosure