Florida Independent Concrete and Associated Products, Inc.

Anti-Trust Compliance Policy
(Adopted January 25, 1994 - Revised November 8, 2006)

It shall be the policy of Florida Independent Concrete and Associated Products, Inc. to be in strict compliance to all federal and state Anti-trust Rules and Regulations, therefore:

BE IT RESOLVED, That the following are adopted as Florida Independent Concrete and Associated Products, Inc. Association's Anti-trust Compliance Policies and Procedures:

1. These policies and procedures apply to all membership, board, committee and other meetings sponsored by the Association, all meetings attended by representatives of the Association and to the Association's employees in all of their activities within the scope of their employment.

2. All meetings of the Association whether membership, board, committee or any other type of meeting sponsored by the Association, shall be conducted at though they were open to the public.

3. Discussions of prices or price levels are prohibited. In addition, no discussion is permitted of any elements of a company's operations which might influence price such as (a) company costs of operations, supplies, labor or services, (b) allowances for discounts, (c) terms of sale including credit arrangements, and (d) profit margins and markups; provided this limitation shall not extend to discussions of methods of operation, maintenance, and similar matters in which cost or efficiency is merely incidental.

4. It is a violation of the anti-trust laws to agree not to compete: therefore, discussions of division of territories or customers or limitations on the nature of business carried on or products sold are not permitted.

5. Boycotts in any form are unlawful. Discussion relating to boycotts is prohibited, including discussions about blacklisting or unfavorable reports about particular companies including their financial situation.

6. It is the Association's policy that all meetings attended by representatives of the Association where discussion can border on an area of anti-trust sensitivity, that the Association's representative request that the discussion be stopped and ask that the request be made part of the minutes of the meeting being attended. If others continue such discussion, the Association's representative should excuse himself from the meeting and request that the minutes show that he left the meeting at that point and why he left. Any such instances should be reported immediately to the Executive Director of the Association and through him to legal counsel so that the matter can be reviewed and a determination be made as to the necessity of further action by the Association.

7. It is the Association's policy that a copy of these Anti-trust Compliance Policies and Procedures be given to each director, committee member, official representative of member companies and Association employees annually and that the same be read as the first order of business at all meetings of the membership of the Association.

8. A prepared Agenda will be written and followed at all meetings. Particular attention will be paid to avoiding discussions as outlined in Paragraph 3 heretofore.

9. Formal minutes of all meetings will be written and filed.

Antitrust Information and Guidelines for FICAP

This section approved and adopted November 8, 2006

The antitrust laws are the rules under which our competitive economic system operates. Their primary purpose is to preserve and promote free competition. **FICAP is committed to ensuring that it's membership, board of directors, and volunteer leadership understands and complies in all respects with federal anti-trust rules and regulations.** The purpose of this document is to briefly review the federal antitrust laws applicable to the organization's activities and to set forth some general guidelines for compliance with those laws.

There are two antitrust statutes, which are of principal concern to individuals and firms who take part in non-profit organizational activities: the Sherman Act and the Federal Trade Commission Act. These laws prohibit contracts, combinations, and conspiracies in restraint of trade. The Supreme Court has said that not every contract or combination in restraint of trade constitutes a violation; only those that unreasonably restrain trade are unlawful. Thus the courts will look at all of the facts and circumstances surrounding the conduct in question in order to determine whether it unreasonably restrains trade and therefore violates the laws.

Certain kinds of conduct are exclusively presumed to be unreasonable and therefore unlawful. Such conduct, which is considered to be unlawful per se, consists of certain practices that clearly restrain competition and have no other redeeming benefits. Examples of such practices include:

1. agreements to establish price (price fixing);
2. agreements to refuse to deal with third parties (boycotts);
3. agreements to allocate markets or limit production;
4. tie-in sales which require the customer to buy an unwanted item in order to buy the product desired.

Associations and other non-profit membership organizations by their very nature present potential antitrust problems. One reason is that in bringing competitors together into an organization, there exists the means by which collusive action can be taken in violation of the antitrust laws. Association meetings or workshops by their very nature bring competitors together. Accordingly, it is necessary to avoid discussions of sensitive topics and especially important to avoid recommendations with respect to sensitive subjects. Since both the Sherman and Federal Trade Commission Acts prohibit combinations in restraint of trade and since a membership organization by its very nature is a combination of competitors, one element of a possible violation is already present. Only the action to restrain trade must occur for there to be a violation.

Another special antitrust problem of a membership organization is that many of its valuable programs deal with subjects sensitive from an antitrust viewpoint: price reporting, product standards, certification, statistics, and customer relations.

