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June 12, 1998

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By Hand

The Honorable Joel I. Klein
Assistant Attorney General
Antitrust Division
Room 3109
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Request for Expedited Business Review Clearance:
Securities industry information exchange to help
address the Year 2000 computer transition.

Dear Mr. Klein:

On behalf of the Securities Industry Association ("SIA"), we request a business review letter setting forth the antitrust enforcement intentions of the Department of Justice with respect to proposed information exchanges to address the Year 2000 computer transition. This request is made pursuant to the procedure for the issuance of business review letters set forth in 28 C.F.R. § 50.6.

Due to the critical nature of this matter to the U.S. economy and the financial services industry, there is an urgent need for the proposed information exchanges. SIA therefore requests that this business review determination be processed in accordance with the Department's procedure for expedited review of information exchanges. This procedure was announced by the Department on December 1, 1992 and is reproduced at CCH Trade Regulation Reporter ¶8559.50. The information and documents called for by the expedited procedure, to the extent available and applicable, are furnished in this letter and the attachment.

We provide here a summary of the Year 2000 transition issue, the proposed information exchanges intended to assist in addressing this issue, the need for the exchanges, and a brief statement of why the proposed activity is procompetitive.

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COMMUNICATIONS

SIA is an association of nearly 800 securities firms. SIA members -- including investment banks, broker-dealers, and mutual fund companies -- are active in all markets and in all phases of corporate and public finance. In the U.S., SIA members collectively account for approximately 90 percent, or \$100 billion, of securities firms' revenues and employ about 350,000 individuals. They manage the accounts of more than 50 million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans. As detailed below, the SIA has developed a comprehensive program to coordinate Year 2000 remediation efforts to maximize the likelihood that the securities markets will function smoothly as the calendar changes on January 1, 2000. SIA's program has been crafted through the generous efforts of hundreds of senior securities industry executives and scores of non-industry participants (including exchanges, bank regulators, industry regulators, clearing entities, data processors, and depositories).

THE YEAR 2000 TRANSITION ISSUE

Many computers were designed with software programmed to operate with data fields that use two digits to indicate a given year. This was done to save what was then scarce memory and storage capacity. The result is that when the date changes to the Year 2000, the programs in question will interpret a double zero as the Year 1900 or zero rather than the Year 2000.

A variety of adverse consequences could result from this situation. For example, systems might fail to respond or respond incorrectly to a trade order meant to take place in Year 2000 because the system interprets the date as one that has passed. The misinterpretation may trigger other errors, creating a chain reaction with widening and unpredictable consequences. Systems dealing with billings, records, sales, and a multitude of other transactions could malfunction. Forty to eighty percent of computer programs are believed to be affected by this problem, and the cost of avoiding the problem is believed to be high. Robert Butler and Anne Hoge, "The Year 2000 Problem," Messaging Magazine, March/April 1998; Robert G. Gerber, Comment, Computers and the Year 2000: Are You Ready?, 30 J. Marshall L. Rev. 837, 843 n.46 (1997).

The Year 2000 problem is especially critical in the securities industry, which is characterized by a high degree of legitimate interdependency among firms.¹ The inability of even a few firms to execute trades, transfer funds, or document transactions as a consequence of Year 2000 problems could have "ripple" or "domino" effects on other firms and associated industry entities. Firms that resolve their own Year 2000 problems could therefore be adversely affected if other firms in the industry experience Year 2000 problems. In addition, it is important that the public have confidence in the efficiency and integrity of the securities markets, and problems caused by only a few firms could greatly reduce that confidence.

President Clinton has urged the public "to make sure that they have done everything they can do within their own business sector to be ready" for Year 2000 and has termed the Year 2000 issue a "profound challenge." Matt Hamblen, Clinton Seeks Relief for Looming "Cyberspace Headache," Computerworld, May 26, 1998. SIA's Year 2000 program -- and the proposed information exchange -- respond directly to the President's call for action.

