



## **ANTITRUST COMPLIANCE DISCUSSION GUIDELINES**

### **PLEASE READ**

The antitrust laws aim to protect the Guaranteed Asset Protection Alliance (GAPA) from agreements between competitors that affect the price or distribution of products while promoting fair and vigorous competition in the marketplace. GAPA member companies, as competitors in the market, will always act in their individual, competitive best interests. When member companies meet at GAPA functions, however, there are legitimate concerns about the application of the antitrust laws to their discussions. Because GAPA meetings are not authorized by any state regulatory official acting under proper statutory authority, the McCarran-Ferguson Act exemption does not provide protection against antitrust enforcement. This policy statement is intended to provide general guidance regarding the permissible areas of discussion.

Under the so-called Noer-Pennington doctrine, participants in GAPA may individually and jointly plan to influence governmental action. This immunity from antitrust liability stems from the First Amendment's guarantees of free speech and the right to petition government. It protects discussions regarding a wide range of political activities including direct lobbying, campaign contributions, media campaigns, testimony before governmental bodies, grassroots activities, and coordination of lobbying efforts with other trade groups. The key element necessary to maintain the immunity is that the discussion must relate to plans to support or oppose legislation, regulatory action or judicial proceedings through traditional lobbying methods. While the immunity applies to political activities even if those activities have a business impact, it does not apply to business activities simply because they have a political impact. Thus, companies may not discuss market activity to influence a governmental body nor may they discuss market response to legislation.

Discussion of non-legislative topics requires even more careful consideration of possible antitrust implications. It is imperative that participants avoid any discussion of prices, market allocation, product restrictions or any conduct that could be construed as boycott. These topics are per se illegal-the intent of the parties or the effect on competition is irrelevant. Other commercial activities may also be violations of antitrust laws if they constitute an unreasonable restraint of trade. The best advice to participants at GAP meetings is to stay within the formal agenda and to avoid any informal or formal discussion relating to specific company plans.