vie FINANCIAL GROUP

June 26, 2003

Jonathan *G*. Katz, Esquire
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

RE: Release Nos. 33-8 160; 34-46980; IC-25845; File No. S7-50-02
     Proposed Revisions to Rule 10b-18 and Purchases of Certain **Equity** Securities
     by the **Issuer** and Others ("Proposal Release")

Dear Mr. Katz,

Vie Financial Group, Inc. (**"Vie"**) appreciates the opportunity to **provide** this
supplement to our comment letter on the Proposal Release that we submitted on March *3,*
2003.[1] In our March Letter, Vie urged the Commission to provide an exception for
issuers' volume weighted **average** price ("VWAP") transactions from the pricing
condition of the Rule. Vie observed that VWAP is well regarded **as** a ubiquitous trading
benchmark for market participants who **seek** a fundamentally fair pricing methodology
that inherently lacks susceptibility to manipulation. For purposes of amending **Rule 1 0b-
18, we** believe that **the** integrity of VWAP as **a** pricing mechanism and its insulation from
manipulation can best be **assured** by defining the calculation and the interval times upon
which the calculation **is** to be based.

With **respect** to the VWAP calculation, the Commission already has provided
solid guidance in this **area.** In approving the Philadelphia Stock **Exchange,** Inc.'s
eVWAP, a crossing **network** facility designed and developed by **Vie** (fomerly known as
The Ashton Technology Group),' the Commission specifically delineated the "calculation
of VWAP."[3] The Commission eVWAP **Approval** Order stated:

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[1] See **letter to** Jonathan G. Katz, **Secretary,** Commission, from William W. Uchimoto, **Executive** Vice
President **and** General **Counsel, Vie,** dated March **3, 2003** ("**March Letter**").

[2] *See* Rel. **No.** 34-41210 (March 24, 1999); File No. SR-Phlx-96-I4 ("Commission eVWAP **Approval**
Order"!.

[3] Commission eVWAP **Approval.** Order at 13.

[t]he Exchange shall calculate a final VWAP **value** for each eligible security by: (i) using **all** regular way trades (including sold sales and late sales) [n. 31 states "A 'late sale' **Is a** transaction which is a correct last sale but **Is** publicly disseminated later than is required. Generally, transactions are required to be publicly disseminated within 90 seconds of execution. A 'sold sale' refers to a transaction appearing on the CTS out of its proper sequence."] reported by the appropriate reporting authority from the opening of the regular trading session and printed prior to 4:15:00 P.M., [**n.32** states "It should be noted that prints representing trades executed after regular trading hours 9:30 **A.M.** to 4:00 P.M.), such **as** prints reflecting trades executed during the Exchange's Post Primary Session, will only be included in the VWAP calculation until 4:01:30 P.M."] (ii) multiplying each respective **reported price** by the total number of shares traded at that **price;** (iii) adding together each of these calculated values to compile an aggregate sum; and (iv) dividing the aggregate sum **by** the total number of reported **shares** that appear in the prints included in step (i) of the **VWAP calculation process.** The resulting VWAP value will **be** reported in the form of a fraction and **will** be rounded to the nearest 1/256th. [n. **33** states "The System software also allows Participants to convert VWAP prices into decimal form."].[4]

We believe that the above VWAP calculation standards can **be** extended to Rule 10b-18 with the caveat that issuers in listed securities should **be** able to **utilize** a consolidated or primary market **VWAP** calculation for their repurchase transactions. In this regard, we note the overwhelming demand by our clients for primary market **VWAP** pricing in listed issues. The Commission's standards developed in the Commission eVWAP Approval Order are consistent with securities information vendor standards used in the dissemination of VWAP calculations to market participants.

'With respect to the interval time upon which to base a **VWAP** calculation, we believe that an all-day[5] calculation is naturally the least susceptible **to** manipulation because all transactions occurring during regular trading hours are included in the calculation. **An** all-day calculation, for **example,** is **required** as the basis of the Commission affording exemptive relief from tick requirements for certain VWAP transactions otherwise subject *to* Rule 10a-1 under the Exchange **Act.** Nevertheless, because a significant segment of our **domestic** institutional clients will not commit to a trading decision until the market has opened and **shows an** initial direction, we believe that issuers should have the **opportunity** to effect a VWAP transaction at **any** time at or between 9:30 **A.M.** EST and 10 **A.M.** EST that will base VWAP pricing at such start time through the close. Our analysis shows that over 85% of transaction volume occurs during this interval.

Lastly, we note the prevalent and strong opposition expressed in the various comment letters to the Commission's proposal to remove the current **block** exemption contained in Rule 10b-18. We *see* the obvious tension **between** the Commission's

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[4] Id.

[5] We **define** "all-day" as a **VWAP** calculation based on all **trades** reported during regular **trading** hours as measured by the **principle** market on which the security trades.

attempt to address the concern of allowing issuers to repurchase their shares through large orders without any restrictions, and the **heavy** reliance that issuers, particularly small and midcap issuers, have placed on the block exemption to effectively carry out their repurchase strategies. With the **VWAP** calculation and intervals precisely defined **for** purposes of the revised safe harbor, **we** strongly **suggest** that **the** Commission consider maintaining the current block exemption of Rule 10b-18 so long **as** the block is transacted at **VWAP.** In this regard, issuers **will** have the ability **to** continue to **engage** in block transactions subject to such blocks being executed in accordance with the powerful anti-manipulation prophylactic **of** VWAP pricing. **We** do, **however, support** amending the **Rule's** definition of "block" to coincide with current definitions contained in **self-**regulatory organizations' rules.

Thank you **for** the opportunity to supplement our earlier comments, **We** would be pleased *to* discuss any of these points with you in further depth at **your** convenience.

Sincerely,

/s/William A. Lupien   /s/ William W. Uchimoto
William A. Lupien   William W. Uchimoto
Director   Executive Vice President
                      and General Counsel