SIA'S YEAR 2000 PROGRAM

SIA has developed a comprehensive program to assist the securities industry to prepare for the millennium change. SIA has estimated that the financial services industry will spend between \$4 and \$6 billion over the next several years modifying its computer systems to handle conversion to Year 2000. This program, which began in 1995, includes the following elements:

- The development of a project plan for organizations within the securities industry whereby a timetable was established for various testing scenarios.
- An industry awareness program that includes industry conferences, workshops, seminars, and the SIA Year 2000 website (www.sia.com).
- An industry-wide testing program to test all major products from order entry to settlement. The program features a "beta" test in July 1998, a full industry-wide test to begin in March 1999, and joint testing with the New York Federal Reserve Bank and Clearinghouse to test payment systems.

¹ The securities industry is not only highly interdependent, but is also highly dependent on the proper functioning of the telecommunications, electric power, and banking industries.

- A third-party provider program to facilitate a dialogue between securities firms and the key providers of hardware, software, data services, and facilities, including telecommunications and electrical power.
- An international program to address important international financial markets.
- Development of industry-wide contingency plans and support for firm-specific contingency plans.
- An external communications program to inform legislators, regulators, the media, issuers, and investors of the status of the industry's Year 2000 readiness programs.

The SIA has also worked closely with the Securities and Exchange Commission (the "SEC") to assure that its principal regulator is comfortable with the extent of progress being made by the industry in its remediation efforts and to assist the SEC in its own extensive efforts to see the industry through this important challenge. Similarly, SIA has worked with the self-regulatory organizations to maximize coordination efforts.

THE PROPOSED INFORMATION EXCHANGE

In order to assist its members with the Year 2000 transition, SIA proposes two types of information exchanges. The first category of information exchange would involve gathering information from manufacturers and vendors of computer software, hardware, and chips regarding their efforts to ensure that their products are (or will be) Year 2000 compliant. This information must be gathered and exchanged in a timeframe that will permit organizations the opportunity to test their internal systems and infrastructure. Once compiled, this information will be made available to, and exchanged by, SIA members. Such information has been (or will be) gathered in a variety of ways. For instance, SIA recently prepared and disseminated a survey, a copy of which is attached as Exhibit 1, to approximately 35 key software vendors and data service providers. That survey sought objective, factual information about product testing, Year 2000 compliance, vendor test plans, etc. Another manner in which vendor information is being (or has been) compiled is through direct communications between software vendors and data service providers, on the one hand, and their clients (*i.e.*, securities firms) on the other, as part of the firms' individual remediation efforts. Both SIA, and presumably its member firms as well, are likely to engage in further efforts to obtain information from vendors, through such means as further mailings, vendor surveys, face-to-face meetings, and the like. Survey responses posted on SIA's web site are publicly available. Therefore vendors could gain access to each others' responses.

The second type of information exchange would involve the exchange of information among SIA members about topics such as (1) the results of product tests they have performed on their systems, (2) information they have learned about how to remediate Year 2000 problems inherent in particular products, and (3) information they have learned from, and about, various vendors and their products. This type of information will be exchanged in person, by circulating documents among relevant parties, or by other means as appropriate.

The information would be shared among SIA members and others that are part of the industry's Year 2000 project, such as regulators, exchanges, depositories and clearing companies. To the extent possible, only factual information about testing and experiences would be exchanged. No price information will be exchanged. When requested by the vendor, efforts will be made to provide information about a specific product or vendor to the relevant vendor in order to allow the vendor to respond to the information exchanged. In such instances, vendors would be provided only the information applicable to their products; they would not have access to information exchanged about their competitors' products.

With respect to all information to be exchanged, it is important to note that neither the firms nor the SIA intend to recommend in favor of, or against, the products of particular vendors. In short, whether information is exchanged directly between or among the firms, or through SIA, the information will be stated in non-judgmental terms so that there can be no legitimate inference that the sharing of information will result in any anticompetitive consequences (i.e., group boycott activity). It will be for SIA members to decide as individual entities how, or even whether, each will use the information.

NEED FOR THE INFORMATION EXCHANGE

SIA's members rely on computer software from numerous vendors and data service providers and they often utilize different generations and versions of software from the same vendor. As described above, a critical feature of SIA's Year 2000 program is actual testing of computer systems. Neither sufficient resources nor sufficient time is available for each firm individually to test every product it utilizes. Accordingly, the ability to disseminate and exchange information about Year 2000 compliance, particularly test results and remediation plans, is critical to the industry's ability to be prepared for the Year 2000. By all accounts, it is abundantly clear that the time remaining to correct software, hardware and chip problems and to avoid consequent systems and facilities malfunctions may be insufficient unless prompt and thorough steps are taken.

