

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: COUNSEL'S OFFICE

2014-00932F

REASON FOR REFERRAL
REQUEST FOR DIRECTION

SHUTDOWN CALENDAR EXTENSION

(PROPOSED ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932G

REASON FOR REFERRAL
REQUEST FOR DIRECTION

LIMITED AVAILABILITY ITEMS

(PROPOSED ADVISORY 5)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All manufacturers, importers, wholesalers, retailers and agency staff

Subject: Proper marketing and sales of "limited availability" items and "closeout sales" of wine and/or distilled spirits

The purpose of this Advisory is to provide guidance to manufacturers, importers and wholesalers with respect to their ability under the Alcoholic Beverage Control Law ("ABCL") to properly price post and solicit sales for "limited availability" items and "closeout sales" of wine or distilled spirits. This Advisory replaces and rescinds Advisory 2013-5a issued on September 25, 2013.

For purposes of this advisory "limited availability" items are those items bearing the same brand or trade name, or combo packs pursuant to Advisory #2013-1, for which the manufacturer, importer or wholesaler has reason to believe market demand exceeds or will soon exceed available inventory. Such reasonable belief may be based upon the knowledge that the manufacturer, importer or wholesaler: (1) does not have sufficient inventory to meet demand; or (2) cannot purchase sufficient inventory to satisfy demand; or (3) does not intend to sell or purchase further inventory for a period of at least one year; or (4) has a seasonal item which is limited or for which the season is over; or (5) has an item that has been discontinued by the supplier; or (6) has price posted a subsequent vintage; or (7) has terminated their business relationship.

For purposes of this advisory "closeout sales" occur when it is the intent of the manufacturer, importer or wholesaler to sell its entire remaining inventory, and there is a reduction in the posted price of at least 10% from the previous month. "Closeout sales" are one acceptable method of allocation for sales of "limited availability" items as further set forth below. "Closeout sales" are a special category of limited availability items created because the manufacturer, importer or wholesaler does not intend to sell additional inventory once the current inventory runs out. Except for seasonal items, no item should be subject to a "closeout sale" unless it has been offered for sale in New York for a period of at least six months.

Manufacturers, importers and wholesalers are required to notify the Authority in advance of all "limited availability" price postings.

¹ The price filing of a later vintage does not, in and of itself, convert any prior vintage to a limited availability item.

Beginning with the March, 2014 wholesale wine and wholesale liquor price postings (due January 25, 2014), manufacturers, importers and wholesalers will be required to specify a method of allocation for each "limited availability" posting. Said notification with a method of allocation specification shall be posted together with the monthly price filing in a manner prescribed by the Authority, which will enable the wholesaler to select "limited availability" and a method of allocation. At that time, manufacturers, importers and wholesalers will have the ability to utilize the new price posting system or continue to utilize the old price posting system (as well as the limited availability email inbox: limited.availability@sla.ny.gov) at their discretion until the May, 2014 retail wine and retail liquor price postings (due April 5, 2014) when only the new price posting system will be available.

In the event that an item is not filed as a limited availability item, and a subsequent unexpected event (e.g., the item receives a high score from a trade or consumer publication or a celebrity endorsement) occurs during the month which creates a demand for the item which is greater than the existing inventory of the item, for the remainder of the month and upon notice to the Authority via the limited availability email inbox (limited.availability@sla.ny.gov), a wholesaler may limit the amount which any customer may purchase to one purchase at the smallest quantity discount filed for the month in question. In the following month such an item must be filed as a limited availability item. For all allocation changes made after the initial filing and prior to the first day of the month for which the price posting is effective, the limited availability email inbox (previously utilized for all "limited availability" postings) will remain available and will now be utilized solely for allocation changes made during that period.² The below form for email submission of such mid-month "limited availability" price postings is required unless permission is obtained from the Authority to use an alternate form. With respect to such allocation changes, except as may be authorized in section 101-b of the ABCL, there shall be no price changes without permission from the Authority for good cause shown until the next month's price posting has been filed and is in effect. NOTE: (1) Once the month for which the prices are posted has begun, the method of allocation may not be changed without permission from the Authority; (2) any changes to the price posting must be properly price posted the following month; and (3) "closeout sales" may not be implemented via mid-month allocation changes and must be properly price posted.³

¹ Once a "limited availability" allocation is filed there may no longer be sales at the smallest quantity discount level. Additionally, quantity discounts may not be utilized with any "limited availability" allocation.

² All such changes to the "limited availability" postings will be published via the authority's website (www.sla.ny.gov.)

Manufacturers, importers and wholesalers are reminded that quantity discounts are not permitted for "limited availability" price postings. Manufacturers, importers and wholesalers are reminded that value added packs that are limited in nature must be price posted as "limited availability" items. All combination packages which are not intended to be delivered to the consumer intact are considered to be "limited availability" items with the exception of distributor assembled ("DA") items pursuant to paragraph 16 of Advisory #2013-1. Please refer to Advisory #2013-1 with regard to when a value added pack is to be considered a limited availability item.

The Authority recognizes that good cause has been shown to allocate "limited availability" items differently between on and off premises licensees, and a manufacturer, importer, or wholesaler may consider the nature of, and the consumer market for, a limited item when choosing a method of allocation. If a different method of allocation is used for a given channel (i.e., on-premises or off-premises), licensees within the same channel must have an equal opportunity to obtain the "limited availability" item.

PROPER TYPES OF "LIMITED AVAILABILITY" ALLOCATIONS:

The list below sets forth methods of allocation deemed permissible by the Members of the Authority. A different method of allocation may be used for each channel. Other methods of allocation than those set forth herein may be utilized. However, if the manufacturer, importer or wholesaler utilizes another method of allocation and does not obtain prior written approval from the Authority, it does so at its own risk.

- 1) Past sales history (within preceding 12 months) with 10% holdback allowance (i.e., set aside and held in inventory) for prospective new business as long as such past sales were not themselves discriminatory;
- 2) Lists of retailers published by respected third party sources such as: a listing as best wine list in Wine Spectator Magazine; a listing in Zagats as best restaurants; a listing in Michelin Guide or the like;
- 3) Unsold accounts (retailers that have not purchased the item within the past year);
- 4) First come first served with a maximum per account;
- 5) Advance interest, provided all accounts are given reasonable notice and the opportunity to express their interest but no pre-ordering is entered into;

6) "Closeout sales" - The following method should be used for items designated for "closeout sales."

- First month filing of maximum number of cases per retailer (not to exceed 10% of the available inventory) together with a notice that in the next month and thereafter the item will be marked "first come first served - no maximum."
- Second and subsequent months, first come first served - no limit, until inventory of the item is depleted to zero. Manufacturers, importers and wholesalers may begin accepting such orders at 9:00 AM on the twenty-fifth day of the month preceding the second month in which any such posting goes into effect. NOTE: If the price is reduced in the second or any subsequent month, the process must be repeated from the beginning (with a new first month maximum case allocation filing) until inventory of the item is depleted to zero.

Regardless of the method of allocation utilized, if a 70/30 split between channels is utilized, the manufacturer, importer or wholesaler will be deemed to be operating within a safe harbor as pertaining to allocations between channels for any given month. If the 70/30 split allocation formula is deviated from, the burden will be on the manufacturer, importer or wholesaler to demonstrate that an approved method of allocation from the above list was utilized for any given month. Although price posting is done on a month by month basis, a manufacturer, importer, or wholesaler may create an allocation plan for a limited availability item that extends over a commercially reasonable period, not exceeding twelve months, provided there is no change in price during that period. If a price reduction is filed for any limited availability item that is so allocated, the 70/30 split between channels must occur at each price utilized during said commercially reasonable period. The manufacturer, importer or wholesaler is under an obligation to keep proper internal controls and records to justify the need to designate any item as limited availability as well as the method of allocation chosen.

