

FEDERAL RESERVE BANK *of* NEW YORK

33 LIBERTY STREET, NEW YORK, NY 10045-0001

Antitrust Guidelines for the Members of the Investor Advisory Committee on Financial Markets

Effective Date: January 2015

Introduction

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 like the Investor Advisory Committee on Financial Markets (“IACFM”) to make recommendations for industry reforms, best practices, and other such activities. 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 Federal Reserve Bank of New York (“FRBNY”) within the financial community, committee members must expect careful scrutiny of the IACFM’s actions.

All members should review these Guidelines carefully and share them with any of their staff involved in IACFM projects. If you have any questions about either these Guidelines, please contact an attorney from the Federal Reserve Bank of New York.

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, committee members should never engage in any of the following conduct or activities.

- **Price Fixing Agreements:** IACFM 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:** Committee 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

The following activities may or may not be permissible, depending on the circumstances. 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.

- **Standard setting:** Standard setting should be avoided if the standards under consideration would prevent certain entities (or groups of entities) from competing in the market or where significant barriers to entry would be raised. In all cases, the standards must be based on legitimate business reasons, such as improving market efficiency, stability, or integrity. Market participants’ adherence to the standards must be voluntary.
- **Information sharing:** Committee members may discuss common problems and challenges of a general, administrative, or logistical nature, but no discussion should have as its purpose encouraging uniform action or eliminating competition. Information about a member’s business may be shared in order to foster general understanding, and to contribute to the drafting of best practice recommendations. However, 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. Such proprietary information may be shared, aggregated, and disseminated for legitimate business reasons through an FRBNY staff member.
- **Best Practices Recommendations:** While the IACFM has not previously developed or issued best practices recommendations, this is one of the most important activities of industry committees and it can be done legally so long as a few principles are kept in mind. Best practice recommendations may not have the purpose or effect of eliminating competition in the pricing of products or services. Standards should seek to enhance the efficiency, stability, and integrity of the market and should discourage practices that have a detrimental effect on customers.

Legislative Activities

The IACFM may from time to time wish to present its views regarding governmental and regulatory matters to legislative bodies. Antitrust law specifically recognizes the right of competing members of a market to present a unified position to the government on issues impacting their market. However, IACFM members are advised to confine these communications and agreements to good faith, reasonable attempts to influence government actions.

Procedures to ensure compliance

Notwithstanding the restrictions outlined above, the value of external committees is clear. Best practices recommendations, market studies, and press releases are all ways in which such committees may meet their respective mandates. All these activities are acceptable because they are designed to improve the functioning, reputation, and integrity of the market.

The IACFM has created a number of procedures to maximize compliance with the spirit and letter of the antitrust laws, and to promote transparency, consistency, and fairness in IACFM proceedings. Specifically, all meetings will have an agenda, which will be circulated to the members in advance, and all meetings will be attended by at least one FRBNY attorney. Minutes recording the proceedings, and including a list of all attendees, will be kept and made publically available via the website for the IACFM.

IACFM members should 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.