

## 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, wholesalers and importers with respect to their ability under the Alcoholic Beverage Control Law (“ABCL”) to properly price post and solicit sales for “limited availability” and “closeout sales” of wine or distilled spirits items. This advisory assumes compliance with Advisories #2012-5 and #2013-1.

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: 1) has reason to believe market demand exceeds or will soon exceed available inventory; or 2) does not intend to purchase or cannot purchase further inventory for a period of at least one year; or 3) has a seasonal item which is limited or for which the season is over; or 4) has an item that has been discontinued by the supplier; or 5) has price posted a subsequent vintage; or 6) has terminated its relationship with (or had its relationship terminated by) the supplier.

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 may incorporate a price reduction from the previous month. “closeout sales” are one acceptable method of allocation for sales of “limited availability” items as further set forth below.

Manufacturers, importers and wholesalers are required to notify the authority in advance of all “limited availability” price postings. Beginning with the September, 2013 retail wine and retail liquor price postings, manufacturers, importers and wholesalers will be required to specify a method of allocation with all “limited availability” postings. For allocation changes mid-month, the email inbox previously utilized for all “limited availability” postings ([limited.availability@sla.ny.gov](mailto:limited.availability@sla.ny.gov)) will remain available but will now be solely utilized for mid-month allocation changes. The below form for email

submission of mid-month “limited availability” price postings is required unless permission is obtained from the Authority to use an alternate form. NOTE: Mid-month allocation changes must be properly price posted the following month and may not be utilized for “closeout sales.”<sup>1</sup>

Manufacturers, importers and wholesalers are reminded that quantity discounts are not permitted for “limited availability” price postings. Manufacturers 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.

Except with permission from the Authority for good cause shown consistent with the intent of the statute, under the ABCL all retailers (on and off premises) have a right to purchase any item at the price posted. The Authority recognizes that good cause has been shown to allocate “limited availability” items differently between on and off premises licensees, provided: (i) the allocation is consistent with this Advisory; (ii) a reasonable method of allocation applies to each channel (on premises and off premises); (iii) all licensees within a channel who meet the allocation method have an equal opportunity to obtain the “limited availability” item; and (iv) at least 30 % of the available quantity must be allocated to each channel, provided where the supply is extremely limited, and the manufacturer, importer or wholesaler is prepared to justify its action, an allocation which results in not less than 20% of the item being allocated to a particular channel is acceptable with prior written approval of the Authority.

#### PROPER TYPES OF “LIMITED AVAILABILITY” ALLOCATIONS:

The following methods of allocating limited availability items are acceptable to the Members of the Authority:

- 1) Past sales (within preceding 12 months) with 10% holdback allowance (i.e., set aside and held in inventory) for prospective new business (provided there is at least a 70/30 on-premises/off-premises split\*); and
- 2) Two month “closeout sales” – First month filing of maximum number of cases per retailer (assumes increased retailer interest due to price drop from prior month); second month all retailers that

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<sup>1</sup> All mid-month “limited availability” allocation changes will be published via the Authority website ([www.sla.ny.gov](http://www.sla.ny.gov)).

purchased maximum allotment must be given opportunity to purchase proportional amount of remaining inventory at same price as first month so that inventory of the item is depleted to zero. If price is dropped in second month then the process repeats itself until inventory of the item is depleted to zero.

- 3) 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 (provided there is at least a 70/30 on-premises/off-premises split\*); and
- 4) Unsold accounts (provided there is at least a 70/30 on-premises/off-premises split\*); and
- 5) First come first served with a maximum per account (provided there is at least a 70/30 on-premises/off-premises split\*); and
- 6) Advance interest, provided all accounts are given reasonable notice and the opportunity to express their interest but no pre-ordering or agreements on price are entered into (provided there is at least a 70/30 on-premises/off-premises split\*); and

A different method of allocation from the above list may be used for each channel. Other methods of allocation may be used, provided, if the manufacturer, importer or wholesaler does not obtain prior written approval from the Authority in advance, it selects the method of allocation at its own risk. The manufacturer, importer or wholesaler is under an obligation to keep proper internal controls and records to justify the need to designate the item as limited availability and the method of allocations chosen.

\* In instances where the supply of an item is extremely limited, and the supplier or wholesaler is prepared to justify its action, an allocation which results in not less than 20% of the item being allocated to a particular channel is acceptable with prior written approval of the Authority.

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):

Number of bottles per case:

Allocation details:

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