

[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 $1/256^{\text{th}}$. [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-day⁵ 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

⁴ Id.

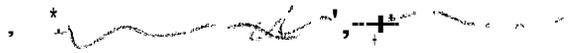
⁵ We **define** “all-day” as a **VWAP** calculation based on **all trades** reported during regular **trading** hours as measured by the **principle** market on which the security trades.

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
William A. Lupien
Director


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