Limited Availability Mid-Month Allocation Change Reporting Form

Wholesaler name (not d/b/a):

Wholesaler NYSLA license number:

Month and year for this report:

Name of person completing this report:

Contact person's name, phone number, email address:

Product and pricing information (as reported on the price posting noted above):

TTB/CoLA # or Brand Label Registration #:

Wholesaler Item #:

Regular / Combo / VAP (R, C, V):

Brand name and product description (including age if applicable):

Price per bottle and per case (BT \$, CS \$) (specify and list NYC if applicable) as reflected in the price posting:

Number of bottles per case:

Requested allocation changes details:

*****No quantity discounts allowed on Limited Availability items*****

Forward via electronic mail to: limited.availability@sla.ny.gov

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932H

REASON FOR REFERRAL
REQUEST FOR DIRECTION

CONTAINERS, PACKAGING AND
PERSONALIZATION OF BOTTLES

(PROPOSED ADVISORY 6)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All suppliers¹ and distributors² of liquor and wine
Subject: Containers, packaging and personalization of bottles

Section 101-b of the Alcoholic Beverage Control Law provides that there may be only one price listed for an item in the price schedule filed with the Liquor Authority, unless permission is first obtained from the Authority for good cause shown when not inconsistent with the purposes of the statute. It has come to the Authority's attention that under current marketing practices, suppliers seek to create "ornamental," "enhanced," or "special" containers to address consumers' desire for special gift products. In addition, suppliers and distributors have requested direction with respect to: how they may package containers of liquor and wine for delivery to retailers; and whether they can supply bottles and containers personalized for consumers. The Authority has, from time to time, issued bulletins addressing the conditions under which such products may be distributed. In light of the passage of time since the issuance of those directives, and after recent discussions with industry members, the Authority has determined that it is appropriate to revisit the guidance set forth in those directives and states the following:

Prior Bulletins

Bulletin No. 343 (issued on August 11, 1961), Bulletin No. 440 (issued on February 3, 1969), Bulletin 440-a (issued on July 16, 1971), Bulletin 440-b (issued on August 11, 1971) and Advisory 2012-5 (issued on August 29, 2012) are hereby rescinded.

¹ For purposes of this advisory, "supplier" means entities licensed in this state to manufacture alcoholic beverages, as well as: other domestic and foreign manufacturers of alcoholic beverages, importers, and other entities that sell alcoholic beverages, directly or indirectly, to licensed wholesalers for distribution in this state.

² For purposes of this advisory, "distributor" means a licensed wholesaler.

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Containers of liquor or wine

1. The term "container" as used herein is intended to mean the bottle or other vessel containing the liquor or wine as well as any container into which the individual bottle or vessel is placed. No such container shall be permitted which has any secondary value or after-use, except of an ornamental or decorative nature.
2. The terms "ornamental," "enhanced," or "special" containers, as used herein, are intended to mean: containers of crockery, ceramic material, crystal, tin or other metal, plastic or wood; and decanters of any type. The Authority retains the sole discretion to determine which containers are properly considered "standard" versus "ornamental," "enhanced," or "special."
3. Brand owners or brand agents may offer items in the "standard" container and/or "ornamental," "enhanced," or "special" containers.
4. The "ornamental," "enhanced," or "special" containers may be sold at the same price, or a higher price than the "standard" container.
5. Items in "ornamental," "enhanced," or "special" containers must be price scheduled separately from items in "standard" containers.
6. Where any "ornamental," "enhanced," or "special" types of containers are distributed as limited availability items, the brand owner or brand agent must comply with the provisions of Advisory 2014-4.
7. Where any "standard" container is distributed as a limited availability item, any and all "ornamental," "enhanced," or "special" containers bearing the same brand or trade name must also be sold as limited availability items.
8. Brand owners or brand agents wishing to sell items sharing the same brand label at different prices for a reason other than an "ornamental," "enhanced," or "special" container (such as a different label, for example) must obtain prior permission

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from the Authority to do so. All such requests should be addressed to the Wholesale Bureau in writing or via electronic mail at: wholesale@sla.ny.gov. In all such instances the Authority retains the sole discretion to determine which items sharing the same brand label may properly be sold at a different price.

Packaging of liquor or wine

1. Suppliers and distributors may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.
2. Baskets, boxes or other packages having a value to the retailer or consumer distinct from their value as packages for alcoholic beverages may not be used to pack containers of alcoholic beverages and may not be furnished, given or sold to retailers by suppliers and distributors.
3. Nothing hereinabove set forth shall be construed as excluding the use of paper, canvas, cloth, straw, simulated leather and plastics as wrapping material for packaging, provided that such wrapping material has no secondary value or use aside from its use as a wrapping for alcoholic beverages.
4. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by suppliers and distributors apart from the cases in which containers of alcoholic beverages were originally packed in a quantity not to exceed an amount required for the number of containers of such brands that the retailer has in inventory.

Personalization of bottles and other containers

1. The term "personalize" as used herein means engraving, stamping, writing or otherwise adding the name of one or more persons to a bottle or other container of an alcoholic beverage. Such personalization may also include language commemorating an event, special occasion, etc.
2. A personalized bottle or container shall not include the name, trademark or any other information identifying the retailer.

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3. A supplier may personalize a bottle or another container of an alcoholic beverage for a retail consumer. Such service may be provided to the retailer by the supplier or by the supplier's wholesaler, at the request of the supplier.
4. A supplier may charge the retailer for such services or provide same at no cost. In any event, the supplier must make such services available to any retailer upon the same terms.

All suppliers and distributors are hereby cautioned that any violation of the directives contained in the above Advisory may subject them to disciplinary action by the Authority pursuant to ABCL §119 and/or an action for injunctive relief pursuant to ABCL §123.

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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-009321

REASON FOR REFERRAL
REQUEST FOR DIRECTION

BRAND LABEL REGISTRATION

(PROPOSED ADVISORY 7)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All brand owners, manufacturers, wholesalers and
retailers

Subject: Brand Label Registration guidance

In light of recent amendments to the Alcoholic Beverage Control Law ("ABCL"), this Advisory is being issued to provide guidance to licensees in complying with requirements for brand label registration. Please read this Advisory carefully - as a result of the amendments there are many changes being made to expedite and simplify the registration process. For example, in almost all cases, the need to file amended, "supplemental" or separate registrations is being eliminated.

All alcoholic beverages sold in this state must have an approved brand label affixed or imprinted upon the container. The only exceptions to this requirement are privately held wines and liquors being sold pursuant to ABCL §85 or ABCL §99-g. Manufacturers, wholesalers and retailers may be subject to disciplinary action for advertising or offering for sale any alcoholic beverage that does not have an approved brand label. While the changes discussed in this Advisory eliminate or reduce filing requirements, brand labels must still comply with the requirements set forth in this Advisory. Failure to comply with these requirements may subject licensees to disciplinary action.

Compliance with Part 84 of the Rules of the Authority

ABCL §107-a and Part 84 of the Rules of the Authority govern the registration and approval of brand labels. Chapter 354 of the Laws of 2013 amended §107-a. As a result of the amendments, certain provisions of the regulations in Part 84 are now inconsistent with the statutory provisions. To avoid confusion until such time as the Authority issues new regulations consistent with the amended ABCL §107-a, brand

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owners and licensees should be guided by the information contained in this Advisory instead of the regulations in Part 84. Licensees who comply with the provisions of this Advisory will not be subject to disciplinary action if their conduct would otherwise be considered a violation of Part 84.

Required information on brand labels

Effective March 26, 2014, ABCL §107-a requires that brand labels contain:

- The brand or trade name (see "Brand or Trade Names" section in this Advisory);
- The class and type of alcoholic beverage (see "Class and Type of Alcoholic Beverage" section in this Advisory);
- The net contents of the container (see "Net Contents" section in this Advisory); and
- All other labeling information required by TTB (see "Information Required by TTB" section in this Advisory).

Except as explained in this Advisory (see "When is a separate brand label approval required?" section), a separate brand label registration is required when there is any difference in either: the brand or trade name; or the class and type of alcoholic beverage.

