STATE OF NEW YORK
LIQUOR AUTHORITY

TO: All manufacturers, importers, wholesalers, and agency staff

SUBJECT: Improper marketing of wines bearing the same brand, trade name and vintage

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 sell wines featuring the same brand, trade name and vintage with or without the addition of a sticker featuring the wording "Direct," "Reserve," or wording intended to give the impression that the product differs from the other product being sold under the same name. This Advisory assumes compliance with Advisory #2014-23.

Pursuant to ABCL §101-b(2)(a), manufacturers and wholesalers are prohibited from discriminating, directly or indirectly, in price, in the sale at wholesale or retail of liquor or wine bearing the same brand or trade name of like age and quality. The Authority is aware that certain entities involved in the chain of distribution of wine have engaged in the practice of obtaining separate federal Certificate of Label Approvals ("COLAs") for both the standard brand labels of wines as well as for substantially similar labels which bear the words "Direct," "Reserve," or wording intended to give the impression that product differs from the other product being sold under the same name on the label. These entities subsequently place stickers bearing the words such as "Direct," "Reserve," or similar permutations thereof on bottles and/or cases of standard labeled wine as needed to satisfy the needs of their preferred New York business partners. The substantially similar labeled or "stickered" product is then marketed and sold at different prices from the standard labeled product, and utilized for discriminatory market behavior at both wholesale and retail in New York. The Authority finds that the act of placing stickers on bottles and/or cases of a given brand, trade name or vintage of alcoholic beverages - even if said stickers comport with a separate federal COLA – does not create a separate brand or trade name[1] sufficient to support separate pricing in compliance with §101-b(2)(a), and this determination is not dependent upon whether it is the manufacturer or wholesaler that is the entity responsible for the actual stickering of the product, or by whether there is one wholesaler or multiple wholesalers filing wholesale price schedules for the items that are alleged to be different brands.

[1] As set forth in Advisory 2016-3 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 band or trade name to include any statement regarding: flavor description; age; and geographic designation or appellation. Generally speaking, any difference in the band name is considered a separate brand label.

This Advisory is not intended to impact the ability of manufacturers, importers or wholesalers to sell the same brand, trade name and vintage of wine in different "ornamental" labels at different prices from standard labels – industry members are reminded that said practice is provided for in Advisory 2014-23, and that a request must first be sent to the Wholesale Bureau in writing or via electronic mail at: wholesale.bureau@sla.ny.gov. This Advisory is also not intended to affect the ability of manufacturers to use terms such as "Reserve," "Select," or similar wording on the brand label to distinguish different wines. Licensees should refer to Advisory 2016-3 concerning brand label registration.