LSTA ANTITRUST GUIDELINES

The antitrust laws are designed to ensure that business is conducted in an open, competitive atmosphere and that competition is not unreasonably restricted. Trade associations and their members are subject to particular antitrust scrutiny. The courts have sometimes deemed trade associations to be possible "hotbeds of conspiracy." It is an easy matter, in the context of a trade association, to cross the line that separates legitimate joint activity from illegitimate anticompetitive conduct.

The challenging aspect of complying with antitrust laws is that they are complicated and the general language in which the statutes are written does not specify the exact conduct that would be considered a violation. Therefore, you should review these guidelines periodically, and consult with the LSTA General Counsel if you have questions.

Why You Should Be Concerned

Federal antitrust statutes originated with the Sherman Antitrust Act and include the Clayton, Robinson-Patman, and the Federal Trade Commission acts. These laws make monopolization and unreasonable restraints of trade illegal. Their violation may be a felony punishable by large fines and imprisonment, and a number of executives guilty of antitrust crimes have been sentenced to jail.

In addition, corporations and other persons injured by violation of federal (and many state) antitrust laws may recover treble damages and all their attorney's fees. As a result, bringing antitrust lawsuits is encouraged, and accused individuals and corporations, whether innocent or guilty, are exposed to the aggravation, inconvenience and costs of defense. Remember, the mere exchange of price, product or cost information can give rise to an investigation.

Your ultimate task, as a member of the LSTA, is to avoid any appearance or basis for characterization of impropriety and not just to remain honest in fact. Accordingly, there is a need for all members of the LSTA to ensure their own compliance with these guidelines and firmly shut down discussions that might inadvertently stray and immediately report them to LSTA counsel.

What Is Prohibited

The antitrust laws prohibit agreements to:

- Fix prices (for example, the compensation a dealer receives for its services, including commissions, interest rates, fees, and other accommodations).
- Divide markets or customers.
- Boycott or jointly refuse to deal with customers or other financial institutions, or agree only to deal on certain specified terms (for example, adopting certain covenants or agreed upon margin levels or rates).
- Arrive at any understanding, express or implied, respecting any anticompetitive concert of action.

An anticompetitive agreement need not be formal or even express and can be proven by circumstantial evidence. Thus, if such circumstances as the exchange of pricing plans permit the inference of a tacit understanding to "act in concert" or "follow the leader," a jury may be allowed to find intentional violation of the law.

The LSTA is committed to ensuring that none of its activities, as carried out by its members, even remotely suggests antitrust misconduct. Keep in mind the following basic guidelines when attending LSTA events.

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What You Should Avoid

At meetings and roundtables conducted by the LSTA, and even in conversations:

- Do not agree — or engage in any form of conduct from which it may be argued that you agreed — to fix commissions, interest rates, fees or any other element of the "price" or terms of transactions.

- Do not share information concerning your prices or fees on matters such as costs that affect your price.

- Do not agree to treat a particular individual or group of customers in one set manner or to boycott or stop dealing with certain kinds of customers.

- Do not allocate customers or territories.

- Do not make announcements concerning what your firm may or may not do concerning terms for dealing with certain classes of customers.

- Do not disclose confidential, proprietary or competitive information on your institution's sensitive corporate strategies.

What You Can Do

- You may discuss common problems and challenges of a general, administrative or logistical nature as long as a purpose is not to encourage uniform action and the elimination of competition with respect to future transactions. It is permissible to discuss deteriorating or problematic areas of the market.

- You may communicate with respect to a unified position vis-à-vis government agencies. Be careful that you do not suggest "standing up" to groups of competitors or to anyone except the government.

- You may formulate and use standard agreements, guidelines and procedures, but members must not agree that these standards will be the only terms on which they will deal with others.

How You Can Avoid the Appearance of Impropriety

- Have a member of the LSTA's senior staff present at gatherings of peers. For discussions of more sensitive subjects, the LSTA may ask its counsel to monitor meetings; members are also free to have their own counsel monitor meetings.

- Prepare an agenda or list for each meeting of a committee or other group of members that sets out the subjects for discussion. Do not go far afield from the agenda; if it becomes clear that the group would like to discuss a new subject, the LSTA staff member can (after consideration of the topic and obtaining legal advice where appropriate) arrange a new meeting at which that subject will be on the agenda.

- Make sure the LSTA staff member keeps notes that accurately reflect the attendees (in person and by phone) and the content of the meeting.

- The LSTA's General Counsel should be consulted in connection with any proposals related to membership eligibility or expulsion of a member, creation of a code of ethics or other forms of self-regulation, or the development of joint statistical or cooperative research programs.

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