Brand Names

The "brand or trade name" is the name under which the product is marketed. It is usually the most prominent information on the label and the name used by consumers to identify the product. The Authority considers the brand name to include any statement regarding: flavor description; vintage; age; and geographic designation or appellation. Generally speaking, any difference in the brand name is considered a separate brand label.

In most cases, the Authority considers any difference in the brand name as a different brand name and, therefore, a separate brand label approval will be required. For example, the addition of designations such as "kosher" or "organic" would be

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a different brand name from a brand label that was otherwise the same except for that designation. With respect to beer, the designations "IPA," "ale" and "pale ale," for example, would all be considered separate brand names. A whiskey that is marketed with different ages is considered to have a separate brand name for each age.

However, as discussed later in this Advisory under the "When is a separate brand label approval required?" section, certain differences in the brand name are not considered separate brand labels and, therefore, a separate approval is not required. Please note that these are long standing exceptions to the general rule that any difference in the brand name requires a separate brand label approval.

Class and Type of Alcoholic Beverage

Brand labels must use TTb's categories for the class and type of the alcoholic beverage.

For cider

As a result of changes made to the ABCL, the permissible alcohol content of cider has been increased from 7% to 8.5%. If the product meets the ABCL definition of wine and cider, the manufacturer will have the choice of marketing the product either as wine or cider. However, if the alcohol content exceeds 7%, TTb will require that the product be brand label approved as a wine even if the manufacturer intends to market the product in this state as cider. TTb will allow the brand label to identify the product as cider. In the event the brand owner intends to market the product in New York State as a wine, that label approval will be sufficient and no state registration is required.

If the product will be marketed as a cider in New York State, it must be brand label registered with the Authority as a cider. The designation of the type of pomme fruit used is considered to be part of the class and type information and must be set forth on the label.

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For wine specialties

The designation "wine specialty" is considered to be part of the class and type information and must be set forth on the label. For purposes of this advisory, a "wine specialty" shall mean wine containing less than 7% alcohol by volume that: includes ingredients not permitted in "wine" as defined in ABCL §3(36); and does not meet the definition of "wine product" set forth in ABCL §3(36-a).

Net Contents

The Authority does not require that the net contents statement be included on the actual label. The information may be imprinted or otherwise set forth on the bottle/container. If the information is not included on the brand label, the application must include a photograph of the bottle/container clearly showing where the information will be displayed.

Information Required by TTB

As noted above, in addition to the brand or trade name, the class and type of alcoholic beverage, and the net contents, a brand label must contain any other labeling information required by TTB. If the label sets forth this information in accordance with TTB regulations, the label will be considered in compliance with this state's brand label registration laws. Following is a list of the information currently required by TTB regulations. Please note that this information is provided only for guidance, and reference should be made to TTB regulations to assure compliance.

For liquor:

- The alcohol content;
- The name and address of the bottler and/or the manufacturer or importer;
- The country of origin (for imported alcoholic beverages);
- A statement with respect to the presence of coloring materials (if applicable);

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- A statement with respect to treatment with wood (if applicable);
- A statement with respect to FD&C Yellow #5 (if applicable);
- A statement regarding the presence of sulfur dioxide (if applicable);
- A statement regarding the percentage of neutral spirits (if applicable);
- A statement of age (if applicable);
- The state of distillation for whiskeys produced in the United States; and
- A health warning statement.

For beer:

- The alcohol content;
- The name and address of the bottler and/or the manufacturer or importer;
- A statement with respect to FD&C Yellow #5 (if applicable);
- A statement regarding the presence of saccharin (if applicable);
- A statement regarding the presence of sulfur dioxide (if applicable);
- A statement regarding the presence of aspartame (if applicable);
- The country of origin (for imported alcoholic beverages); and
- A health warning statement.

For wine:

- The alcohol content;
- The name and address of the bottler and/or the manufacturer or importer;
- A statement regarding the presence of sulfur dioxide (if applicable);
- The appellation of origin (when required);
- The country of origin (for imported alcoholic beverages); and
- A health warning statement.

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Items prohibited on brand labels

Effective March 26, 2014, ABCL §107-a brand label may not contain any of the following:

- Any false or untrue statement;
- Any statement disparaging of a competitor's product;
- Any statement, design, device or representation that may mislead a consumer; or
- Any statement or claim that the product has any health benefits.

Applications for approval of brand label registration will be reviewed to determine whether any prohibited statements are contained in a brand label. In addition, if a change is made to any approved brand label, the inclusion of any prohibited statement will subject the brand owner (if licensed), or the licensee filing the application on behalf of the brand owner, to disciplinary action.

The application process

An application for registration of a brand label shall include:

- A completed registration application form;
- In the event the applicant is not the brand owner, a letter from the brand owner appointing the applicant as its exclusive agent for purposes of submitting the application;
- A legible photocopy or photograph of the brand label that is being registered with each required item clearly identified. If the net contents are not set forth on the brand label, the application must include a photograph of the bottle/container clearly showing where the information will be displayed;
- In the case of cider, wine products, non-malt beer, wine specialties and kombucha, an analysis by a TTB approved laboratory stating the alcohol content and ingredients of the alcoholic beverage; and
- A check or money order for the required fee.

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The failure of an applicant to submit any of the above items will result in disapproval of the application. Applicants are urged to read the instructions provided to insure that all required information is included in the application. If items, such as the net contents, are not on the brand label but appear elsewhere on the container, a photograph showing the location of that item on the container must also be submitted.

All applications for registration and approval of brand labels must be submitted by: certified mail, return receipt requested; registered mail, return receipt requested; or overnight delivery service with proof of mailing. A brand label approved by TTB will be deemed approved thirty days after the Authority receives the application unless the Authority issues a decision disapproving the application before that time. In light of changes at the TTB, a copy of the actual TTB approval will not have to be submitted with the application. The TTB identification number will be sufficient.

When is a separate brand label approval required?

A separate brand label registration is required when there is a difference in: the brand or trade name; or the class or type of alcoholic beverage. A separate brand label registration is also required when a "private brand label" is being placed on the container. A "separate brand label registration" requires a separate application and fee (unless the fee is otherwise waived by ABCL §107-a).

As noted in the "Brand Name" section of this Advisory, a brand name includes any statement regarding: flavor description; vintage; age; and geographic designation or appellation. Therefore, except as set forth below, any difference in any of those items creates a separate brand label requiring separate registration and approval. The following are not considered by the Authority to constitute separate brand names:

- Cordial and liqueur brand names that differ only with respect to flavor description;
- Wine brand names that differ only with respect to vintage year;
- Gin brand names that differ only with respect to the addition of the designation "dry"; and

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- Rum brand names that differ only with respect to the addition of the designation "white," "light," "dark," "gold" or "silver."

In Advisory 2013-3, the Authority stated that the placement of stickers bearing the words "Direct," "Reserve" or similar permutations thereof on bottles or cases does not create a separate brand or trade name. This Advisory does not, in any way, change the guidance provided in Advisory 2013-3.

As noted above, each brand label must include the class and type of alcoholic beverage. With one exception, any difference in the class or type of alcoholic beverage constitutes a separate brand label. Beer brand names that differ only with respect to the use of the designation "beer," "lager beer" or "lager" do not constitute separate brand names.

Vintage year and age of an alcoholic beverage

As noted above in the "Brand name" section, the vintage year or age of an alcoholic beverage is considered to be part of the brand name. However, under Part 84 of the Rules of the Authority, a change in the vintage year did not require a separate brand label registration. Liquor labels that differed with respect to the age of the product did require separate brand label registrations. This treatment of vintage years and age of the product remains in effect.

Duration of approval

An approval of a registration shall be valid for one year. Current brand label registration approvals shall remain in effect until they expire. New applications and renewals of existing applications will be issued for one year on the following schedule:

- Liquor- October 1st through September 30th.
- Beer- July 1st through June 30th.
- Wine products- March 1st through February 28th/29th.
- Cider- March 1st through February 28th/29th.

