Exxon Mobil Corporation
5959 Las Colinas Boulevard
Irving, Texas 75039-2298
972 444 1550 Telephone
972 444 1516 Facsimile

Robert N. Schleckser
Assistant Treasurer

ExxonMobil

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Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1091

Subject: Purchases of Certain Equity Securities by the Issuer and Others
(the "Proposal")
Release No. 34-61414
File No. S7-04-10

Dear Ms. Murphy:

I am Assistant Treasurer of Exxon Mobil Corporation ("ExxonMobil"). I am writing on behalf of ExxonMobil to comment on the Proposal.

General Comments.

ExxonMobil believes that issuer share repurchase programs benefit shareholders and the market. By repurchasing shares, an issuer is able to rebalance its capital structure for the benefit of its shareholders and take advantage of a highly efficient way to distribute cash to them, allowing each individual investor the flexibility either to (i) sell shares to receive cash, or (ii) continue to hold shares that represent an increased ownership interest in the company. In addition, companies can offset the dilution that shareholders would otherwise suffer as a result of share issuances under employee benefit plans. Ongoing issuer repurchase programs also generally help provide depth and liquidity to the market for a company's stock.[1] Over the past five years, ExxonMobil has distributed $119 billion to our shareholders by repurchasing shares.

We believe that Rule 10b-18 (the "Rule") has been a successful and effective rule, allowing companies to repurchase shares while protecting markets against any potential for abuse. In that light, we commend the staff for the Proposal to update the Rule to take

[1] We note the SEC's use of its emergency powers to waive the volume and timing limitations that normally apply under Rule 10b-18 during the first five days of trading after 9/11 so that issuers could provide needed liquidity and help restore normal market functioning. See Release No. 34-44791 (September 19, 2001).

account of market developments, thereby helping to maintain the Rule's continued relevance and utility.

VWAP Pricing.

ExxonMobil strongly endorses the proposal to include purchases effected on the basis of VWAP pricing within the express safe harbor provisions of the Rule. VWAP pricing ensures that issuers are passive price takers, rather than active market makers. As a result, we believe VWAP pricing represents an ideal methodology for purposes of the Rule.

Our views on the specific criteria set forth in proposed paragraph (a)(14) are as follows:

1. *Security must be actively traded*: ExxonMobil supports this requirement as proposed.

2. *Timing of purchase:* We agree that an issuer's VWAP order should generally be entered into or matched prior to the beginning of the trading day. However, we recommend that the safe harbor allow VWAP orders to be placed up until 10:00 AM Eastern time. (In that case, the VWAP pricing should be determined from the time the order is placed until the close of regular trading.) Allowing additional time for issuers to place orders would provide useful operational flexibility, while still ensuring that the VWAP price for the day would be based on a sufficient volume of market transactions.

3. *VWAP based on consolidated tap*e: In addition to allowing VWAP purchases calculated on the basis of all 10b-18 trades reported in the consolidated tape, we also believe it would be appropriate to extend safe harbor protection to purchases calculated on the basis of all regular 10b-18 trades reported on the issuer's principal market such as the NYSE. At least in the case of major national markets such as the NYSE, we believe the primary market for an actively traded security provides sufficient depth and liquidity to ensure that issuer purchases do not affect market prices. We further understand that consolidated exchange volumes may include a relatively high percentage of block trades that are crossedwhich may not provide the most accurate representation of true market prices.

4. *VWAP purchases limited to 10% of ADTV*: ExxonMobil strongly urges the Commission not to limit VWAP purchases to 10% of ADTV. VWAP purchases should be permitted up to the full 25% ADTV limit otherwise provided under the Rule. As previously discussed, we believe VWAP pricing is ideally suited to achieving the anti-manipulative purposes of the Rule. We see no reason why such purchases should be disfavored in comparison to other 10b-18 purchases through imposition of a more-restrictive volume limitation.

5. *No purpose of creating actual or apparent trading or affecting price*: ExxonMobil supports this requirement as proposed.

6. *VWAP based on all 10b-18 trades during regular session*: ExxonMobil supports this requirement, although as noted earlier, late orders based on the go forward VWAP could also be accommodated.

7. *Reporting with special VWAP trade modifier:* ExxonMobil supports this requirement as proposed.

Additional comments.

In addition to the comments regarding proposed Rule 10b-18(a)(14) set forth above, ExxonMobil urges the Commission not to enact changes that would have the effect of discouraging issuers from engaging in share repurchase programs. As noted previously, we believe issuer repurchase programs benefit shareholders and the market as a whole, and that Rule 10b-18 has served its intended purpose well. In light of that successful history, and in the absence of any specific evidence of a problem, we do not believe the Commission should increase issuer compliance costs or make issuer compliance more difficult.

In particular, we strongly urge the Commission not to limit the ability of issuers to conduct 10b-18-compliant repurchase programs at a time when insiders may also be selling shares in the market. The premise of the Rule is that purchases effected in accordance with the Rule will not affect market prices. If the Rule is effective for its intended purpose (and we believe it is), then by definition there is no inappropriate benefit being realized by insiders who may sell shares in the market on the same day. We are also concerned that creating a linkage under the Rule between insider sales and issuer repurchases would make it more difficult for issuers to comply with Rule 10b5-1(c)(2). In order to make use of the protections of that Rule, issuers generally must maintain a "Chinese Wall" between insiders who may have material information and the persons exercising investment discretion with respect to issuer purchases. That separation would become problematic if issuer purchase programs must be closely coordinated with insider sales activity.

Similarly, in the absence of a specific problem, we urge the Commission not to impose disclosure requirements beyond existing Item 703 of Regulation S-K or to increase issuer recordkeeping requirements.

With respect to the proposed amendment to require that a 10b-18 purchase may not be the opening trade in either the issuer's primary market or the market in which the trade is effected, in addition to the consolidated tape, we believe it would be clearer simply to

provide that a 10b-18 purchase may not be made until after the opening trade in the market where the trade is effected.

Finally, we support the Commission's perspective that issuers should not be penalized for a technical failure to comply with the Rule's provisions where the issuer could not reasonably have ensured compliance, such as in the case of a trade that is non-compliant solely due to flickering quotes. In that case, we urge the Commission to consider allowing issuers to rely on the safe harbor even for the particular non-compliant purchase, where the issuer has made a good-faith effort to comply and the event of non-compliance is outside the issuer's control.

We thank the Commission for the opportunity to comment on these important issues. We would be happy to discuss any of these matters in more detail or to provide additional information at the staff's request.

Sincerely,

Robert N. Schleckser
Assistant Treasurer