

# FEDERAL RESERVE BANK *of* CLEVELAND

## Antitrust Guidelines for Members of the Federal Reserve Bank of Cleveland's Advisory Councils

The Federal Reserve Bank of Cleveland ("Bank") has established a framework for the creation of advisory councils to address particular issues or markets, or advise the Bank with respect to industries, current and emerging business conditions and risks, and various other matters (collectively, "Advisory Councils"). The Bank is committed to compliance with the law, including antitrust laws. Although antitrust law does not prohibit participants and competitors from joining together on councils, it is important that care is taken when members of an Advisory Council meet, either formally or informally, or otherwise communicate concerning Advisory Council business, so that their conduct does not become or appear to be anticompetitive. These guidelines ("Guidelines") are designed to assist in compliance with antitrust laws. Federal law and state law prohibit certain business activities as antitrust violations. Antitrust laws are designed to protect competition and eliminate unreasonable restraint on trade. Many competitor collaborations, such as the Advisory Councils, have legitimate purposes, but the consequences for improper activity are substantial. Antitrust violations may result in criminal and civil liability, and penalties for antitrust violations may include significant corporate and individual fines and damages, and imprisonment for individuals.

The Bank has adopted these Guidelines and they apply to all activities related to the Advisory Councils. Adherence to the Guidelines is mandatory and is a condition for participating in an Advisory Council. Members are individually responsible for ensuring that their actions comply with the antitrust laws. Members should review these Guidelines carefully, and share these Guidelines with any of their staff involved in Advisory Councils. While it is appropriate for members of an Advisory Council to meet and discuss problems and challenges presented in the marketplace, no discussions of the members should have as its purpose encouraging uniform action or reducing or eliminating competition. Improper information sharing may violate antitrust laws if it aides conspiracies to fix prices, allocate customers or markets or attempt to monopolize markets. For example, information sharing among competitor members concerning confidential, proprietary, or competitively sensitive information may raise antitrust concerns. The following areas are particularly sensitive to claims of improper information sharing and members should not engage in any of the following conduct in conjunction with their work on an Advisory Council:

- Prices – Any attempts to raise, stabilize or set future prices is a per se violation of antitrust laws.
- Customer or Territory Allocation – Customer or territorial allocation of markets is a per se violation of antitrust laws.
- Boycotts or Exclusive Dealings – Agreements among competitors to only deal with certain firms or only deal with them on different terms are a per se violation of the antitrust laws.
- Strategic Planning – Participants should not discuss their own confidential, proprietary plans such as business plans, marketing plans and plans for future expansion, withdrawal from a market, new products or new pricing.
- Costs – Attempts to control costs, such as labor, can be viewed as anticompetitive. While labor costs in the market could be an appropriate topic for an Advisory Council meeting,

establishing specific salaries or the maximum salary for certain types of employees is inappropriate.

- Lending Standards – Any collusive agreements among members on the setting of interest rates or other lending standards.
- Monopolization – Any discussion of efforts to unlawfully monopolize a market or line of business.

The Bank has created certain procedures to help facilitate compliance with the letter and the spirit of the antitrust laws. These include:

- The identification of a secretariat (including any designee of such secretariat, the “Secretariat”) by the Bank, who will serve as the repository of official records of the Advisory Council.
- All Advisory Council meetings will have an agenda which will be made available in advance of the group’s meeting.
- Minutes of Advisory Council meetings, including a list of all attendees and topics discussed, will be recorded and maintained.
- All Advisory Council meetings will be attended by a Bank staff member. A representative of the Bank’s Legal Department will attend meetings of an Advisory Council as appropriate.
- Any materials to be shared with an Advisory Council during its meetings, conference calls or other council-sponsored activities must be made available to the Secretariat in advance of distribution. The Secretariat will oversee all distributions of materials to the members. Members should not share information related to the work of the Advisory Council among themselves that has not been previously submitted to the Secretariat.
- Each member and any non-members participating in Advisory Council activities will be provided with a copy of these Guidelines.

If a member of an Advisory Council suspects that these Guidelines or any antitrust laws are being violated, they should remove themselves from the meeting or activity and notify the Secretariat of such concerns. In the alternative, members may speak with their own attorneys and communicate through their attorney to the Secretariat.