

# ALSTON & BIRD LLP

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25

Margaret A. Sheehan

June 22, 2004

*VIA HAND DELIVERY*

Jonathan G. Katz  
Secretary  
US Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549

RECEIVED  
OFFICE OF THE SECRETARY  
JUN 22 2004

Re: Response to SR-NSCC-2003-21

Dear Sir:

We represent CheckFree Corporation ("CheckFree") and, on its behalf, we hereby respectfully submit the attached letter as part of our response to the request for comments to Release No. 34-48846: Notice of Filing of a Proposed Rule Change Relating to the New Separately Managed Accounts Service dated November 26, 2003, proposed by the National Securities Clearing Corporation ("NSCC").

Should you have additional questions or need additional information, please do not hesitate to contact me at (202) 756-3305.

Sincerely,



Margaret A. Sheehan

MAS:mas  
Enclosure

cc: Carol A. Jameson  
Laura E. Binion

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May 28, 2004

## *Via Overnight Delivery*

Mr. Christopher Davis  
Executive Director  
The Money Management Institute  
Suite 703  
1101 17th Street, N.W.  
Washington DC 20036-4726

**RECEIVED**  
**OFFICE OF THE SECRETARY**  
JUN 22 2004

Re: MMI Data Standards

Dear Mr. Davis:

I am writing on behalf of CheckFree Corporation. As you know, CheckFree has been requesting that you provide answers to certain questions regarding the separately managed account data standards that the SMA industry (including CheckFree) has developed and on which MMI has placed its copyright notice. A copy of the questions CheckFree previously submitted to you is attached at Tab A. These questions arose in part from an October 15, 2003 meeting between the MMI and CheckFree, during which CheckFree representatives raised questions and you asked that they put them in writing. CheckFree first sent the attached questions to you on November 26, 2003 and then repeatedly requested clarification. Although CheckFree acknowledges and appreciates the call from Peter to Jamie Waller earlier this week, it still needs specific answers to its specific questions regarding the data standards.

In light of certain developments, in particular your comment letter to the Securities and Exchange Commission dated December 11, 2003 and the NSCC's comment letter to the Securities and Exchange Commission from Thacher, Proffitt dated February 2, 2004, CheckFree is even more concerned about the MMI's plans for the data standards. Specifically, it appears that the NSCC may have taken over primary responsibility for the standards from the MMI. For example, in your letter you state "[i]n addition to its advisory role on the [Tech Ops] committee, MMI also turned to NSCC to develop a central processing utility that would support and utilize these industry standards." (Emphasis added.) In addition, the NSCC's letter states "the MMI, on behalf of its constituents, asked NSCC to develop and provide the SMA Service." The NSCC's

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Mr. Christopher Davis

May 28, 2004

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letter states further that “[t]he SMA Service Protocols will not be made available by NSCC to any persons for the purpose of developing technology to compete with the SMA Service....” CheckFree is an MMI member and helped to develop these “industry” standards, which “industry” standards we understood were to be used, and made available for use, by the SMA industry, including members of the MMI. CheckFree is concerned that, despite these facts, it and other MMI members, as well as those involved in the SMA industry generally, will not be allowed to use the “industry” standards in the development of their own SMA products and services. Specifically, CheckFree is concerned that the MMI, the NSCC, or other MMI members that contributed to the design or the development of the “industry” standards may assert intellectual property rights to the “industry” standards. Accordingly, we have updated and expanded upon our questions, which we attach at Tab B.

We are most eager for a response to our questions. We have as recently as May 24<sup>th</sup>, canvassed the MMI website and see no updated disclosures regarding these issues. We believe that the lack of clarity regarding the MMI’s and the NSCC’s plans for and claimed rights to the “industry” standards has impeded the implementation of automation initiatives of not only CheckFree but others in the SMA industry.

Please let us know when we can expect a substantive response to the issues we have raised.

Sincerely,



Margaret A. Sheehan

Enclosures

cc: Peter Muratore, Chairman, The Money Management Institute – *By Overnight Delivery*  
Larry E. Bergmann, Associate Director, Division of Market Regulation,  
Securities and Exchange Commission – *By Hand Delivery*  
Jerry Carpenter, Assistant Director, Securities Processing Regulations,  
Division of Market Regulation, Securities and Exchange Commission – *By Hand Delivery*  
Laura Binion, General Counsel, CheckFree Corporation (w/out enclosures)

**Questions for the MMI**

**Licensing terms (in place or contemplated):**

- Does an implementor have to be an MMI member?
- Can the implementor be sponsored by an MMI member?
- If so, are there restrictions imposed that would prevent general sales of a product developed under said sponsorship?
- Is the license royalty free?
- Does marketing literature or product documentation referencing the MMI specification need to acknowledge the MMI specification copyright or specific license terms and/or IP obligations (see below)?

