

## COMPETITION LAW COMPLIANCE POLICY AND GUIDELINES

The Board of Directors of the Investment Industry Association of Canada (the “IIAC”) has adopted the following policy to ensure that all activities of the Association operate in compliance with the *Competition Act* (the “Act”).

### 1. INTRODUCTION

It is the IIAC’s policy to comply with the Act in letter and spirit. This policy applies to all members of the IIAC and to employees of the IIAC.

Members are reminded that the Act applies to all business activities in Canada, including the actions and activities conducted by or under the auspices of trade associations such as the IIAC.

### 2. TRADE ASSOCIATIONS & COMPETITION LAW ISSUES

Trade associations, such as the IIAC are legitimate forums for cooperation among competitors. Trade associations’ activities generally do not raise issues under the Act and they perform many beneficial functions for their members, including lobbying policy makers, government relations, public education, joint promotion of the industry, etc. However, the very nature of associations, especially those that bring together competitors, creates a risk that they could be used, directly or indirectly, as a vehicle for anti-competitive activities. In particular, trade associations could be used to assist in the implementation of anti-competitive agreements and other collective actions that raise competition law issues.

Of greatest concern is where an association provides a forum for competitors to agree on competitively sensitive matters. Trade association activities on subjects such as pricing, customers, territories, market shares, terms of sales and advertising restrictions can lead to anti-competitive behaviour and can raise concerns under the Act. For these reasons, members and their representatives on IIAC committees must be aware of the application of competition law and potential risks relating to their (and the IIAC’s) activities and must therefore be careful to avoid conduct which could be in violation of the Act.

As a trade association, the IIAC’s activities are distinct from the business of IIAC members, who also have their own responsibilities for ensuring compliance with the Act.

### 3. OVERVIEW OF THE ACT

Members are reminded that the Act applies to all business activities in Canada, including the actions and activities conducted by or under the auspices of trade associations such as at the IIAC. The Act is administered and enforced by the Commissioner of Competition and the Competition Bureau. The

Commissioner is an appointed independent law enforcement official. It contains both criminal and civil provisions aimed at preventing certain advertising practices and sets out certain prohibitions on how competitors may deal with each other, as well as how businesses treat their suppliers and customers. Specifically, the Act addresses, among other things, conspiracy (such as price fixing), bid-rigging, price discrimination, predatory pricing, discriminatory promotional allowances, double ticketing, multi-level marketing and pyramid schemes, price maintenance, bait and switch selling, sale above advertised price, mergers, refusal to deal, consignment selling, exclusive dealing, tied selling, market restrictions, abuse of dominant position, delivered pricing or specialization agreements.

The area of greatest concern for a trade association is competitor collaboration issues. Anti-competitive agreements among actual or potential competitors are the most serious competition criminal offence in Canada.

With very limited exceptions in the case of certain joint ventures, an offence is committed when one party agrees with a competitor or a potential competitor to:

- Fix, maintain, increase or control the price for supply of a product or service;
- Allocate sales, territories, customers or markets for the product or supply of a product or service;
- Fix maintain, control, prevent, lessen or eliminate the production or supply of a product or service.

These activities are strictly prohibited even if there is no negative impact on competition, even if competitors believe that prices will be lower or markets will be more competitive and even if there is no market impact.

In addition, a prohibited criminal agreement does not have to be express, or in writing. It can involve an implicit understanding. It can be assumed or inferred from exchanges of information and/or parallel conduct. Therefore it is important to ensure that members do not create the appearance of wrongdoing.

Violating the Act has significant legal, financial and reputational consequences for associations and their members.

Consequences can include:

- Fines against the IIAC and member firms of up to \$25 million;
- Fines of up to \$25 million and/or jail of up to 14 years for individuals;
- Use of investigative powers, such as wire taps and search warrants;
- Disruption of business and distraction from business efforts;
- Civil claims for damages; and
- Reputational damage to the IIAC and member firms.

#### 4. GUIDELINES

The following guidelines are provided to IIAC members to help ensure that meetings and activities of IIAC members do not lead to breaches of the Act. These guidelines apply at both formal and informal meetings. Please keep in mind that the Act is complex, and these guidelines do not cover all contingencies. Please consult legal counsel if you have questions about the Act or these guidelines.

## DO NOT

- Seek or accept, discuss or exchange commercially sensitive information with competitors or potential competitors (defined widely) concerning matters such as:
  - Fixing, maintaining, increasing or controlling the price of a product or service. Price is defined broadly to include discounts, rebates, allowances, price concessions or any other advantage in relation to the supply of a product or service.
    - Examples of potential competition law violations include: agreements between competitors or potential competitors to establish methods to determine prices or agreeing to the use of a price list for negotiations with consumers.
  - Allocating sales, territories, customers or markets.
    - Examples of potential competition law violations include: agreements among competitors or potential competitors not to compete for customers based on territory, type of service/product, or other criteria.
  - Output restrictions regarding fixing, maintaining, controlling, preventing, lessening or eliminating the supply of a product or service.
    - Examples of potential competition law violations include: agreements regarding quotas for products or agreements to reduce the quantity or quality of products or services.

## DO

- Obtain a copy of the agenda prior to participating in an IIAC meeting.
- Keep minutes of the meetings which clearly indicate the participants and the matters discussed and which follow the agenda of the meeting.
- Confine discussions to the immediate subjects for which the meeting was convened.
- Review the minutes provided by the IIAC and report any mistakes
- Be alert to discussions that may raise competition law concerns. If improper discussions arise, members should voice their concerns, and if necessary leave the meeting and have their departure noted for the minutes and report the incident to the IIAC.
- Seek legal advice if a particular situation gives rise to competition law concerns or questions – even silence can be construed as approval.
- Seek legal advice before discussing potentially sensitive competition issues.