

MONEY MANAGEMENT INSTITUTE

ANTITRUST GUIDELINES AND COMPLIANCE POLICY

I. INTRODUCTION

MMI is the national organization for the advisory solutions industry, representing asset management firms, sponsors of investment advisory programs, and service providers. MMI provides a forum for the industry's leaders to address issues and better serve investors. As a trade association, MMI is -- by definition -- a collaboration among competitors. As such, it must conduct its activities in full compliance with the antitrust laws. It is the policy of MMI to conduct its activities accordingly and to comply with all federal and state antitrust laws in such a manner as to avoid even the appearance of improper activity. These Antitrust Guidelines and Compliance Policy are intended to provide a basic overview of the antitrust laws, illustrate antitrust concerns that have been known to arise in trade association activities, and to alert members and staff to situations that should be avoided or circumstances under which legal guidance should be obtained. It is not an exhaustive discussion of every type of antitrust issue that might arise, either through MMI activities or activities of members unrelated to MMI programs. MMI staff and members should review the information and guidelines set forth below. Any questions should be raised promptly with MMI's President or legal counsel.

II. THE PURPOSE AND IMPORTANCE OF THE ANTITRUST LAWS

United States antitrust laws were enacted to promote competition and protect consumers. The Sherman Act, the most relevant federal antitrust law, prohibits agreements, understandings, or joint actions among companies that unduly restrain competition. Not every collective action or agreement between two or more companies is unlawful; the antitrust laws are concerned only with those types of competitor collaborations that unreasonably restrain competition.

The antitrust laws broadly prohibit competitors from engaging in collaborative activities that restrain competition with respect to price, quality, or distribution of products or services. These laws also prohibit competitors from acting in concert to restrict the competitive capabilities or opportunities of other competitors, suppliers, or customers.

Although recognizing that trade associations, like MMI, play an important role in the economy by identifying and developing pro-competitive and efficiency-enhancing initiatives and other collaborative activities that strengthen industries for the benefit of all market participants, antitrust enforcement officials pay particular attention to trade association activities. In addition, the consequences of antitrust violations are severe and can include both civil and criminal liability, penalties, fines, and damages, as well as court orders requiring that certain business practices be enjoined. It is essential, therefore, that all MMI activities be undertaken consistent with the guidelines and principles set forth herein.

III. GENERAL ANTITRUST PRINCIPLES

Set out below is a brief overview of some of the key principles of antitrust law that members and staff should keep in mind in connection with MMI activities.

A. Agreements in Restraint of Trade

A core premise of the antitrust laws is that competition functions best when each competitor makes its business decisions independently. The antitrust laws, therefore, are concerned primarily with agreements among competitors that can unduly restrain such independent decision making.

Under the antitrust laws, such agreements need not be written or formal or enforceable; they, instead, can be oral or written, formal or informal, expressed or implied. In certain circumstances, the existence of an unlawful agreement can be inferred from circumstantial evidence that the participants have agreed to act in some manner that restrains trade. In certain circumstances, for example, an illegal agreement to restrain trade may be inferred from the fact that competing firms all acted in a similar manner following a meeting where a particular topic was discussed or certain information was exchanged. Even though the meeting or information exchange may not have had any impact at all on a firm's independent business decisions that may have led it to act in a manner similar to its competitors, it may be difficult to overcome the inference of an illegal agreement.

B. "Per Se" Unlawful Agreements

Certain types of conduct are considered to be "per se" illegal under the antitrust laws. This means that the conduct is strictly illegal without regard to intent, reasonableness, actual competitive effects, or other justification. The most important of these per se illegal practices of greatest concern to trade associations are:

PRICE-FIXING: Agreements among competitors on the price at which they will sell their products or services are called "price-fixing." Price-fixing may exist even if there is no agreement on a specific price to be charged. Any agreement between or among competitors with the purpose of increasing or affecting the price of a product or service will violate the antitrust laws. Price-fixing might include agreements among competitors on price ranges, pricing formulas, stock and other commission rates, the size of price spreads, discounting policies, or account fees. Thus, representatives of competing firms should, at all times, avoid discussing actual prices charged or to be charged for products and services.

BID-RIGGING: "Bid-Rigging" is an area closely related to price-fixing and is also per se illegal. The objective of bid-rigging is to eliminate or reduce price competition, or to assure that, over time, each competing bidder receives a "fair share" of total business awarded on the basis of sealed bids. Bid-rigging includes the designation by competitors of one company to win a bid with the understanding that the remaining companies will submit higher bids. An agreement among competitors not to bid on a particular project also constitutes bid-rigging.