**Certification**

- What are your goals for interoperability between implementations?
- Does the MMI plan to put a certification process in place to insure that products and services adhere to some level of specification compliance?
- Do you plan to develop a formal test suite that vendors can license along with the specification to do compliance / interop testing?
- If not, how will you achieve your interoperability goals?
- Will there be an "MMI mark" available to products & services that pass your certification requirements?

**Intellectual Property Rights**

- Has the MMI pursued any process to insure that the specification is unencumbered by participants' intellectual property rights, particularly issued patents?
- Do participants in the specification process agree to license any related IP on a royalty free or RAND (Reasonable and non-discriminatory) basis?
- Are specification licensees and implementors required to waive related IP rights?

**Cooperation / Collaboration with other standards groups**

- There are numerous XML and data standard initiatives underway within the Securities industry
  - How is the MMI keeping abreast of related initiatives?
  - How do you plan to avoid overlap and conflict with other efforts (even basic ones like FIXml and SWIFTml)?
-

**Questions Relating to the MMI Data Standard**

As the MMI Data Standard moves from a design and development effort by a technical committee to the formal status of published "industry" standards, the industry needs clarification on the terms under which the MMI will allow, members of the technical committee (including past members thereof), members of MMI, and members of the SMA industry at large to use the resulting work which MMI has identified to the SEC as being "industry" standards and how the MMI plans to promote interoperability among implementations.

- 1) What intellectual property rights exist in, and what licensing terms do you have in place or envision for, the MMI Data Standard which MMI has identified to the SEC as being "industry" standards?**
  - a) What is the difference, if any, between the MMI Data Standard and the "industry" standard?
  - b) Does an implementer have to be an MMI member?
  - c) Can a non-member implementer (such as a vendor) be sponsored by an MMI member?
    - i) If so, are there restrictions imposed that would prevent general sales of a product developed under said sponsorship?
  - d) Has the MMI pursued any process to insure that the specification is unencumbered by participants' issued patents or published patent applications?
  - e) What exactly is the MMI claiming copyright rights in (i.e., what is the MMI claiming as being copyrightable)?
  - f) Do products that incorporate all or elements of the MMI Data Standard or the "industry" standards need to explicitly:
    - i) acknowledge copyright rights claimed to be held by the MMI or patents claimed to be owned by MMI or others?
    - ii) include language enumerating granted license terms?
  - g) Is a license required under the copyright rights in the MMI Data Standard or the "industry" standards, and if so, will the license be royalty free in perpetuity or be on some other basis? Will the terms differ depending on whether the licensee was a participant in the authorship of the MMI Data Standard or the "industry" standards as opposed to a non-participant?
  - h) Is a license required under any patent rights covering the MMI Data Standard, or the "industry" standards, and if so, will that license be on a royalty free in perpetuity or RAND (reasonable and non-discriminatory) basis? Will the terms differ depending on whether the licensee was a participant in the design or development of the MMI Data Standard or the "industry" standard as opposed to a non-participant?
  
- 2) What plans does the MMI have for certification of products and services that claim to support the MMI Data Standard or the "industry" standards?**
  - a) What are your goals for interoperability between independent implementations?
  - b) What certification process will exist to insure that products and services adhere to some level of compliance?
    - i) For example, do you plan to release a formal test suite that implementers can employ to verify compliance with the MMI Data Standard or the "industry" standards?
    - ii) Will you define multiple levels of compliance to the standard?
  - c) Will there be an "MMI mark" available to products & services that demonstrate compliance via a certification process?

**3) Is the MMI attempting to coordinate and rationalize the MMI Data Standard or the “industry” standards with other related standardization efforts?**

Given that there are numerous data standards initiatives active in the Securities industry (particularly with the growing popularity of XML and related technologies):

- a) How is the MMI keeping abreast of related initiatives?
- b) How do you plan to avoid overlap and conflict with other efforts (such as FIXml and SWIFTml)?