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ADVISORY #2017-x

To: Licensed liquor and wine wholesalers and retailers
Subject: "Bill and Hold"¹

For purposes of this advisory, "Bill and Hold" refers to the practice of a licensed wholesaler selling product to a licensed retailer without the product being delivered to the retailer's licensed premises or to a warehouse on behalf of the retailer. Instead, the product remains at the wholesaler's licensed premises or at a warehouse operated by the wholesaler.

The purpose of this Advisory is to provide guidance to the industry so that licensees involved in Bill and Hold sales do not violate the provisions of the Alcoholic Beverage Control Law, particularly with respect to the Gifts and Services Law. This Advisory assumes compliance with Part 64 of the Rules of the State Liquor Authority (9 N.Y.C.R.R. Part 64) regarding warehouse receipt requirements.

In the view of the Authority, Bill and Hold sales conducted under the following conditions are permissible:

- 1) If a licensed wholesaler offers the Bill and Hold method of sale to any retailer, that wholesaler must offer Bill and Hold sales to any retailer purchasing product from the wholesaler. Provided, however, that a wholesaler is not required to offer all of its products for sale under Bill and Hold.
- 2) Any purchase in which the retailer is not taking immediate delivery of all the product ordered, at either its licensed premises or at a warehouse on behalf of the retailer, must be treated as a Bill and Hold sale.
- 3) A wholesaler may not require a retailer to make any purchase via the Bill and Hold method as a condition of the sale. If a wholesaler offers Bill and Hold, the retailer has the option of not using it for a particular purchase or purchases.

¹ This Advisory replaces Advisory #2017-1. No substantive changes were made to that Advisory.

- 4) For the purpose of determining the applicable price of the product, all Bill and Hold sales must be invoiced as of the date the wholesaler accepts the retailer's order, and such date shall be considered the date of delivery for determining the “final payment date” for sales made on credit.
- 5) Alcoholic beverages purchased using Bill and Hold may be stored at the wholesaler's licensed premises or at a warehouse for which the wholesaler holds a permit. If the licensed premises is used for storage, the wholesaler does not need to obtain a separate warehouse permit for the location.
- 6) The wholesaler must charge the retailer the “market rate” for storing the product in any warehouse that it owns or controls. Under no condition can storage be offered without cost, not even for a single day. A fee equal to the average fee charged by the two third-party public warehouses closest to the wholesaler's licensed premises (or the wholesaler's warehouse, if the products are stored there) shall be deemed the “market rate” for purposes of this advisory. Other methods of computing the “market rate” may be utilized, however, if a wholesaler utilizes another method and does not obtain prior written approval from the Authority it does so at its own risk. Additionally, any wholesaler seeking to change its storage charge fees must give a minimum of 60 days' notice to retailers that are currently storing product with them prior to any change going into effect.
- 7) A wholesaler does not have to set aside specific product for each retailer using Bill and Hold, provided that the total amount of the particular alcoholic beverage physically present at the wholesaler's licensed premises and its warehouse is equal to or greater than the amount of that product reserved for Bill and Hold orders sold, but not yet delivered.
- 8) Upon the passage of eighteen (18) months from the date of the placement of the order by the retailer, the retailer is required to accept delivery of any and all product remaining in the possession of the wholesaler.
- 9) The wholesaler shall maintain adequate books and records regarding Bill and Hold sales showing, for each sale, the name and serial number of the retailer, the original amount of product purchased, the remaining product on hand, and the amount of storage fees charged to the retailer.
- 10) Provided that the retailer has either an active license or liquidator's permit, no wholesaler may refuse to deliver any Bill and Hold items upon the retailers' payment of all storage and delivery charges regardless of the amount or value of the product at issue at the time.
- 11) Product sold under Bill and Hold cannot be exchanged for other products. For example, a particular vintage year of a wine purchased using Bill and Hold cannot be replaced with a different vintage year unless the products were price posted as “various vintages” (“VV”) on the Authority's price posting system, in which case any vintage of the brand item may be delivered to the retailer in satisfaction of the retailer's order.

Advisory #2017-x
"Bill and Hold"

In order to allow the industry to modify any current practices that are not consistent with the guidance offered by this Advisory, the conditions set forth above shall only apply to alcoholic beverages being held in Bill and Hold as of September 1, 2017, and any Bill and hold sales made on or after September 1, 2017.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on June 8, 2017 before Chairman Vincent Bradley and Commissioner Greeley Ford. This written advisory was approved by the Members of the Authority at a Full Board meeting held on June 8, 2017 before Chairman Vincent Bradley and Commissioner Greeley Ford.

Dated:

Thomas J. Donohue
Secretary to the Authority