Securities Industry Association

120 Broadway, New York, NY 10271-0080, (212) 608-1500, Fax (212) 608-1604
1401 Eye Street, NW, Washington, DC 20005-2225, (202) 296-9410, Fax (202) 296-9775
info@sia.com, http://www.sia.com

January 15, 1998

Senator Robert F. Bennett
Chairman
Senate Banking Subcommittee on Financial Services and Technology
538 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Bennett:

On behalf of the Securities Industry Association and its Year 2000 Legal and Regulatory Subcommittee, we are writing to provide comments on , S. 1518, *The Year 2000 Computer Remediation and Shareholder Protection Act of 1997*.

At the outset, we would like to thank you for your hard work on the Year 2000 issue. As Chairman of the Senate Banking Subcommittee on Financial Services and Technology you have a unique opportunity to highlight this issue and educate your colleagues and the public. We appreciate the seriousness with which you have taken this role. The attention and analysis you have given to the Year 2000 and its impact on the financial services industry is unparalleled.

In response to a request by your staff, we have prepared the attached memorandum. In short, we believe existing SEC disclosure requirements are preferable to passing new legislation. The "Management's Discussion and Analysis of Financial Condition and Results of Operations," supplemented with Staff Legal Bulletin No. 5, (updated January 12, 1998) provides a flexible and realistic approach to disclosure. Any further direction in this area would best be accomplished through additional regulatory guidance -- with legislative oversight if necessary -- rather than through legislation.

Again, thank you for your attention to this issue -- Robert Cresanti and MaryAnn Nash on your staff have been particularly helpful and knowledgeable. We hope to continue this dialogue with you as the 105th Congress resumes.

Sincerely,

Steve Judge

Senior Vice President
Government Affairs

Oliver Herzfeld
Chairman
Year 2000 Legal and Regulatory Subcommittee

Summary of Concerns on Year 2000 Computer Remediation and Shareholder Protection Act of 1997.

General.

There is no reason why Year 2000 computer compatibility issues should be treated any differently than other important issues that have the potential to significantly disrupt ongoing business arrangements, such as environmental liabilities, labor issues, merger negotiations, and financial leveraging.

The SEC's existing disclosure rules, particularly its "Management's Discussion and Analysis of Financial Condition and Results of Operations" ("MD&A")(Item 303 of Regulations S-K and S-B) is a flexible and realistic approach to disclosure of all issues that can have a material impact on a company's financial condition and results of operations. The SEC has supplemented its MD&A requirements with Staff Legal Bulletin No. 5 (revised on January 12, 1998). Any additional direction in this area can best be accomplished through further regulatory guidance (and legislative oversight, if necessary) rather than directly through legislation.

A specific disclosure requirement for this single issue would not only be unprecedented, but it would also not prompt any greater disclosure of material information than is now required by the SEC's MD&A rule. Instead, its only likely effects would be to (i) force companies to include boilerplate warnings, to the detriment of clear and relevant disclosure; and (ii) provide plaintiffs' counsel with a road map for frivolous litigation.

Specific Comments.

Section 3(b)(1). This detailed prescription of disclosure may not be material for many companies. In addition, terms like "awareness, assessment, renovation, validation, and implementation" and "appropriate business unit" are open to many different interpretations in specific instances. In order to cover themselves from potential litigation, companies are likely to implement this provision by taking a "kitchen sink" approach to disclosure.

Section 3(b)(2). Any material costs or anticipated costs incurred by the issuer are already required to be disclosed. Estimates of nonmaterial future costs serve no useful purpose, and are likely to spawn litigation if they turn out to be off the mark.

Section 3(b)(3). "anticipated litigation costs and liability outlays" are truly impossible to forecast, since they depend on a host of unforeseeable contingencies, such as the identity of the party bringing suit, the litigation strategies and legal theories that opposing counsel might pursue, the substantive and procedural laws existing at the time suit is brought in the jurisdiction (both U.S. and foreign) in which a case might be brought, the predilections of the judge to whom the case is assigned, and the causal connection between any alleged injury and the company's activities.

Section 3(b)(4). The proposal that insurance coverage be disclosed is not only an open invitation for frivolous lawsuits, but is also potentially misleading. It gives a deceptive sense of comfort: if there were insurance coverage, it would likely only help defray the costs of bankruptcy and little else.

Section 3(b)(5). "Contingency plans developed by the issuer to ensure continued operations of the essential business functions of the issuer" could potentially require issuers in many instances to disclose sensitive proprietary information. This disclosure could harm the competitiveness of some issuers, and discourage issuers from developing highly detailed plans.