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- Wine requiring state approval, including wine specialties- March 1st through February 28th/29th.

In the case of a current registration approval that expires prior to or after the above dates, the renewal and fee will be prorated until the appropriate date. Thereafter the renewal will be issued for one year. For example, a liquor brand label approval that expires on February 28, 2015 will be renewed until September 30, 2015 at 7/12 of the fee. The registration approval thereafter will be renewed for one year periods commencing on October 1, 2015.

In the case of a new registration approval to take effect before the above dates, the initial approval will be prorated to the appropriate date. Thereafter, any renewal will be issued for one year. For example, a new beer registration approval issued on December 1, 2014 will be effective until June 30, 2015 at 7/12 of the fee. The registration approval thereafter will be renewed for one year periods commencing on July 1, 2015.

Changes in brand label agent

In the event that an unlicensed brand owner changes the licensee designated as the exclusive agent for a particular item, the new exclusive agent shall file an application for approval of the brand label. The registration approved under the former brand agent shall be deemed surrendered and the former brand agent may apply for a refund of the unused portion of the registration fee.

Designation of brand agents and licensing requirements for brand owners

If the brand owner is licensed under the ABCL, it must file the application for brand label registration approval (as well as the price schedule required by ABCL §101-b(3)(a), except in the case of a private label). A brand owner, whether located in this state or elsewhere, that is not licensed under the ABCL must designate a wholesaler licensed in this state as its exclusive agent for purposes of filing the application for brand label registration approval as well as the price schedule required by ABCL §101-b(3)(a).

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In the case of an alcoholic beverage produced in this state, the brand owner (except in the case of a private label) shall be a manufacturer licensed in this state. However, if the licensed manufacturer intends to distribute the product in this state exclusively through one licensed wholesaler (with no sales being made by the manufacturer to any other licensed wholesaler or any licensed retailer in this state), the manufacturer may designate such exclusive wholesaler as the brand owner of the label.

In the case of an alcoholic beverage produced outside of this state, an unlicensed entity doing business in this state may be the brand owner. However, the unlicensed New York entity whose alcoholic beverage is produced out-of-state may not be the importer of the product into this state or solicit purchases of the product within this state by licensed wholesalers and retailers.

In the case of a brand owner not licensed in this state, an "appointment letter" must be submitted by the brand owner identifying the licensed wholesaler who is designated as the exclusive agent to file the application for brand label approval. Please note that a separate appointment letter from the brand owner is not required for each brand name. One letter may be used to list all the brand names for which the licensed wholesaler has been appointed as exclusive agent.

"Ornamental," "enhanced," or "special" containers

The marketing of alcoholic beverages in "ornamental", "enhanced" or "special" containers is addressed in Advisory 2014-5, which replaces Advisory 2012-5. Alcoholic beverages sold in such containers do not require a separate brand label registration.

"Supplemental" brand labels

As a result of the amendments made to ABCL §107-a, it is no longer necessary to file separate, or "supplemental," brand label registrations. As noted above, a separate brand label registration will only be required when there is a change in: 1)

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the brand or trade name; or 2) the class or type of the alcoholic beverage.

Although the brand label must set forth the net contents and the labeling information required by TTB, if a change is made to those items it is not necessary to file an application to amend or supplement the existing approved label or obtain approval for a separate label. In addition, a second label that differs from the approved label does not require a separate registration as long as the brand or trade name and the class or type of the alcoholic beverage remains the same.

However, even if an amended, supplemented or separate brand label registration is not required, any brand label being used must comply with the provisions of ABCL §107-a and this Advisory. In particular, any brand labels changed after approval of the Authority must contain the information required by ABCL §107-a and must not include the items prohibited by ABCL §107-a. Violations will result in disciplinary action by the Authority.

Private labels

A "private brand label" is a brand label owned by a licensed retailer. It does not have to contain the retailer's name. An alcoholic beverage with a private brand label can only be sold by the licensed retailer who owns the brand label. The licensed retailer must own the brand name or otherwise have the legal right to use a brand or trade name belonging to another entity. However, in no case can the brand name be owned by a manufacturer or wholesaler. Manufacturers and wholesalers may not allow retailers to use their brand or trade name on a retailer's private brand label, except to identify the manufacturer, importer or bottler as may be required under TTB regulations. The use of phrases such as "exclusively bottled for" or "exclusive to" the retailer on a brand label owned by the manufacturer or another party does not constitute a private brand label. Such practices constitute an illegal gift or service in violation of ABCL §101(1)(c).

Applications for approval of private brand labels must include proof that the retailer owns, or has the legal right to use, the brand or trade name set forth on the label. If the brand label is otherwise in compliance with ABCL §107-a and this Advisory, a retailer does not have to obtain a separate brand

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label registration approval when there is a difference in the manufacturer, importer or bottler.

Wine

An application for registration approval does not have to be submitted for wine brand labels that have been approved by TTB. A wine brand label without TTB approval must be registered and approved by the Authority.

Cider

Effective January 15, 2014, the definition of cider contained in the ABCL was amended. Among other changes, the maximum alcohol content by volume was increased from 7% to 8.5%. In addition, an alcoholic beverage that meets the definition of cider and wine may be marketed either as a cider, or as a wine. If the brand owner decides to market the product as a cider, it must be brand label registered as a cider. That product may be offered for sale by any licensed retailer. If the brand owner decides to market the product as a wine, the brand label must be approved (as a wine) by TTB or the Authority. The product must also be price posted and sold only by retailers who are licensed to sell wine.

Deviations or changes in alcohol content

Except for cider and wine products, the Authority will allow a deviation of no more than 1.5% between the alcohol content stated on the label and the actual alcohol content of the product as shown in the laboratory analysis. In the case of cider and wine products: the Authority will allow a deviation of no more than 0.5%; and the actual alcohol content cannot exceed the statutory limit set forth in the ABCL.

If the alcohol content stated on the label or container is changed after the brand label has been approved, a new, amended or supplemental registration is not required. As long as the brand label otherwise conforms to the requirements set forth in

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this Advisory, the change will be deemed part of the approved label. Please note that this applies if the alcohol content is being changed. If two products have brand labels that are identical in all other ways, with the only difference being the alcohol content, each product will require its own brand label approval.

Nutrition Facts Sheet

Brand labels that do not require TTB approval (such as wine products, wine specialties and cider under 7% alcohol content) must include the Nutrition Facts Sheet required by the FDA. If the FDA has granted an exemption from this requirement, or if the FDA does not require the inclusion of the facts sheet, an affirmation to that effect must be included with the application.

"Small batch" fee exemptions

ABCL §107-a provides for exemptions from the fee for brand label registration for liquor, beer and cider produced in "small batches". For liquor, "small batches" means 1,000 gallons or less. For beer and cider, "small batches" means 1,500 barrels or less. While there is a fee exemption, an application for registration of the brand label must still be filed and approved.

In determining whether the product has been manufactured in a "small batch," please note that:

- The fee exemption applies to product under the same state brand label registration number. If the total annual amount manufactured for a product, or products, under one brand label registration number exceeds (or is anticipated to exceed) the limitations stated above, a fee will be required to register the label.
- The total amount manufactured includes not only the amount of product manufactured for sale in this state, but the entire annual amount of the product that is manufactured, regardless of where it will be sold.

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Beer and wine products sold in "soft pouches"

As noted above, brand labels cannot contain any statement, design, device or representation that is likely to mislead the consumer. In the view of the Authority, beer and wine products sold in "soft pouches" (whether or not intended to be frozen prior to consumption) can be mistaken for non-alcoholic products sold by off-premises beer retailers. Therefore, to avoid consumer deception and confusion, as well as to assist in preventing sales of these products to underage persons, the Authority requires that the front label of any such container, as well as the case or pack for such containers, include the following statement: "CONTAINS ALCOHOL - NO SALES UNDER 21".

