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# Intellectual Property & Technology Law

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A periodic report designed to provide review and analysis of legal developments affecting technology and intellectual property

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## FFIEC ISSUES DIRECTIVES ON YEAR 2000 COMPLIANCE

The Federal Financial Institutions Examination Council (FFIEC) recently issued an Interagency Statement emphasizing Year 2000 issues facing financial institutions in an effort to heighten awareness and focus the attention of regulatory agencies and the banking industry in general on the potential impact of Year 2000 issues. The Interagency Statement sets forth the steps to be taken by management at financial institutions to assess and resolve Year 2000 issues, including identifying systems and applications that must be modified, evaluating various alternatives (determining which applications should be redeveloped, replaced or modified); estimating costs for modifications; reviewing, approving and establishing milestones to ensure the timely completion of the institution's millennium plan; and ensuring that new systems are Year 2000 compliant.

The FFIEC also directs financial institutions to assess computer systems and services provided by service bureaus, hardware vendors and other software vendors to ensure that such vendors and servicers are adequately addressing Year 2000 issues. The Interagency Statement concludes with the recommendation that all remediation efforts be completed by December 31, 1998 in order to provide one full year for testing.

The Interagency Statement also discusses the supervisory role the bank regulatory agencies will take with regard to Year 2000 compliance issues. The agencies' supervisory plans should serve to increase the industry's awareness of Year 2000 issues, assess the planning efforts of banks and

thrifths with respect to such issues, include a review of Year 2000 preparedness in its examination process, and work with institutions facing difficulties. As part of their follow-up, the agencies will also "take appropriate supervisory action" if institutions fail to devote adequate attention and resources to Year 2000 issues.

The Interagency Statement is comprised of four major areas addressing Year 2000 issues: Year 2000 Project Management, External Risk Issues, Other Operational Issues and Supervisory Strategy.

### **Year 2000 Project Management**

The FFIEC expects management to establish a program to assess and resolve Year 2000 problems within their institution and sets forth timeliness for the process. The Interagency Statement directs that: (i) "mission critical applications" be identified and priorities set for Year 2000 remediation by the end of the third quarter of 1997; (ii) code revisions, hardware upgrades and other changes that follow the initial assessment be completed by December 31, 1998; (iii) testing be well underway by December 31, 1998 to provide sufficient time for testing; and (iv) institutions have Year 2000 plans in place for examiner review.

The Year 2000 project management provisions provide for five phases in the management process: awareness phase (defining the problem and obtaining executive management support), assessment phase (assessing magnitude of the problem and magnitude of remediation of the problem), renovation phase (remedy Year 2000 defects), validation phase (testing the remediation), and implementation phase (all systems Year 2000 complaint).

#### **About Vedder Price**

Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with approximately 180 attorneys in Chicago, New York City and Livingston, New Jersey.

#### **Technology and Intellectual Property Group**

Vedder, Price, Kaufman & Kammholz offers its clients the benefits of a full-service patent, trademark and copyright law practice which is active in both domestic and foreign areas. Vedder Price's practice is directed not only at obtaining protection of intellectual property

### **External Risk Issues**

The Interagency Statement directs management to immediately consider certain issues in its assessment process. Regulators have determined that some institutions have not taken a proactive approach in ensuring Year 2000 compliance by third parties for data processing services or application software. The Interagency Statement directs that management work with such vendors and monitor the vendors' progress with respect to Year 2000 progress and include Year 2000 covenants in all vendor contracts. Institutions should also review methods of data exchange

rights for its clients, but also at successfully enforcing such rights or defending its clients in the court and before federal agencies, such as the Patent and Trademark Office and the International Trade Commission when necessary.

We also have been principal counsel for both vendors and users of information technology products and services. Computer software development agreements, computer software licensing agreements, Year 2000 counseling, outsourcing (mainly of data management via specialized computer software tools as well as help desk-type operations and networking operations), multimedia content acquisition agreements, security interests in intellectual property, distribution agreements and consulting agreements, creative business ventures and strategic alliances are all matters we handle regularly for our firm's client base.

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among financial institutions that are threatened by the Year 2000 problem and provide sufficient time to assess the effect of Year 2000 solutions on data transfers among institutions. Financial institutions lending to large corporate customers are directed to assess such customers' Year 2000 efforts to insure that there is no disruption of business with respect to those customers and include Year 2000 compliance language in its loan documentation.

### Other Operational Issues

The FFIEC also instructs financial institutions to consider other operating issues in assessing Year 2000 issues, such as system repair versus system replacement, cost and monitoring, effect of mergers and acquisitions on compliance programs, existence of remote locations, legal issues relating to license agreements and other contracts, and necessity for all Year 2000 plans to address Leap Year calculations (February 29, 2000).

### Supervisory Strategy

The regulatory agencies will conduct a supervisory review of all financial institutions' Year 2000 compliance efforts by mid-1998. The Interagency Statement includes an examiner questionnaire that the agencies may use in assessing an institution's progress on Year 2000 issues. The questionnaire can also be used by an institution's management as a self-assessment of its Year 2000 compliance efforts.

Given the magnitude of the Year 2000 problem, the federal regulatory agencies intend to closely monitor each institution's efforts to adequately assess and resolve Year 2000 compliance issues. Institutions should already be well under way in their Year 2000 compliance programs, as time and resources are becoming scarce.

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