CUSTOMER ALLOCATIONS: Another per se illegal violation concerns any agreement to divide or allocate customers among competing entities. These are illegal, whether based upon

specific customers or classes of customers. For example, an agreement between competitors pursuant to which one competitor agrees not to pursue retail investors, if the second competitor agrees not to pursue institutional investors, or a certain class of institutional investors, is an unlawful customer allocation. No discussions should occur concerning allocating current customers.

GEOGRAPHIC/PRODUCT MARKET ALLOCATIONS: Agreements among competitors to divide or allocate business on the basis of U.S. geographic or product markets are per se unlawful. For example, agreements among firms in different regions of the country not to enter each other's U.S. geographic territories are strictly illegal, as are agreements with competitors allocating certain products or investment vehicles among themselves. Discussions concerning plans to expand into or withdraw from certain geographic or product markets should be avoided.

GROUP BOYCOTTS: A group boycott exists when a group of competitors agrees to take some form of action to exclude someone from the market, such as by agreeing to refuse to deal with another competitor, or with a supplier or customer. Group boycotts can be considered under some circumstances to be per se illegal, and no discussion about forming a boycott should take place.

C. "Rule of Reason" Collaborations

The types of competitor collaborations discussed below are generally subject to an antitrust analysis known as the "rule of reason." This means that the conduct may or may not be permissible, depending on the circumstances. Frequently, this "rule of reason" analysis does not lend itself to specific guidelines, and legal counsel may need to be consulted to determine whether a particular activity is permissible.

STANDARD SETTING: Product standards development refers to the process of identifying and agreeing upon a specific set of criteria to which a particular type of product should conform. In the United States, product standards are generally developed by private industry and are often spearheaded by trade associations. Standards development may create antitrust problems where, for example, they preclude certain entities from competing in the sale of that product, or features are added to a product for no reason other than to increase the price of the product. Care must be taken to ensure any such standards can be supported by legitimate business justifications. In addition, any standards promulgated by MMI must be recognized as purely voluntary in nature. Each member has the right to follow the standards or not

BEST PRACTICES: It is not unusual for trade associations, particularly professional associations, to promulgate standards of conduct or a code of professional responsibility for members of the association. To the extent these standards are designed to protect the public from clearly unethical, fraudulent, unfair or deceptive practices, there are substantial business justifications to support the standards of conduct under the antitrust laws. Care must be taken, however, to ensure standards of conduct, such as any proposed "best practices" suggestions, do not have the purpose or effect of disadvantaging

competitors or favoring one group of competitors over another. In addition, any best practices developed by MMI must be recognized as purely voluntary in nature, with each market participant deciding for itself whether or to what extent to adopt or implement any such practices.

INFORMATION EXCHANGES: Information concerning matters such as prices charged for services rendered, business plans, marketing plans, new product development, costs and profits, that is not already publicly available, and which is competitively sensitive, can raise antitrust questions. While some types of information exchange are clearly pro-competitive, other types of information sharing could raise questions as to whether the exchange of information suggests, or could facilitate, an agreement to restrain trade. Some of the factors that are important to consider are: whether the information is being collected by MMI or another third party and will be disseminated in such a way that the competitors which provided the information are anonymous; whether the information is historical data or projected prices or costs; whether the data providers constitute a significant share of the market; and whether the data is already publicly available.

D. Government-Related Activity

MMI's mission is for industry participants to address common concerns, discuss industry issues and work together to better serve investors and be a leading advocate for the industry on regulatory and legislative issues. Regardless of their competitive implications, efforts of MMI and its members to persuade legislators or government officials to take (or not take) legislative, administrative, or regulatory action are generally protected against challenge under the antitrust laws as an exercise of free speech rights under the First Amendment. This immunity also extends to participation in judicial and administrative proceedings, so long as there is a sound legal basis for the positions asserted by the trade association in such proceedings. However, the mere fact that a government official is present at a meeting or suggests that the industry engage in collective action provides no shield for otherwise illegal activity. Moreover, activities that are not genuinely intended to influence government action may be considered a sham and vulnerable to antitrust allegations.

VI. ANTITRUST GUIDELINES

Based on the general antitrust principles identified above, MMI staff and members should conduct their activities in compliance with the following guidelines.