PERSONALIZED BOTTLES AND CONTAINERS

The addition of personalized engraving, stamping, writing, etc., to a bottle or other container in compliance with the Authority's "Containers, packaging and personalization of ..." Advisory does not require a separate brand label registration approval.

"USE UP" PERIOD FOR NON-COMPLYING LABELS

The Authority anticipates that manufacturers and wholesalers will have an inventory of labels on hand that may not comply with the amendments made to ABCL §107-a and the guidance provided by this Advisory. Such labels may continue to be used until the current registration period for the label expires and for an additional six month period.

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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932J

REASON FOR REFERRAL
REQUEST FOR DIRECTION

RESTRICTIONS ON "BUY BACK" OR
"BAR SPEND" EVENTS

(PROPOSED ADVISORY 8)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All suppliers¹, distributors² and licensed on-premises retailers

Subject: Gifts and Services Law: Guidance on "buy-back", "bar spend", private and promotional events conducted at retail establishments

The Alcoholic Beverage Control Law ("ABCL") contains various provisions governing the relationship between the "three tiers" (suppliers, distributors and retailers) of the alcoholic beverage industry. Among those provisions is the Gifts and Services Law, ABCL §101(1)(c). That statute prohibits suppliers and distributors from making any gift or rendering any service to a retailer which "in the judgment of the liquor authority may tend to influence such licensee to purchase the product" of the supplier or distributor.

There are both statutory and regulatory exceptions to the prohibition contained in §101(1)(c). For example, Part 86 of the Rules of the Authority contains a list of items and services that a supplier or distributor may provide to a retailer. Apart from the exceptions specifically set forth in either the law or the regulations, the Authority generally considers anything given by a supplier or a distributor to a retailer as an improper attempt to influence the retailer to buy the supplier's or distributor's products.

Given allegations of widespread abuse of the Gifts and Services Law, as well as other violations of the provisions governing the relationship between the three tiers, the Attorney General's Office, together with the Authority, conducted an investigation into the trade practices of certain suppliers, distributors and retailers. The result of that investigation was a series of court orders imposing penalties on those entities. Those orders (commonly referred to as the "Consent Orders") also set forth activities that the Authority considers to be

¹ For purposes of this advisory, "supplier" means entities licensed in this state to manufacture alcoholic beverages, as well as: other domestic and foreign manufacturers of alcoholic beverages, importers, and other entities that sell alcoholic beverages, directly or indirectly, to licensed wholesalers for distribution in this state.

² For purposes of this advisory, "distributor" means a licensed wholesaler.

violations of the Gifts and Services Law. In addition, the Consent Orders contain examples of permissible dealings between suppliers and distributors on one hand, and retailers on the other.

It should be noted that, while only certain entities were named in the Consent Orders, the Authority considers the orders to be a statement of permissible and impermissible trade practices. Accordingly, the Authority expects all suppliers, distributors and licensed retailers to abide by the terms of the Consent Orders. Licensees that engage in conduct that is prohibited by the Consent Orders are subject to disciplinary action by the Authority. This includes not only suppliers and distributors who improperly provide gifts and services to retailers, but retailers who accept, or solicit, such gifts or services.

Among the topics addressed in the Consent Orders is the ability of suppliers and distributors to purchase alcoholic beverages for consumers from a retailer. The Consent Orders contain a general prohibition against such activity. However, the orders contain three exceptions to that general prohibition. The exceptions apply only to purchases made from a licensed on-premises retailer. First, a supplier or distributor may purchase an alcoholic beverage for a consumer or consumers on an individual or incidental basis.³

Second, a supplier or distributor may purchase alcoholic beverages for its employees, private guests, or employees of other suppliers, distributors or retailers during certain events conducted by the supplier or distributor. Those events are: bona fide business meetings or business entertainment; or private invitation-only events closed to the general public. The events must take place at either a licensed on-premises retailer's establishment or a location for which a caterer's permit has been issued.

Third, a supplier or distributor may purchase alcoholic beverages at a promotional event that is open to the general public. The Consent Orders provide that the supplier or distributor may spend no more than \$500 (plus a 20% wait staff gratuity) at each event. In addition, a supplier or distributor may not conduct more than six events annually at any particular licensed establishment. All three exceptions prohibit the

³ For example, a salesperson for a supplier or distributor may purchase a drink for an individual patron of a licensed retailer while such salesperson is in the premises taking an order.

supplier or distributor from paying more than the retailer's regular price for the alcoholic beverages.

The Consent Orders were issued in late 2006 and early 2007. Since that time the Authority has received inquiries regarding the interpretation of certain provisions of the Consent Order. In particular, a number of questions and issues have been raised regarding the application of the three exceptions discussed above. Given the passage of time, as well as input from the industry subsequent to the issuance of the orders, the Authority is also of the view that certain modifications to the terms of the orders would be appropriate. This advisory is issued to provide guidance to industry members and agency staff specifically with respect to the provisions of the Consent Orders addressing the ability of suppliers and distributors to buy alcoholic beverages from licensed on-premises retailers.⁴

Purchases for consumers on an individual or incidental basis

The provisions of the Consent Orders allowing for such purchases remain unchanged. Suppliers, distributors and retailers are reminded that these provisions are not intended to be used for promotional type events, such as discussed below. The purpose of the provisions is to allow for the occasional purchase of alcoholic beverages by employees of the supplier or distributor at the retail establishment for their own consumption, or (as described in footnote #3) for sales staff to make occasional purchases for individual patrons of a retailer.

Business meeting and private events

As noted above, "business meetings or business entertainment" and "private invitation-only events closed to the general public" are exceptions to the general prohibition against a supplier or distributor purchasing alcoholic beverages from a retailer. The question of what constitutes "business meetings or business entertainment" and "private invitation-only events closed to the general public" has been the focus of much of the discussion regarding the ability of suppliers and distributors to buy alcoholic beverages from licensed on-premises retailers.

- Business meetings or business entertainment

⁴ A copy of the Consent Order issued with respect to suppliers is attached hereto. The provisions regarding the ability of suppliers and distributors to buy alcoholic beverages from licensed on-premises retailers are the same in each of the three orders.

The Authority interprets "business meetings or business entertainment" to mean a gathering of the supplier's or distributor's employees, and/or representatives from entities that conduct business with the supplier or distributor. This includes other suppliers, distributors and licensed retailers. The purpose of the gathering must be for a legitimate business purpose. For example, a discussion concerning product sales, the introduction of a new product, etc. Holiday parties and other events to commemorate special occasions are not considered business meetings or business entertainment. There are no restrictions regarding the amount that a supplier or distributor may spend for such an event, or the number of times a supplier or distributor may use a particular retailer's establishment for such events. However, these gatherings must be conducted under the following guidelines:

1. Such events shall be held in an area that is reserved for invitees. Said area may consist of as little as one reserved table if such an arrangement is commensurate with the number of invitees.
2. An employee of the supplier or distributor must be present during the entire event.
3. Retail licensees and their employees may be invited. The supplier or distributor may send a general invitation for the event to all employees of a retail licensee.
4. The presence of media representatives and/or the circulation of generic media advisories shall not affect the determination of whether or not an event is being conducted for a business purpose.

- Private invitation-only events closed to the general public

A "private invitation-only event closed to the general public" is not conducted for a business purpose. However, these events are not meant to be used for promotional purposes by a supplier or distributor, or to otherwise circumvent the provisions of the Consent Orders. Accordingly, to provide clarification as to what constitutes a bona fide "private invitation-only event," the Authority adopts the following guidelines:

1. A "private invitation-only event closed to the general public" is a gathering of invitees who have an identifiable affiliation or relationship with the supplier or distributor (e.g., a party for employees, vendors or

business associates), or a common affiliation or relationship with one another (e.g., an event for journalists, sports teams or non-profit organizations). A large gathering of a group of consumers or potential consumers, without meaningful commonality other than the supplier's or distributor's attempt to market or target a demographic, shall not be considered a "private invitation-only event closed to the general public."

