



February 12, 2003

Mr. James Brigagliano
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Dear Mr. Brigagliano:

On behalf of Vie Institutional Services, Inc. ("Vie"), a registered broker-dealer and member of the National Association of Securities Dealers, Inc. and the Philadelphia Stock Exchange, Inc. ("PHLX"), we request that the Securities and Exchange Commission ("Commission") grant, pursuant to the Commission's authority under Rule 10a-1(f) under the Securities Exchange Act of 1934, as amended ("Exchange Act"), an exemption from the tick test requirements of Rule 10a-1 under the Exchange Act for Vie customers executing pre-opening short sale transactions in certain national securities exchange-listed stocks at a full-day volume weighted average price ("VWAP"). This Vie service offering is hereinafter denoted as the "VWAP Match."

The VWAP Match will take place in the morning before regular trading begins at 9:30 a.m. Eastern Standard Time (all times hereinafter refer to EST). Customers may submit orders to Vie of at least 1,000 shares per eligible security symbol until 9:15 a.m. and will receive binding match reports back to customers by 9:25 a.m. Vie customers will be matched on a time priority basis based on the time of receipt of such orders by Vie. Even if a customer receives priority, such customer's order will match only to the extent that contra-side liquidity has been received by Vie. Therefore, customers have no assurances of matching all or even a portion of their order in the VWAP Match. All unexecuted orders will be cancelled and returned to the pertinent customer[s]. Vie offers this matching service strictly as an agency broker and preserves the anonymity of all customers. After the close of regular trading on the primary exchange at 4:00 p.m., each executed order matched during that day's pre-opening period will be priced based on the VWAP as Vie calculates from all primary market¹ trades reported in the pertinent

¹ In order to qualify as a primary market for purposes of this letter, the referenced market must account for 75% or more of the Listed Security's U.S. average daily trading volume ("ADTV"). For the purposes of this letter, the ADTV value would be calculated in reference to the date on which the proposed short sale transaction is to take place. That is, the average daily trading volume reported by the referenced market during the two full calendar months immediately preceding the date of the proposed short sale or during any 60 consecutive calendar days ending within the 10 calendar days preceding the date of the proposed short sale must be equal to or greater than 75% of the U.S. average daily trading volume of the security during the same relevant time period.

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security during regular trading hours (9:30 a.m. through 4:00 p.m.).² For any security that was matched during the pre-opening of the primary market's regular trading hours, i.e., 9:30 a.m., and if the primary market in a particular security has not commenced trading by 3:00 p.m., VWAP matches in such security will automatically be busted among the customers to such matches.

Under Rule 10a-1, a short sale of a security registered on a national securities exchange and reported in the consolidated reporting system may not be effected at a price either (1) below the last reported price of a transaction reported in such system ("minus tick") or (2) at the last reported price if such price is lower than the previously reported different price ("zero minus tick"). This is known as the "tick test." Because VWAP Match trades are assigned the VWAP after the close of regular trading hours based on a day-long calculation methodology, it is possible that some short sales executed in the VWAP Match may not be in compliance with the tick test because the matching price of a security may be on a minus tick or zero-minus tick with respect to the last sale reported by the Consolidated Tape. In adopting Rule 10a-1, the Commission was concerned, among other things, about the use of short sales as a manipulative tool, such as in a "bear raid" where short selling was widely seen to depress the price of a security by creating sell-side imbalances. The objective of the Rule, therefore, was to prevent both market destabilizing and manipulative activity.

We believe that short sales effected in Vie's VWAP Match will not present any potential for the type of manipulation or destabilization that Rule 10a-1 was designed to address. In this regard, Vie is an affiliate of the Vie Financial Group, Inc. ("VFG"). VFG and the PHLX pioneered the first short sale exemption in connection with VWAP matching through VFG's eVWAP Trading System.³ We observe that Vie's VWAP