An antitrust violation does not require proof of a formal agreement. A discussion of a sensitive topic, such as prices, followed by parallel action by those involved in or present at the discussion is enough to show a price fixing conspiracy. As a result, those attending a FICAP sponsored meeting must remember the importance of avoiding not only unlawful activities, but also even the appearance of unlawful activity. Members of FICAP should refrain from any discussion that could provide the basis for an inference that the members agreed to take any action that might restrain trade.

An “agreement” among members in antitrust terms is a very broad concept: it may be oral or written, formal or informal, expressed or implied. A “gentleman’s agreement” to “hold the line” on prices is more than sufficient to evidence an unlawful conspiracy to fix prices.

The basic principle to be followed in avoiding antitrust violations in connection with organization activity is: to see that no illegal agreements, expressed or implied, are reached or carried out through the organization. Members should also avoid engaging in conduct, which may give the appearance of an unlawful agreement.

Following are some general guidelines, which can minimize the possibility that inferences of antitrust guilt can be drawn from organization activities:

1. Meetings should be held only when there are proper items of substance to be discussed which justify a meeting.
2. In advance of every meeting, a notice of meeting along with an agenda should be sent to each member of the group; the agenda should be specific and such broad topics as “marketing practices,” which might look suspicious form an antitrust standpoint, should be avoided.
3. Participants at the meeting should adhere strictly to the agenda. In general, subjects not included on the agenda should not be considered at the meeting.
4. If a member brings up for discussion at a meeting a subject of doubtful legality, he should be told immediately the subject is not a proper one for discussion. The organization staff representative or any member present who is aware of the legal implications of a discussion of the subject should attempt to halt the discussion. Should the discussion continue, despite protest, it is advisable that members leave the meeting.
5. Secret or “rump” meetings held at the time of the regular meeting should be strictly avoided. Such meetings may enhance the opportunity for the discussion of illegal activities, and, accordingly, they seriously jeopardize legitimate organization activities and create a very substantial risk that those activities will be investigated.
6. During meetings there should be no recommendations with respect to “sensitive” antitrust subjects – those that relate to price, costs, and the selection of customers or suppliers. Prices should not be discussed at all.
7. Members should not be coerced in any way into taking part in organization activities. There should be no policing of the industry to see how individual members are conducting their business.
8. If there is any doubt about an organization program or subject of discussion, members should check with organization staff and counsel. Members may also wish to consult with their company’s counsel, and this is encouraged.
9. Members should cooperate with FICAP’s counsel in all matters, particularly when counsel has ruled adversely about a particular activity.

The following topics are some of the main ones, which should not be discussed at meetings of industry members:

1. Do not discuss current or future prices.
2. Do not discuss what is a fair profit level. i.e., "Here's what our members need to do to make money."
3. Do not discuss price adjustments.
4. Do not discuss cash discounts.
5. Do not discuss credit terms.
6. Do not discuss allocating markets.
7. Do not discuss wage rates.
8. Do not discuss refusing to deal with a corporation.

Some of the basic areas of activity which should be carefully scrutinized from an antitrust standpoint are the following:

1. Denial of membership to an applicant.
2. Expulsion of a member.
3. Conduct of a statistical reporting program.
4. Conduct of a standardization and certification program.
5. Conduct of a joint research program.
6. Establishment and enforcement of codes of ethics.
7. Denial of services to non-members.

As a practical matter, violations of these rules can have serious consequences for an association, member companies and company employees. The Sherman Antitrust Act is both a civil and criminal statute. Therefore, there are both civil and criminal penalties for violating the antitrust laws. The penalties for violating the antitrust laws are severe. An individual and a corporation found to have violated the antitrust laws may be fined up to $350,000 and $10 million, respectively. Individuals and corporate officers may be imprisoned for up to three years.

Additionally, there are civil penalties available to government antitrust enforcement agencies such as a cease and desist order and dissolution of the organization. In addition to government enforcement of the antitrust laws, ***an individual or company that suffers injury as a result of an antitrust violation may file a private suit against the violator and recover treble damages.*** Therefore, the organization's antitrust liability does not lie solely at the hands of government enforcement agencies.

Antitrust investigations and litigation are lengthy, complex, disruptive and expensive. They may be generated by federal or state regulators, your competitors, your customers, even by your own current or former employees. Therefore, all companies and their employees must not only comply with the antitrust laws, but must conduct themselves in a manner that avoids even the slightest suspicion that the law is being violated. Associations such as FICAP, because they bring competitors together, are natural targets, along with members alleged to have participated with or through the association. When in doubt about discussing any topic, consult with your own legal counsel, or with FICAP staff or its legal counsel, to be sure you are on safe antitrust ground. When unsure, play it safe and avoid the topic.