2. Invitees to a "private invitation-only event closed to the general public" shall be solicited by a communication from the supplier or distributor sent directly to specific individuals of legal drinking age, by individual name. The supplier or distributor may elect to allow each such named individual to bring one guest.⁵ The solicitation may be made by a variety of means, such as letter, email, or other digital communication, phone call, delivery service or in person. The following may not be used to solicit attendees: invitations contained in any form of media advertisements; generic communications advising anyone wishing to attend the event to register as an invitee; or "mailing lists" of consumers either obtained or created by the supplier or distributor.
3. A "private invitation-only event closed to the general public" shall be held in an area that is reserved for invitees. Said area may consist of as little as one reserved table if such an arrangement is commensurate with the number of invitees.
4. An employee of the supplier or distributor must be present during the entire event.
5. Retail licensees and their employees may be invited. However, the supplier or distributor may not send a general invitation for the event to all employees of a retail licensee or to a chain of retail licensees with the exception of invitations to retailer education seminars held pursuant to §86.8 of the Rules of the Authority.
6. The presence of media representatives and/or the circulation of generic media advisories shall not affect the determination of whether or not an event is a *bona fide* "private invitation-only event closed to the general public."

⁵ For events held solely for employees of the supplier or distributor, invitees may also include the employee's immediate family members.

Promotional events open to the general public

As noted above, the Consent Orders allow a supplier or distributor to purchase alcoholic beverages at a promotional event that is open to the general public. The Consent Orders provide that the supplier or distributor may spend no more than \$500 (plus a 20% wait staff gratuity) at each event. In addition, a supplier or distributor may not conduct more than six events at any particular licensed establishment.

The Authority finds that it is appropriate, based on the passage of time and after hearing the concerns of the industry, to ease the restrictions imposed by the Consent Orders. Therefore, notwithstanding the provisions of the Consent Order, the Authority will allow suppliers and distributors to conduct such events under the following conditions:

1. The supplier or distributor may spend no more than \$700.00 (excluding a wait staff gratuity of not more than 20%) for the purchase of alcoholic beverages.
2. The supplier or distributor may not purchase food, non-alcoholic beverages or any other items from the retailer.
3. The supplier or distributor may conduct no more than ten events per calendar year at each licensed premises.
4. Suppliers and distributors may advertise such events, identifying the date, time and location. They may also send invitations to members of the general public for such events. However, attendance may not be restricted only to members of the general public who have received invitations.

Suppliers and distributors will no longer be required to submit statements after each such event to the Authority. Instead, each supplier and distributor shall be required to maintain, for a period of two years from the date of each event, a record of the event that includes: the date, time, location, and duration of the event; the brand(s) that were purchased; and the name(s) of the persons or agents who conducted the event on behalf of the supplier or distributor.

Promotional invitational events open to the general public

Based on input from industry members, the Authority is aware that promotional events on a scale much larger than those envisioned in the Consent Orders are sometimes appropriate to

successfully market alcoholic beverages. To allow for such events to be conducted in compliance with the Gifts and Services Law, the Authority hereby adopts a fourth exception to the general prohibition against suppliers and distributors purchasing alcoholic beverages for consumers from a retailer. Such events, often referred to as a "brand experience," shall be subject to the following conditions:

1. The supplier or distributor may spend no more than \$10,000.00 (excluding a wait staff gratuity of not more than 20%) for the purchase of alcoholic beverages, non-alcoholic beverages and food from the retailer. A supplier or distributor may seek, in advance, permission from the Authority to conduct an event at which it would spend more than \$10,000.
2. The supplier or distributor may not use the same licensed retailer (either the retailer's licensed premises or the retailer's services under a caterer's permit) for more than six events per calendar year.
3. Attendees to such events must be invited. The supplier or distributor may solicit invitees by a communication from the supplier or distributor sent directly to specific individuals of legal drinking age, by individual name. The solicitation may be made by a variety of means, such as letter, email, or other digital communication, phone call, delivery service or in person. The following may be used to solicit attendees: invitations contained in any form of media advertisements; generic communications advising anyone wishing to attend the event to register as an invitee; and "mailing lists" of consumers either obtained or created by the supplier or distributor.
4. The supplier or distributor may advertise such events, identifying the date, time and location.
5. The supplier or distributor may elect to allow each such named individual to bring one guest.
6. The supplier and distributor shall be required to maintain, for a period of two years from the date of each event, a record of the event that includes: the date, time, location, and duration of the event; the brand(s) that were purchased; and the name(s) of the persons or agents who conducted the event on behalf of the supplier or distributor.

Events where the supplier or distributor provides the alcoholic beverages

As noted above, this Advisory addresses situations where the supplier or the distributor is purchasing alcoholic beverages from a retailer. If the supplier or distributor is donating alcoholic beverages for an event being conducted by a not-for-profit organization, the restrictions set forth in this Advisory are not applicable. It does not matter whether the event is being held at a licensed premises, or at a non-licensed venue with the appropriate permit issued by the Authority. It also does not matter whether the supplier or distributor receives any promotional benefits in exchange for the donation to the organization. However, the supplier or distributor cannot select the retail license catering the event.

In addition, if a supplier or distributor is conducting a private invitation-only event closed to the general public, or a "brand experience" event at a non-licensed venue, the restrictions set forth in this Advisory are not applicable if the supplier or distributor is providing the alcoholic beverages. The supplier or distributor may hire a retail license to serve the alcoholic beverages and provide food to attendees.

In either of the examples provided above, the supplier or distributor must insure that the appropriate permit or license is in effect for the venue and any unused alcoholic beverages provided by the supplier or distributor must be removed after the event.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932K

REASON FOR REFERRAL
REQUEST FOR DIRECTION

PURCHASES BY MANUFACTURERS
FOR RETAIL STORES

(PROPOSED ADVISORY 9)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All licensed manufacturers and wholesalers

Subject: Purchase of alcoholic beverages by manufacturers for retail sale

The Alcoholic Beverage Control Law ("ABCL") contains certain provisions that allow licensed manufacturers, to a limited extent, to sell alcoholic beverages at retail. In response to inquiries from the industry seeking guidance as to the ability of, and conditions governing, licensed manufacturers purchasing product from other licensed manufacturers and licensed wholesalers for purposes of resale, this Advisory is being issued.

Sale by licensed wholesalers to licensed manufacturers

ABCL §53 (beer wholesalers), ABCL §58 (cider wholesalers), ABCL §58-a (beer wholesalers selling cider), ABCL §62 (liquor wholesalers) all provide that those wholesalers may sell, at wholesale, alcoholic beverages to other licensed wholesalers and licensed retailers. Unlike the statute governing wine wholesalers [ABCL §78], those statutes do not specifically allow beer, cider and liquor wholesalers to sell product intended for retail sale to licensed manufacturers.

It is the view of the Authority that, for purposes of the above referenced sections of the ABCL, the word "retailers" [§53, §58-a and §62] and "retail licensee" [§58] should be read to include licensed manufacturers who are authorized to sell alcoholic beverages at retail. Accordingly, licensed wholesalers may sell, at wholesale, alcoholic beverages to such manufacturers. Please note that, with respect to wine and liquor, all such sales must be made using the retail price schedules posted pursuant to ABCL §101-b(3)(b).

Purchases of NYS labeled wine and/or NYS labeled liquor by licensed wineries and farm wineries

Unlike other provisions regarding the retail sale of alcoholic beverages by a licensed manufacturer, the ABCL contains specific restrictions regarding purchases by licensed wineries of NYS labeled wine and by licensed farm wineries of NYS labeled wine and NYS labeled liquor. Specifically, ABCL §76(11)(b)(vi) [for wineries] and

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\$76-a(4)(b)(6) can be read to require that the purchases be made only from a licensed manufacturer, either outright or on consignment.

