



DEPARTMENT OF JUSTICE  
Antitrust Division

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Robert B. Bell, Esq.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Bell:

This letter responds to your request on behalf of the Securities Industry Association ("SIA") for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. §50.6. You have requested a statement of the Department's current antitrust enforcement intentions regarding a proposed information exchange program designed to facilitate and expedite the securities industry's efforts to resolve the Year 2000 computer transition problems that confront that industry. Based on the information and assurances that you have provided, the Department has no current intention to challenge the information exchanges proposed by the SIA.

Your request letter states that many securities firms utilize computer systems designed with software programmed to operate with data fields that use two digits to indicate a given year. As a consequence, on January 1, 2000 these computer programs may interpret the double zero as either the year 1900 or zero rather than the year 2000. You indicate a concern that, unless remedied, this problem could occasion a breakdown in many computerized information systems utilized in the securities industry. Similar concerns have been expressed by others with respect to other industries and certain governmental activities. Indeed, the President has established a Council on the Year 2000 Conversion to encourage government and private industry to take the steps necessary to resolve potential Year 2000 transition problems in advance of January 1, 2000.

SIA is an association of nearly 800 securities firms. Membership is open to all qualifying entities on a nondiscriminatory basis. Its members are active in all markets and in all phases of corporate and public finance, and include investment banks, broker-dealers, and mutual fund companies. They manage the accounts of more than 50 million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans. The SIA has developed a comprehensive program to coordinate Year 2000 remediation efforts to increase the likelihood that the securities markets will function smoothly when the calendar changes to January 1, 2000. SIA's program has been coordinated with the SEC, bank regulators and various parties that provide services to the securities industry.

In order to assist its members with the Year 2000 transition, SIA proposed two types of information exchanges. The first would involve gathering information from manufacturers and vendors of computer software, hardware, and chips regarding their efforts to ensure that their products will be Year 2000 compliant. This information will be gathered and exchanged in a time-frame 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 will be gathered in a variety of ways. For instance, SIA will prepare and disseminate a survey to approximately 35 key software vendors and data service providers. That survey will seek objective, factual information about product testing, Year 2000 compliance, vendor test plans, etc. Another manner in which vendor information will be compiled is through direct communications between software vendors and data service providers, on the one hand, and their clients -- 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 mailings, vendor surveys, face-to-face meetings, and the like.

The second type of proposed information exchange would involve exchanges among SIA members concerning topics such as (1) the results of product tests performed on their systems, (2) methods of remediating Year 2000 problems inherent in particular products, and (3) information about various vendors and their products. 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 will be exchanged. No price information will be exchanged. Vendors may be provided test information about their own products in order to allow them 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. Neither SIA nor its members will recommend in favor of, or against, the products of particular vendors. The exchanged information will be stated in non-judgmental terms to lessen the risk that the sharing of information could result in any anticompetitive consequences. SIA members will decide as

individual entities how, or even whether, each will use the information.

SIA asserts that neither sufficient resources nor time is available for each member 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 viewed by SIA as critical to the industry's ability to remedy its Year 2000 problems in a timely manner. It claims that the proposed exchange would foster dissemination of accurate information and avoid confusion, and that it will be more efficient, both for software users 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 attempt to standardize the responses. It also claims that vendors may benefit by not having to provide duplicative information to their many customers in the securities industry. SIA thus claims that the proposed information exchanges will enable vendors to focus their scarce time and resources on their own product remediation efforts.

Another manner in which SIA makes what is essentially the same efficiency argument is to suggest that individuals employed in the securities industry who possess the expertise to remedy technical Year 2000 problems are a scarce resource. In your view, the proposed information exchanges will address this scarcity by allowing the firms to prioritize their testing efforts. You suggest that without this information exchange program, critical products may well be untested, due to lack of time to test the thousands of products that interface with the very large number of computer systems that support the securities industry.

The SIA asserts that collaborative efforts to resolve the industry's Year 2000 problems are particularly appropriate in the securities industry, because of the high degree of interdependence between rivals on matters of this nature. You state that,

“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 [as a whole], and problems caused by only a few firms could greatly reduce that confidence.”

Based on the information and assurances provided us by SIA, and the nature of the proposed information exchanges, the Department does not believe that the proposed conduct will have anticompetitive effects. The information exchanges, as limited in your request letter, should not diminish competition amongst SIA's member securities firms. No pricing or

customer information will be disclosed. Nor is there any proposed conduct that would directly lessen competition in the procurement of computer services. The information to be exchanged about vendors will be stated in an objective nonjudgmental manner. No recommendations will be made. Nor will collective procurement action be taken; i.e., there will be no collective boycotts. Each SIA member will make its own individual judgment about whom to hire for the necessary remedial work.

Moreover, it does not appear that the proposed information exchange would reduce competition amongst hardware, software or chip vendors. The type of vendor information to be exchanged does not involve pricing or customer data. While some of the information could conceivably have some strategic impact in vendor rivalry, it appears to be of the type that would be publicly advertised rather than kept secret. In any event, the proposed information exchanges would not appear to have the capacity to lessen innovation or pricing rivalry among vendors.

Finally, it is possible, as you submit, that the proposed information exchanges will be procompetitive. SIA's assertions that there is insufficient computer personnel available to allow all SIA members to rely on their own individual efforts to make their systems ready for January 1, 2000, and that the health of the industry is truly interdependent in terms of computer communications are both facially plausible. If they are true, the proposed collaboration may even be necessary to avoid serious disruption of the securities trading system. However, even if the proposed collaboration were not necessary for this purpose, it could still reduce costs, and/or speed up resolution of Year 2000 issues. Either type of benefit could redound to the benefit of investors and thus be viewed as output enhancing, i.e., pro-competitive.

This letter express the Department's current enforcement intentions, and is predicated on the accuracy of the information and assertions that you have presented to us. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual activities of the SIA or its members prove to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's business review procedure, 28 C.F.R. §50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,

/S/

Joel I. Klein