May 6, 2004

Larry Bergmann, Esq.
Senior Associate Director
Division of Market Regulation
Securities and Exchange Commission
Judiciary Plaza
450 Fifth Street, N.W.
Washington, DC 20549-1001

Re: **File No. SR-NSCC-2003-21**

Dear Mr. Bergmann:

As I advised you at an earlier date, National Securities Clearing Corporation ("NSCC") has consulted with Shearman & Sterling's Dale Collins, NSCC's antitrust counsel, concerning the implications of the recent court decisions that discuss the extent to which the antitrust laws apply to conduct regulated by the Commission. Mr. Collins strongly supports NSCC's view that, in light of the following, the Commission may comfortably proceed to approve the subject rule filing without making any affirmative decision or pronouncement regarding antitrust immunity:

1. The Commission is not charged with responsibility for enforcing or applying the antitrust laws, and when it takes action it is not required to take action that has the least anticompetitive effect. Rather, the Commission is charged with balancing (a) the competitive implications of any action it takes and (b) the regulatory objectives of the securities laws.

2. The doctrine of implied repeal of the antitrust laws or implied immunity from the antitrust laws is applied where, with respect to particular conduct, there is the potential that the Commission may permit, pursuant to its authority under the securities laws, that which the antitrust laws forbid. In such a circumstance, where there is "plain repugnancy" between the antitrust laws and the securities laws with respect to conduct subject to regulation by the Commission (whether or not the Commission has actually exercised its authority with respect to such conduct), and then only to the extent necessary to make the securities laws work, immunity is granted from the antitrust laws.

3. The decision to grant immunity from the antitrust laws is a decision for the courts to make in the context of an antitrust action in which the immunity defense is asserted by the defendant. While the views of the SEC may be afforded some deference, in the end it is always a decision for the courts alone.

4. The Commission (or the staff pursuant to delegated authority) does have to determine, pursuant to Section 19(b) of the Exchange Act and the requirements of Form 19b-4, that the proposed rule (to establish the SMA service) will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act - - and there is an abundance of information in the public record, including comment letters from consumers, to support that conclusion. But the Commission does not have to determine (i) whether in fact the subject conduct (operation of the proposed service) does or will violate the antitrust laws (that is for the courts) or (ii) whether the subject conduct should be immune from the antitrust laws (that too is for the courts).

Very truly yours,

Richard B. Nesson

RBN/tb