In the view of the Authority, the above referenced provisions of the ABCL do not require purchases only from the licensed manufacturer. The provisions merely allow the licensed manufacturer, when purchasing directly from another licensed manufacturer, to either purchase the alcoholic beverages outright or on consignment, which is otherwise prohibited under the ABCL. Wineries and farm wineries may also purchase NYS labeled wine and NYS labeled liquor (farm wineries only) from licensed wholesalers.

Price schedules

Please note that all purchases by a licensed manufacturer (for purposes of retail sales) from a licensed wholesaler or another manufacturer must be made using the retail price schedules posted pursuant to ABCL §101-b(3)(b).

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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932L

REASON FOR REFERRAL
REQUEST FOR DIRECTION

ROADSIDE FARM MARKET LICENSE

(PROPOSED ADVISORY 10)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All persons licensed to manufacture or sell New York
state labeled wine

Subject: Roadside Farm Market license

Chapter 355 of the Laws of 2013 amended the Alcoholic Beverage Control Law ("ABCL") to create the "Roadside Farm Market" license. This new license became available on March 26, 2014. Since the law was signed by Governor Cuomo, the Authority has received inquiries regarding the new license, particularly with respect to who is eligible for the license and the relationship between this license, farmers markets and farm wineries. This Advisory is intended to provide guidance to the industry with respect to the new license.

What is a Roadside Farm Market?

A Roadside Farm Market is a retailer who is authorized to sell New York state labeled wines.¹ It consists of a building or structure, located on a farm, where New York agricultural products are sold by the farmer to the general public.²

Is there a difference between a Roadside Farm Market and a Farmers Market?

Yes. As discussed above, a Roadside Farm Market is defined in the ABCL and is eligible for this new license. A "farmers market" is defined³ and regulated by the New York State Department of Agriculture and Markets. The ABCL gives certain manufacturers and wholesalers privileges to conduct tastings and sell their alcoholic beverage products "by the bottle" at farmers markets. Those privileges cannot be used at a Roadside Farm Market.

¹ ABCL §3(27-a)

² ABCL §76-f(2)

⁴ Agriculture & Markets Law §260(1)

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What alcoholic beverages can be sold at a Roadside Farm Market?

A Roadside Farm Market can sell New York state labeled wine for off-premises consumption ("by the bottle"). The wine must be manufactured by a farm winery or special winery that is located within twenty miles of the Roadside Farm Market.⁴

How many different farm wineries or special wineries can the licensee do business with?

There is no limit to the number of farm wineries or special wineries that the Roadside Farm Market can purchase from. However, the farm winery or special winery must be located within twenty miles of the Roadside Farm Market and only wine from two manufacturers can be offered for sale at any given time.⁵

Can tastings be conducted at a Roadside Farm Market?

No tastings can be conducted at a Roadside Farm Market.⁶ This includes tastings done by the licensee or a manufacturer or wholesaler with a permit to conduct tastings.

Can a Farm Winery own or operate a Roadside Farm Market?

No. The new law expressly refers to the Roadside Farm Market license as a retail license. Except when specifically permitted by law, a farm winery (or any other manufacturer) is prohibited from holding a retail license.⁷ The new law does not create an exception for Roadside Farm Markets.

Can the Roadside Farm Market licensee purchase wine directly from the farm winery or special winery?

Yes. The new law contains provisions allowing for the sale of wine from the farm winery⁸ or special winery⁹ directly to the Roadside Farm Market licensee. As a retailer, the Roadside Farm Market licensee can also purchase wine from a licensed wholesaler, provided that the wine is manufactured by a farm

⁴ ABCL §76-f(3)

⁵ ABCL §76-f(3)

⁶ ABCL §76-f(4)

⁷ ABCL §101(1)(a)

⁸ ABCL §76-a(10)

⁹ ABCL §76-c(3)

winery or special winery located within twenty miles of the Roadside Farm Market.

Can other licenses be issued for a Roadside Farm Market?

No. The Authority does not issue multiple retail licenses for the same location.

What are the hours of sale at a Roadside Farm Market?

The hours of sale are the same as those of a package or wine store.¹⁰ The statewide hours of sale are Mondays through Saturday 8 am until midnight and Sundays from noon until 9 pm.¹¹ However, most counties have adopted more restrictive hours. A roadside farm market must comply with the hours of sale that apply in its county. A list of each county's hours of sale is available on the Authority's website. No sales are permitted on Christmas.

How much wine can be stored at a Roadside Farm Market?

Up to twenty cases of wine can be stored at a Roadside Farm Market.¹² The wine must be kept in a safe and secure location when the market is closed for business. The wine must also be kept segregated from the other products sold at the Roadside Farm Market.

¹⁰ ABCL §76-f(4)

¹¹ ABCL §105(14)

¹² ABCL §76-f(3)

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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932M

REASON FOR REFERRAL
REQUEST FOR DIRECTION

GROWLERS

(PROPOSED ADVISORY 11)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All licensees authorized to sell beer and cider for
off-premises consumption

Subject: Growlers

Over the past several years the Authority has been receiving inquiries regarding the sale of beer and cider for off-premises consumption in growlers. For purposes of this Advisory, "growler" means any container other than the original container in which the beer or cider was delivered to the retailer. This Advisory is intended to provide guidance with respect to the use of growlers to those licensees who sell beer and cider at retail for off-premises consumption.

Sections 105(5) and 105(11) of the Alcoholic Beverage Control Law require package and wine stores to keep liquor or wine in the original sealed containers received from the manufacturer or wholesaler. The only exception is a container that is opened for tastings. Given these provisions, liquor and wine sold for off-premises consumption must be sold to the consumer in the original, sealed container. Neither liquor nor wine can be poured into another container and sold to the consumer.

Notably, beer and cider are not mentioned in either section 105(5), section 105(11) or section 106(2)(a). In the view of the Authority, this means that beer and cider do not have to be sold to consumers in the original container. Accordingly, licensees selling beer or cider at retail for off-premises consumption may pour the beer or cider from the original container into a growler for the consumer. The growler may be one provided or sold by the licensee, or one provided by the consumer.

Licensees are reminded that, while the sale of beer or cider using growlers is permissible under the Alcoholic Beverage Control Law, local "open container" ordinances may restrict the ability of the consumer to leave the licensed premises with an unsealed growler.

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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932N

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DELIVERIES BY ENTITIES WITH MULTIPLE LICENSES

(PROPOSED ADVISORY 12)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: Manufacturers and wholesalers holding multiple
licenses

Subject: Deliveries of alcoholic beverages

Section 116 of the Alcoholic Beverage Control Law ("ABCL") allows licensees to transport their alcoholic beverages in vehicles owned and operated, or hired and operated, by the licensee. That statute requires that there be a sign on both sides of the vehicle setting forth the name and address of the licensee, together with such other information as the Authority may require. By regulation,¹ the Authority requires that the sign also include the licensee's serial number. As an alternative to the sign, section 116 allows the licensee to have a copy of its current license certificate in the cab of the vehicle.

The Authority routinely receives inquiries from manufacturers and wholesalers with multiple licenses asking whether they can deliver all of the products manufactured or sold under the various licenses in the same vehicle at the same time. Given the language of the statute and the regulation referring to the "license" and the "serial number," the Authority had taken the position that only product manufactured or sold pursuant to one license could be transported in a licensee's vehicle at any given time.

For example, a company holding a beer wholesale license and a liquor wholesale license would not be able to deliver beer and liquor together in the same vehicle to retailers. A delivery of beer could be made with the sign indicating the beer wholesaler license serial number (or a copy of the beer wholesale license certificate). A separate delivery of liquor could be made in the same vehicle, but only with a sign indicating the liquor wholesaler license serial number (or a copy of the liquor wholesale license certificate).

¹ Section 67.1(b) of the Rules of the Authority

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In the view of the Members of the Authority, such a reading of the statute and regulation is not necessary and creates an undue hardship on manufacturers and wholesalers with multiple licenses. Accordingly, licensees with multiple licenses may transport any and all alcoholic beverages they manufacture or sell in the same vehicle at the same time, provided that copies of all relevant licenses are maintained in the cab of the vehicle.

