

ODYSSEY RE HOLDINGS CORP
Form SC TO-T/A
October 16, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**SCHEDULE TO
(Amendment No. 4)
Tender Offer Statement Under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934**

ODYSSEY RE HOLDINGS CORP.
(Name of Subject Company (issuer))
FAIRFAX INVESTMENTS USA CORP.
a wholly owned subsidiary of
FAIRFAX FINANCIAL HOLDINGS LIMITED
(Names of Filing Persons (offerors))

COMMON STOCK, PAR VALUE \$0.01 PER SHARE
(Title of Class of Securities)

67612W108
(CUSIP Number of Class of Securities)

**Eric P. Salsberg
Vice President, Corporate Affairs
Fairfax Financial Holdings Limited
95 Wellington Street West, Suite 800
Toronto, Ontario, Canada M5J 2N7
(416) 367-4941**

(Name, Address and Telephone Number of Persons Authorized to Receive Notices
and Communications on Behalf of Filing Persons)

Copy to:
**Christopher J. Cummings
Adam M. Givertz
Shearman & Sterling LLP
Commerce Court West
199 Bay Street, Suite 4405
Toronto, Ontario, Canada M5L 1E8
(416) 360-8484**

CALCULATION OF FILING FEE

Transaction Valuation*
\$1,042,046,980

Amount of Filing Fee**
\$58,146.22

* Estimated for purposes of calculating the amount of the filing fee only. The calculation assumes the purchase of all outstanding shares of common stock, par value \$0.01 per share (the Shares), of Odyssey Re Holdings Corp., a Delaware corporation, other than Shares owned by Fairfax Financial Holdings Limited (Fairfax) and its subsidiaries, at a purchase price of \$65.00 per Share, net to the seller in cash. As of September 17, 2009, there were 58,430,892 Shares outstanding, of which 42,399,400 Shares are owned by Fairfax and its subsidiaries. As a result, this calculation assumes the purchase of 16,031,492 Shares.

** The amount of the filing fee is calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 5 for fiscal year 2009 issued by the Securities and Exchange Commission on March 11, 2009. Such fee equals 0.00558% of the transaction value.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$58,146.22

Filing Party: Fairfax Financial Holdings Limited and Fairfax Investments USA Corp.

Form or Registration No.: Schedule TO-T

Date Filed: September 23, 2009

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

This Amendment No. 4 amends and supplements the Tender Offer Statement and Rule 13e-3 Transaction Statement filed on Schedule TO (as amended and supplemented, the **Schedule TO**) by Fairfax Financial Holdings Limited, a Canadian corporation (**Fairfax**), and Fairfax Investments USA Corp., a Delaware corporation and wholly-owned subsidiary of Fairfax (**Purchaser**). The Schedule TO relates to the offer by Purchaser to purchase all the outstanding shares of common stock, par value \$0.01 per share (the **Shares**), of Odyssey Re Holdings Corp, a Delaware corporation (**Odyssey Re**), other than Shares owned by Fairfax and its subsidiaries, at a purchase price of \$65.00 per Share, net to the seller in cash, without interest and less any applicable withholding of taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated September 23, 2009, as amended and supplemented (the **Offer to Purchase**), a copy of which is attached to the Schedule TO as Exhibit (a)(1)(i), and the related Letter of Transmittal, a copy of which is attached to the Schedule TO as Exhibit (a)(1)(ii) (which, as amended or supplemented from time to time, together constitute the **Offer**). All capitalized terms used in this Amendment No. 4 without definition have the meanings ascribed to them in the Schedule TO.

The following amendments to Items 11 and 12 of the Schedule TO are hereby made.

Item 11. Additional Information.

Section a(5) of Item 11 of the Schedule TO is hereby amended in its entirety to read as follows:

Litigation.

On October 7, 2009, the directors of Odyssey Re, Odyssey Re (as a nominal defendant), Fairfax and Purchaser (collectively, the **Defendants**) were served with a purported stockholder derivative and class action complaint, dated October 7, 2009, filed in the Superior Court of Connecticut, Judicial District of Stamford/Norwalk (the **Court**). The action, captioned *CapGrowth Partners v. V. Prem Watsa, et al.*, Docket No. CV09-6002152-S (the **CapGrowth Complaint**), purports to assert claims against the members of Odyssey Re's board of directors for alleged breaches of their fiduciary duties to Odyssey Re's stockholders in connection with the Offer and the other transactions contemplated by the Offer to Purchase, and a claim against Fairfax and Purchaser for allegedly aiding and abetting such alleged breaches of fiduciary duties. The CapGrowth Complaint seeks, among other relief, a declaratory judgment and monetary and/or rescissory damages. The plaintiff also sought, by separate application, a temporary restraining order and expedited discovery and a temporary injunction as to the Offer and the other transactions contemplated by the Offer to Purchase. The Defendants believe that the claims made in the CapGrowth Complaint are without merit and intend to vigorously defend against this action.

On October 14, 2009, the Court held a hearing on the plaintiff's motion for expedited injunctive relief.

On October 16, 2009, the Court issued a Memorandum of Decision Re: Plaintiff's Application for a Temporary Restraining Order, Expedited Discovery and Temporary Injunction (the **Memorandum of Decision**) denying the plaintiff's application for a temporary restraining order, expedited discovery and temporary injunction.

The CapGrowth Complaint and the Memorandum of Decision are filed as Exhibits (a)(5)(i) and (a)(5)(ii), respectively, to and incorporated in the Schedule TO.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended in its entirety to read as follows:

- (a)(1)(i)* Offer to Purchase, dated September 23, 2009.
- (a)(1)(ii)* Letter of Transmittal.
- (a)(1)(iii)* Notice of Guaranteed Delivery.
- (a)(1)(iv)* Letter to Brokers, Dealers, Banks, Trust Companies and Other Nominees.

- (a)(1)(v)* Letter to Clients for use by Brokers, Dealers, Banks, Trust Companies and Other Nominees.
- (a)(1)(vi)* Summary Advertisement to be published in *The Wall Street Journal* on September 24, 2009.
- (a)(5)(i)* CapGrowth Partners v. V. Prem Watsa, et al., Docket No. CV-09-6002152-S, Superior Court of Connecticut, Judicial District of Stamford/Norwalk (filed October 7, 2009).
- (a)(5)(ii) Memorandum of Decision Re: Plaintiff's Application for a Temporary Restraining Order, Expedited Discovery and Temporary Injunction, dated October 16, 2009.
- (d)(1) Agreement and Plan of Merger, dated as of September 18, 2009, by and among Odyssey Re Holdings Corp., Fairfax Financial Holdings Limited and Fairfax Investments USA Corp. (incorporated by reference to Exhibit 2.01 to the Form 8-K filed by Odyssey Re Holdings Corp. on September 21, 2009)
- (d)(2) Stockholder Support Agreement, dated as of September 18, 2009, among Fairfax Financial Holdings Limited and Marshfield Associates, Inc. (incorporated by reference to Exhibit 11.3 to the Schedule 13D filed on September 22, 2009)
- (g)* Presentation of Merrill Lynch, Pierce, Fenner & Smith Incorporated.
- (g)(2) Presentation of Merrill Lynch, Pierce, Fenner & Smith Incorporated dated September 4, 2009 (incorporated by reference to Exhibit (c)(5) to the Schedule 13E-3 filed by Odyssey Re Holdings Corp. on September 30, 2009)

* Previously filed
with the
Schedule TO

SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: October 16, 2009

FAIRFAX INVESTMENTS USA CORP.

By: /s/ Bradley P. Martin
Name: Bradley P. Martin
Title: Vice President, Treasurer and
Secretary

**FAIRFAX FINANCIAL HOLDINGS
LIMITED**

By: /s/ Bradley P. Martin
Name: Bradley P. Martin
Title: Vice President, Chief Operating
Officer and
Corporate Secretary

EXHIBIT INDEX

Exhibit No.	Description
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