A. Price (Current or Future)

Do not reach an agreement – expressed or implied – to fix, stabilize or otherwise tamper with the price of goods and services (or any price-related aspect of competition). “Price” includes any element that directly or indirectly affects price or pricing decisions. Pricing is viewed as the most sensitive subject under the antitrust laws and should rarely ever be discussed. Accordingly, the following items should not be discussed in the context of

MMI meetings or activities without legal guidance to avoid the appearance of improper conduct or any inference of an unlawful agreement on price:

- Current or future prices.
- What constitutes a “fair profit level.”
- Possible increases or decreases in prices.
- Standardization or stabilization of prices.
- Pricing procedures or formulas.
- Cash discounts or rebates.
- Credit terms.
- Confidential future marketing or business plans.
- Salaries, benefits, or wages for employees or independent contractors.
- Whether or not the pricing practices of any member are unethical or constitute an unfair trade practice.
- Information concerning any individual member company’s costs, profits, inventory, market share, or other commercial information of a non-public nature.

B. Competitors and Other Market Participants

A joint action against another participant in the industry that causes a competitive disadvantage is prohibited. In certain circumstances, exclusion of certain members or nonmembers from a program or activity sponsored by MMI may result in competitive disadvantage. Therefore, any activity taken by MMI that may have a significant commercial impact on our industry should be reviewed by legal counsel in order to prevent antitrust violations or even the appearance of antitrust violations.

C. Customers

Avoid any actions that have the appearance of allocating customers, sales, territories, or products. Agreements amongst competitors about who will – or will not – sell particular products, in a particular geographic market, or to particular customer or classes of customers are illegal per se (i.e., the act is inherently illegal).

D. Suppliers and Service Providers

MMI should avoid any activity that could be interpreted as an agreement not to deal with a particular supplier or service provider or to deal with suppliers or service providers only on certain terms. Each MMI member must decide for itself, based on its independent business judgment, with whom it will deal and on what terms.

E. Other Conduct Guidelines

To avoid even the appearance of questionable activity, as well as to guard against inadvertent misconduct, the following additional guidelines should be followed:

- Do not stay at a meeting where any unauthorized discussions of such topics occur.
- Do not make announcements about your own prices (or elements of price) at Institute functions.
- Do not talk about what your company plans to do in particular geographic or product markets, with certain classes of customers, with service providers, or with regard to specific types of transactions.
- Do not disclose to others at meetings any other competitively sensitive information.

V. RECOMMENDED COMPLIANCE PROCEDURES

To reduce the possibility that any MMI-sponsored meeting or activity could be viewed as inconsistent with any of the guidelines set forth above, the following procedures should be observed, not all of which may be applicable to a particular activity or meeting and some of which may not be practical or necessary in connection with such activities. In all events, MMI staff and members should use their best judgment about ensuring that their activities do not inadvertently extend into questionable topics or discussions that may pose antitrust risk.

- A written agenda should be prepared and followed.
- Accurate minutes of meetings should be prepared when feasible, sent to the participants, and maintained in MMI's files. There are times when minutes may be unnecessary or impractical, including, for example, conference calls which are consistent with, and do not stray beyond, an approved written agenda that accurately reflects the matters discussed.
- Accurate records should be maintained that include copies of any handouts prepared for and used in committee meetings.
- In the case of any doubt about the propriety or a topic of discussion, MMI's staff or counsel should be consulted.
- If a member has a reservation concerning remarks or discussion at meeting, that reservation should be stated.
- Avoid informal, "off the record" gatherings involving the discussion of business matters.
- All written documents relating to MMI's activities should be prepared with the assumption that they can be used in a legal proceeding. MMI policy prohibits the use of MMI letterhead by anyone other than MMI staff.

VI. GOVERNMENT REQUESTS FOR INFORMATION

MMI is committed to always cooperating with government agencies, subject to all the safeguards provided by law. In the event that a government official or agency requests information related to MMI activities, The President of MMI or MMI counsel should be immediately contacted to facilitate MMI's cooperation and responsiveness to any such request.

VII. CONCLUSION

Compliance with the antitrust laws is the responsibility of all MMI members and staff and any violation of MMI's Antitrust Policy or conduct inconsistent with its Antitrust Guidelines may be subject to sanction. If it ever appears to any MMI staff or member that an antitrust violation may have occurred or an initiative or activity raises antitrust concerns, MMI members and staff should inform the President of the association and MMI's legal team as soon as possible.