² Vie has developed an algorithm that calculates the VWAP for each eligible security by: (1) calculating raw values for primary market regular session trades reported to the Consolidated Tape during the trading day by multiplying each such price by the total number of shares traded on the primary market at that price; (2) compiling an aggregate sum by adding each calculated raw value from step one above; and (3) dividing the aggregate sum by the total number of reported shares for that day in the security. Vie discloses to its customers how it calculates the VWAP and that Vie performs the calculation as opposed to a third party vendor. Vie's VWAP calculation is consistent with other vendors' primary market VWAP calculations. In this regard, Vie's algorithm is based directly on the eVWAP algorithm. Vie's parent, the Universal Trading Technologies Corporation, designed and developed eVWAP, a crossing network facility of the Philadelphia Stock Exchange, Inc. ("PHLX") that included an algorithm for calculating the eVWAP price, which was assigned to all eVWAP matches and calculated on consolidated market data. The Commission approved the PHLX's rule change establishing eVWAP as a PHLX crossing facility and its calculation methodology. See SR-PHLX 96-14, Release No. 34-41210 (March 24, 1999). Vie's VWAP algorithm uses the same calculation methodology as eVWAP except that primary market transaction data for listed securities is used instead of consolidated data. Vie VWAP trades will be reported to the Consolidated Tape within 90 seconds after calculation of the VWAP (approximately at 4:15 p.m.). Such matches will be reported to the tape as average price trades or b trades for listed securities. Short sale orders in exchange-listed securities effected in the VWAP Match will not be used in determining the VWAP.

³ See Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Edith Hallahan, Counsel, PHLX, dated March 24, 1999. The latter exemption was granted to a registered national securities exchange. The Commission has since granted exemptions to registered broker-dealers. See exemptions to Morgan Stanley & Co. Incorporated (Letter from James Brigagliano, Assistant Director,

Match is substantially similar to the attributes of eVWAP in that both VWAP matches: (i) short sales entered would not participate in the determination of VWAP, (ii) all short sales would be appropriately marked, (iii) the execution price of trades would be determined after the close of the regular trading session, and (iv) trades used to calculate VWAP would themselves be subject to Rule 10a-1.

Due to the passive nature of Vie's VWAP Matches and the manner in which VWAP will be determined, Vie believes that the types of abuses Rule 10a-1 under the Exchange Act are intended to address (i.e., destabilizing and manipulative activity) will not be present with respect to Vie's VWAP Match. Accordingly, we respectfully request that the Commission grant the exemption from the Rule requested in this letter.

In connection with the request sought herein, Vie represents as follows:

- Vie will act only as an agent when effecting customer short sale orders;
- Short sale orders in exchange-listed securities effected in the VWAP Match will not be used in determining VWAP;
- All short sale orders in the VWAP Match will be appropriately marked;
- All short sale orders will be entered into and matched in the VWAP Match during the pre-opening period;
- The execution price of VWAP-matched trades will be determined after the close of the regular trading session;
- Trades used to calculate the VWAP will themselves be subject to Rule 10a-1;
- The VWAP Match for exchange-listed securities will be limited to the securities that comprise the S&P 500 Index and/or to "actively-traded securities" i.e., those securities that have a U.S. average daily trading volume ("ADTV") value of at least \$1 million (calculated by multiplying the shares traded in the U.S. times the security's closing price) and are issued by an issuer whose common equity securities have a public float of at least \$150 million.⁴ Where an exchange-listed security is neither a S&P 500 Index security nor an "actively-traded security," a short sale transaction in the VWAP Match will be permitted only if it is conducted as part of a basket transaction of 20 or more securities in which the subject security does not comprise more than 5% of the value of the basket traded; and
- Vie will maintain and provide to the Commission's Division of Market Regulation, upon request, separately retrievable written records pertaining to

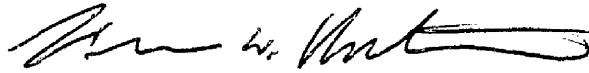
Division of Market Regulation, SEC, to Sam Scott Miller, Esq., Orrick, Herrington & Sutcliffe LLP, dated May 11, 2001), ITG Inc. (Letter from James Brigagliano, Assistant Director, Division of Market Regulation, SEC, to Andre E. Owens, Schiff Hardin & Waite, dated March 30, 2001), and Jefferies & Company, Inc. (Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Soo J. Yim, Wilmer, Cutler & Pickering, dated December 7, 2000).

⁴ For purposes of this request, the ADTV value would be calculated in reference to the date on which the proposed VWAP Match is to take place. That is, the ADTV value will be calculated based on the two full calendar months immediately preceding the date of the proposed short sale or during any 60 consecutive calendar days ending within the 10 calendar days preceding the date of the proposed short sale.

each exempt short sale transaction effected in the VWAP Match, including the date, time, security, price and size of the transaction (the related orders will be marked "short sale exempt").

Please do not hesitate to call me at (215) 789-3305 or e-mail me at wuchimoto@viefinancial.com if you have any questions or comments. Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Uchimoto", with a stylized flourish at the end.

William W. Uchimoto
General Counsel