

FEDERAL RESERVE BANK *of* NEW YORK

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Antitrust Guidelines for the Community Depository Institutions Advisory Council

Effective Date: March 3, 2015

Introduction

Members of the Community Depository Institutions Advisory Council (“Members” of the “Council”) play a valuable role to the Federal Reserve Bank of New York (“FRBNY”) and Board of Governors of the Federal Reserve System (the “Board of Governors”). The purpose of the Council is to provide information, advice, and recommendations to the FRBNY and to the Board of Governors from the perspective of community depository institutions. Members need to keep in mind, though, the antitrust law concepts discussed in these Antitrust Guidelines (the “Guidelines”), which are similar to the antitrust guidelines prepared for and distributed to other outside committees of the FRBNY. Understanding and adhering to these Guidelines is essential to the protection of the Members, their institutions, and the Council.

The United States Congress and the states have enacted antitrust laws to promote competition by ensuring that business activities are conducted in an open and competitive atmosphere, and that no unreasonable restraints are placed on competition. Antitrust law permits participants and competitors to join together on committees to provide information, advice, and recommendations to entities involved in public policy-making, and other such activities. But because such committees bring together competitors to discuss economic, financial, and market conditions, they can be subject to antitrust scrutiny. Care must be taken when Members communicate – whether at formal or informal meetings, conference calls, or electronically – to ensure that no conduct becomes or appears anticompetitive.

Enforcement of the antitrust laws can come from not only the U.S. Department of Justice and state authorities, but also private individuals or entities who feel aggrieved by a particular course of conduct. Given the high profile of the FRBNY within the financial community, Members must expect careful scrutiny of their actions.

All Members should review these Guidelines carefully and share them with any of their staff involved in Council projects. If you have any questions about either these Guidelines, please contact an attorney from the FRBNY.

Impermissible Conduct

Some conduct can violate the antitrust laws even though it has some beneficial effects on the market. This conduct could fall within the activities that antitrust law deems *per se* illegal. To avoid problems and embarrassment, Members should never engage in any of the following conduct or activities.

- **Price Fixing Agreements:** Members should never agree to fix prices, fees, commissions, or any other element of the price or terms of a transaction. They should also never make agreements that could have the effect of fixing prices, fees, or commissions. Discussions concerning these issues should always be avoided.
- **Sharing Pricing Information:** Members should never share or compare information concerning their firms’ prices or fees, or the process of setting prices or fees,

including costs that impact pricing or bidding, as this may be seen as an implicit attempt to fix prices, fees, or commissions.

- **Boycotts:** “Boycotts” refers to agreements among competitors to refuse to deal with someone, or to deal with a particular firm (or firms) differently than others. Members should never agree either to treat a particular individual, firm, or group of firms in a prescribed manner, or to boycott any individual, firm, or group of firms. Members may not discuss setting prices for any particular customer or customers, nor should they agree to deal or not to deal with particular customers in a specific product.
- **Allocation of Customers or Territories:** Members should never agree to allocate customers or products among themselves. Discussions concerning plans to expand into or withdraw from certain geographic or product markets should be avoided.

Conduct that May or May Not Be Permissible

Antitrust law applies a “rule of reason” analysis to activities that are not *per se* illegal, weighing the anti-competitive effects against the pro-competitive justification for an activity. While antitrust law recognizes the benefits of these activities in many situations, care should be taken to ensure that otherwise permissible activities do not mask or promote actions that are or could be interpreted as anticompetitive.

- **Information Sharing:** Council members may discuss market information, as well as common problems and challenges of a general, administrative, or logistical nature, but no discussions should have as their purpose encouraging uniform action or eliminating competition.
- **Proprietary Information:** Detailed information-sharing among Members concerning confidential, proprietary, or competitively sensitive information, including but not limited to prices, business plans, marketing plans, new product development, internal costs, or non-public profit estimates, can raise antitrust concerns. If such proprietary information is pertinent to the work of the Council, it should be shared, aggregated, and disseminated for legitimate business reasons through a FRBNY staff member.

Procedures to ensure compliance

Notwithstanding the restrictions outlined above, the Council plays a valuable role to the FRBNY and the Board of Governors. The Council’s information sharing activities are acceptable under antitrust law because they are designed to provide information, advice, and recommendations to the FRBNY and Board of Governors from the perspective of community depository institutions.

However, to maximize compliance with the spirit and letter of the antitrust laws – and to promote transparency, consistency, and fairness in Council proceedings – the following procedures have been adopted by the Council:

- The Council has an appointed secretariat who will serve as the repository of official records.
- Before every meeting, the secretariat will circulate an agenda to Members.
- The proceedings will be recorded in minutes, which will be publicly disseminated.
- At least one FRBNY attorney will attend all meetings, and any conference calls or other Council-sponsored activities that occur.

- Members are expected to police themselves, and are encouraged to report suspected violations of this policy to an attorney. Even discussions outside formal meetings or conference calls between competitors – including conversations that are assumed to be “off the record”— could result in antitrust scrutiny.