Simplifying the dissemination of information regarding the Year 2000 transition would be highly beneficial. It would foster dissemination of accurate information and avoid confusion. Clearly, it is vastly more efficient -- both for software users (i.e., SIA member firms) and for their vendors -- for SIA to obtain and disseminate information from the hundreds of vendors that support the securities industry, than it would be for scores of securities firms to request information and receive nonstandard responses that may be difficult to interpret. Additionally, vendors who otherwise may be unwilling or slow to provide this important information may be encouraged to do so by the knowledge that dissemination is being handled in a sophisticated and systematic manner and may benefit by not having to provide duplicative information to their many customers in the securities industry. This streamlined approach will enable vendors to focus their scarce time and resources on their own product remediation efforts.

PROCOMPETITIVE CHARACTER OF THE INFORMATION EXCHANGE

It is evident that the two types of information exchanges SIA proposes are in the public interest. In light of the short amount of time remaining to prepare for the Year 2000 conversion and the critical importance to the U.S. economy of maintaining public confidence in the securities markets, these exchanges will promote important policy goals.

The exchange will help market forces function more efficiently, and, importantly in this case, faster. Indeed, it is by now self-evident that individuals employed in the securities industry who possess the expertise to remedy technical Year 2000 problems are a scarce resource such that the industry needs to devote their time to completing the actual remediation tasks. The proposed information exchanges will address this scarcity by allowing the firms to prioritize their testing efforts. By enabling SIA members and other Year 2000 project participants to better evaluate their computer software, hardware and chips, and to intelligently craft their plans to address the innumerable tasks associated with the Year 2000 transition, the information exchange will enhance efficiency, lower operating costs, increase output and maximize the likelihood that the transition to the new millennium will be as flawless as possible. Moreover, in this unusual case, wider and more rapid dissemination of information will help avoid severe ramifications across the entire securities industry and the financial markets.

The situation is similar to those in which research is widely shared to spur innovation or where customers are provided with fuller information to improve their choices. An analogy might be the government and insurance industry programs which provide auto defect, recall, and crash information to the public so that consumers can make more intelligent decisions about corrective measures and new purchases. Also analogous might be instances in which the Department has approved information exchanges relating to credit information. E.g., Business

Review Letter from Joel I. Klein dated September 3, 1997 regarding the National Consumer Telecommunications Data Exchange. However, the information exchanged here would be less sensitive than credit information.

The nature of the information to be exchanged and the structure of the exchange itself assure that there will be no anticompetitive effects. SIA membership is open to qualifying members of the securities industry on a nondiscriminatory basis, any follow-up action by SIA members is left to the discretion of each member, the information to be exchanged is limited and not sensitive, and SIA will attempt to give vendors an opportunity to comment on material information exchanged about their products when they so request. Without this information exchange program, critical products may well go untested -- due to lack of time to test the thousands of products that interface with the incalculable number of computer systems that support the securities industry -- and the industry will be deprived of valuable information needed to ensure that it successfully meets the daunting challenge of the millennium change.

THE DEPARTMENT'S EXPEDITED PROCEDURE

We believe the foregoing provides the relevant information called for under the Department's expedited procedure. That procedure appears to have been drafted to cover a variety of situations, especially sensitive price exchanges. Since the exchange proposed by SIA is not of that nature, we have not attempted to include information on such issues as pricing practices or the ten largest customers, which seem related to the more sensitive scenarios. However, if further information is needed to respond to this request, we stand ready to provide it promptly.

CONCLUSION

There is no question that the Year 2000 challenge facing government, as well as all manner of businesses and institutions worldwide, is perhaps the largest information technology challenge ever. There is also no question that public confidence in the ability of the securities markets to make a smooth transition to the Year 2000 is an essential component of the continued health of our economy. The securities industry has long appreciated the magnitude of the challenge before it and has been working hard both to maintain the public's confidence and to assure that it is well prepared to address these formidable issues. The proposed information exchange promises to enhance efficiency and competition in addressing the pressing public issue of the Year 2000 transition in the securities industry.

The Honorable Joel I. Klein
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We appreciate your consideration and look forward to your response.

Sincerely,

Robert B. Bell

Robert B. Bell

Enclosure

cc: Barry B. Grossman