Antitrust Statement for the Managed Funds Association

April 2009

In conducting the business of the Managed Funds Association ("MFA"), it is important that representatives of the participating companies remember that their actions are subject to antitrust and competition laws. Antitrust concerns are heightened when, as in this case, some participants are competitors of one another. Accordingly, we must be careful to avoid even the appearance of engaging in any inappropriate conduct, both during the formal meetings and in any informal discussions.

In this regard, meeting participants should bear in mind several important principles:

1. The antitrust laws prohibit conduct that unreasonably restrains trade. In most cases, an "agreement" must be shown to establish a violation. Agreements can be explicit or inferred, however.

2. Some types of agreements or understandings are considered so harmful that they are automatically unlawful and no justification may be offered to defend them under most antitrust laws. These activities can result in criminal penalties and substantial triple damage exposure. Examples of these "per se" violations include:

    a. price fixing of all forms;
    b. market division, including agreements to divide customers, territories or product lines;
    c. restrictions on output or production, including agreements on capacity levels; and
    d. some forms of joint refusals to deal with customers, competitors or suppliers.

3. Courts and agencies also recognize, however, that agreements can promote as well as restrain competition, even when competitors are involved. Because of these potential benefits, trade association activities are ordinarily analyzed under the "rule of reason," which involves a weighing and balancing of a collaboration's competitive effects.

4. Although most trade associations will pass muster under the antitrust laws, concerns may nonetheless be present if, for example, they:

    a. unreasonably limit independent decision making or otherwise diminish innovation;
    b. result in overbroad exchanges of competitively sensitive information;

c. have the effect of increasing prices or reducing options available to customers; or
d. unnecessarily disadvantage competitors, customers or suppliers.

5. The antitrust laws do, however, grant immunity to competitors acting jointly for the purpose of seeking to influence the actions of the government.

6. In connection with our meetings:

    a. DO:

        1. adhere to the prepared agenda;
        2. avoid any conduct that could be characterized as automatically unlawful or unreasonably exclusionary;
        3. remember that appearances are important.

    b. DON'T:

        1. discuss competitive issues that aren't necessary to the specific topics before us;
        2. exchange competitively sensitive information without approval of counsel;
        3. engage in "loose talk" regarding competitively sensitive information with competitors outside formal sessions.