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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
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2014-009320

REASON FOR REFERRAL
REQUEST FOR DIRECTION

ALLOWING MANUFACTURERS TO
SERVE AS AGENTS FOR OTHER
MANUFACTURERS

(PROPOSED ADVISORY 13)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: Manufacturers, wholesalers and importers authorized to
conduct tastings and bottle sales

Subject: Authorized agents for tastings and bottle sales

As part of the license privilege, pursuant to a permit expressly set forth in the Alcoholic Beverage Control Law ("ABCL"), or pursuant to a Marketing Permit issued under ABCL section 99-b(1)(k), manufacturers, wholesalers and importers have the ability to conduct tastings and bottle sales of their products at certain events. They may conduct these events themselves, or thorough a representative.

In two situations, a brewer's tasting permit issued under ABCL 51(8) or the Marketing Permit, a licensed beer wholesaler may not serve as a representative for a brewer. In all other situations a licensed manufacturer or wholesaler may serve as the representative for another licensed manufacturer or wholesaler, or the holder of a Marketing Permit. For example, a licensed farm winery holding a Marketing Permit may appoint another licensed farm winery to serve as its representative and conduct tastings and bottle sales on its behalf under the Marketing Permit.

DRAFT

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932P

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DELIVERIES BY FARM WINERIES

(PROPOSED ADVISORY 14)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: Farm winery licensees

Subject: Transporting New York state labeled wine belonging to
other wineries and farm wineries

Section 116 of the Alcoholic Beverage Control Law ("ABCL") allows licensees to deliver their products in their own vehicles without the need of a separate trucking permit. ABCL section 76-a(6)(d) allows a farm winery to also transport New York state labeled wine produced by another licensed winery or farm winery in the farm winery's vehicle without a separate trucking permit. However, section 76-a(6)(d) limits such deliveries of wine from other wineries and farm wineries to: on-premises retail licensees; off-premises retail licenses; and any other person authorized to receive or purchase the wine.

The Authority has received inquiries as to whether farm wineries can transport New York state labeled wine produced by other wineries and farm wineries to other venues, such as farmers markets and events where the wine will be tasted or sold by the bottle as authorized by the ABCL or a permit issued by the Authority. In the view of the Members of the Authority, the language of section 76-a(6)(d) allows for the delivery of such wine by the farm winery to any place where the wine can be sold. This would include farmers markets and other venues where the wine can be sold at retail.

DRAFT

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932Q

REASON FOR REFERRAL
REQUEST FOR DIRECTION

ELIMINATION OF SURETY BONDS FOR
CERTAIN LICENSEES

(PROPOSED ADVISORY 15)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

To: All farm winery, micro-rectifier and micro-brewery
licensees

Subject: Surety Bonds

Section 112 of the Alcoholic Beverage Control Law ("ABCL") provides that the Authority "may require" licensees with a certain class of license to file a surety bond with the Authority. By regulation (Part 81 of the Rules of the Authority) the Authority imposes a requirement on certain classes of licensees to file such a bond. The amount of the bond varies with the class of license.

With respect to manufacturers, the regulations include a bond requirement for: class A distillers; class B distillers (also known as rectifiers); class C distillers; wineries; cider producers; and farm wineries. In Divisional Order #808 (issued on October 9, 1996), the Authority also imposed a bond requirement on class B-1 distillers (micro-rectifiers) and micro-breweries.

Since the Authority issued Divisional Order #808, a number of manufacturing licenses have been added to the ABCL. In 2003 the class A-1, or micro-distiller, license became available. That was followed in 2008 by the class D, or farm distiller, license, in 2013 by the farm brewery license and in 2014 by the farm cidery license. All of these licensees are "craft manufacturers" in the respect that they are limited in the amount of alcoholic beverages that they can produce.

Farm wineries, micro-rectifiers and micro-breweries are also craft manufacturers. However, since the Authority has taken no action since 1996, they are the only craft manufacturers required to file a bond. In order to treat all craft manufacturers equally with respect to the bond requirement, the Authority hereby exercises its discretionary power under section 112 and will no longer require farm wineries, micro-rectifiers and micro-breweries to file a bond with the Authority. Accordingly, Divisional Order #808 is hereby rescinded and, pending amendment of the Rules of the Authority, the provisions of Part 81 requiring a farm winery to file a bond shall be waived.

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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: EXECUTIVE OFFICE

2014-00932R

REASON FOR REFERRAL
REQUEST FOR DIRECTION

EBT TRANSACTIONS IN LICENSED
PREMISES

(PROPOSED ADVISORY 16)

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: Off-premises liquor ("package store") licensees
Off-premises wine ("wine store") licensees
On-premises licensees providing adult entertainment
"C" beer wholesalers selling beer at retail

SUBJECT: EBT Transactions in licensed premises

The federal Middle Class Tax Relief and Job Creation Act of 2012 requires states to put in place policies and procedures to prevent federal public assistance benefits distributed by states from being used in any electronic transaction at designated types of businesses, including certain establishments that sell alcoholic beverages. New York issues its cash public assistance to eligible citizens through a system known as Electronic Benefit Transfer (EBT).

EBT operates on the private sector commercial debit/credit infrastructure that encompasses automated teller machines (ATMs) and point of sale (POS) devices at checkout counters in retail stores. Using EBT, public assistance recipients can withdraw all or a partial amount of their cash assistance from an ATM. They also can use the card to debit their cash account for purchases and cash back transactions at POS devices in any number of retail outlets that accept the EBT card.

To comply with the federal law, Governor Cuomo has signed legislation prohibiting certain licensees from accepting an EBT card for payment. The new legislation, which becomes effective on May 30, 2014, applies to the following types of licensed premises:

- Off-premises liquor ("package store");
- Off-premises wine ("wine store");
- "C" beer wholesaler (a beer wholesaler who is allowed to sell beer at retail; and

- On-premises liquor, wine or beer that allows entertainers to appear unclothed as permitted by the rules of the Authority.

These licensees must ensure access to electronic cash purchases from EBT accounts is disabled at their licensed premises. A licensee that has POS service already has an existing contract with a third party processor that routes electronic transactions through the commercial debit and credit networks. The licensees listed above must contact that third party processor and request that the third party processor disable or remove EBT access from the licensee's account. Once the EBT access has been disabled, an EBT cardholder who attempts to use the card at one of the terminals will receive the same message that any other customer with a non-participating debit/credit card would receive, and the card simply will be declined.

In the case of a "C" beer wholesaler and an on-premises licensee that allows entertainers to appear unclothed as permitted by the rules of the Authority, there may also be an ATM on the licensed premises. Separate action is required to ensure that EBT cardholders are not able to withdraw money from ATMs at these locations. These licensees should contact the financial institution that is part of the licensee's contract for ATM services and request that the financial institution add the New York EBT card's unique Bank Identification Number (BIN), which is 600486, into their system and flag it as an unacceptable transaction. Once the BIN has been uploaded into the system, an EBT cardholder who attempts to use the card at those ATMs will be declined.

Please note that a violation of this new law will subject the licensee to possible disciplinary action, which may include revocation, cancellation or suspension of the license.

A licensee who has any questions or needs assistance in implementing EBT card blocking can contact Al Rios at the New York State Office of Temporary and Disability Assistance by phone at: 518-473-9696 or via e-mail at: al.rios@otda.ny.gov.

This advisory replaces and rescinds: Advisory #2014-1, adopted by the Members of the Authority at the January 3, 2014

DRAFT

Full Board meeting; and Advisory 2014-3, adopted by the Members of the Authority at the January 28, 2014 Full Board meeting.

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NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF APRIL 10, 2014
REFERRED FROM: LICENSING BUREAU

2014-00932S

REASON FOR REFERRAL
REQUEST FOR DIRECTION

DELEGATION OF AUTHORITY: LICENSING BOARD

The Members of the Authority at their regular meeting held at the Zone I New York City office on APRIL 10, 2014 determined: