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OFFICE OF THE STATE COMPTROLLER

September 11, 2008

Mr. Daniel B. Boyle
Chairman
Division of Alcoholic Beverage Control
State Liquor Authority
Alfred E. Smith Building
80 South Swan Street, Suite 900
Albany, NY 12210-8002

Re: Report 2008-F-16

Dear Mr. Boyle:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Division of Alcoholic Beverage Control State Liquor Authority to implement the recommendations contained in our audit report, *Oversight of Wholesalers' Compliance with the Alcoholic Beverage Control Law* (Report 2005-S-33).

Background, Scope and Objectives

The New York State Legislature enacted the Alcohol Beverage Control (ABC) Law in 1934 to regulate the State's alcoholic beverage industry. The ABC Law created the State Liquor Authority (Authority) and the Division of Alcoholic Beverage Control (Division). The Authority is a three-member board of commissioners that oversees the work done by Division staff. The alcoholic beverage industry in New York State has three basic tiers: manufacturers produce the alcoholic beverages, wholesalers distribute them, and retailers sell to consumers. Manufacturers, wholesalers, and retailers must be licensed to do business in the State. Division staff are responsible for reviewing applications, issuing and renewing licenses, and enforcing the ABC Law. The Division has issued rules and regulations over the years to provide guidance to licensees in complying with the ABC Law.

Our initial audit report, which was issued on August 1, 2006, determined whether the Division had adequately enforced the provisions of the Law related to wholesalers through investigations and other activities, and to determine whether the Division had taken appropriate action against those found in violation of the ABC Law. Our report identified a number of weaknesses. In particular, we found that the Division needed to take a more active role in monitoring

wholesaler compliance with the ABC Law. In addition, the Division needed to ensure that the investigative actions taken are documented, as well as the basis for decisions made for each case involving potential violations of the ABC Law. Also, while the Division has issued hundreds of guidance bulletins to the industry, they are not readily available. Therefore, licensees may not be aware of all bulletins that affect them.

We concluded that, because of these and other weaknesses, the Division needed to improve its oversight of wholesalers. The objective of our follow-up was to assess the extent of implementation as of July 1, 2008, of the eleven recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that the Division has made some progress in correcting some of the problems we identified. However, additional improvements are needed. Of the 11 prior audit recommendations, 5 recommendations have been implemented, 2 recommendations have been partially implemented, and 4 recommendations have not been implemented.

Follow-up Observations

Recommendation 1

Regularly review the monthly Retail Price Schedules, as well as all amended schedules, for compliance with the ABC Law. Follow up on apparent and potential violations, including reviewing the records of wholesalers and retailers.

Status - Not Implemented

Agency Action - Since December 2007, wholesalers have been required to submit their monthly price schedules electronically, through the Division's e-Wholesale Price Posting Management Application. Using this system, Division staff have the ability to review all price schedules, compare current price schedules with prior ones, and pull data from the schedules for additional analysis. However, we determined that the price schedules are not reviewed regularly for compliance with the ABC Law. Instead, reviews are done as needed, as part of an investigation of a particular wholesaler. The Division is in the process of training the investigators assigned to the Wholesale Division. According to Division officials, once these investigators are trained, they will begin performing regular reviews of the price schedules.

Recommendation 2

Ensure wholesalers obtain prior approval before they designate items as limited availability on price schedules.

Status - Not Implemented

Agency Action - Division officials state they do not have sufficient staffing to review and approve all requests for items to be designated as limited availability. Instead, they rely on wholesalers to designate items accurately as limited availability in their monthly price schedules. These officials state that if the Division later determines that an item does not qualify as limited availability, the Division will take appropriate actions against the wholesaler. However, the ABC Law requires a wholesaler to have the approval of the Division before designating an item as limited availability.

Recommendation 3

Develop an electronic price schedule database and provide web-based access to retailers and wholesalers.

Status - Implemented

Agency Action - Since December 2007, wholesalers have been required to submit their monthly price schedules electronically, through the Division's e-Wholesale Price Posting Management Application. We confirmed that the price schedules currently in effect are available to both wholesalers and retailers, as well as the general public, through the Division's website.

Recommendation 4

Develop queries to search the electronic price schedules for anomalous entries to improve the Division's oversight of price schedules and wholesalers.

Status - Partially Implemented

Agency Action - We were shown a variety of standard queries available to Division staff that can be used for searching the price lists posted in the e-Wholesale Price Posting Management Application. Furthermore, the staff have access to price lists from prior months that are no longer available to the general public (since they are no longer in effect), and can run the same standard queries against them. In addition, the Division's IT unit can generate additional queries, should the need arise. However, Division officials told us they are not using the queries to determine whether discrepancies exist in wholesalers' price schedules. According to Division officials, the investigators assigned to the Wholesale Division will begin using queries once they have completed their training. Therefore, the Division has not improved its oversight of price schedules and wholesalers.

Recommendation 5

Make Division bulletins available to licensees on the Division's website.

Status - Implemented

Agency Action - We confirmed that the Division is posting all new Division bulletins on its website.

It is in the process of reviewing all of its Division bulletins to determine which ones are still in effect and which have been superseded. When that process is complete, older Division bulletins will also be posted to the Division's website. In the meantime, the website directs people to contact the Press Office concerning these older bulletins.

Recommendation 6

Develop a process for recording all complaints and referrals received.

Status - Implemented

Agency Action - We verified that the Division has added a feature to its case tracking system that records all complaints and referrals that do not result in an investigation by the Division, as well as those that do. This information is now part of the permanent record about a licensee, and may be used to identify potential problem licensees.

Recommendation 7

Ensure documentation is maintained to justify the decision made for each case, including review and approval by a supervising investigator.

Status - Implemented

Agency Action - We examined 15 cases that had been started since January 2008 and were completed by the time of our review in July 2008. For each case, we verified that the Division is maintaining documentation to justify the decisions made. In addition, we confirmed that each case is assigned to either a supervising investigator or the Director of Wholesale Enforcement.

Recommendation 8

Develop guidance on when issuing a Letter of Advisement is appropriate.

Status - Implemented

Agency Action - We verified that the Division has developed guidance that investigative staff should follow when determining whether it would be appropriate to issue a Letter of Advisement.

Recommendation 9

Conduct follow-up investigations to ensure violations have been corrected.

Status - Not Implemented

Agency Action - In December 2007, the Division created a Division of Wholesale Enforcement,

which is responsible for overseeing all wholesaler activity and conducting investigations of wholesalers. Prior to that time, the Division had a single Division of Enforcement that handled investigations of both wholesalers and retailers. Division officials stated that, since the Division of Wholesale Enforcement has just started, it has not had time to follow up on the investigations it has completed. While there is no formal policy requiring a follow-up investigation, Division officials stated that serious violations - whether by a wholesaler or a retailer - would be pursued until they are remedied.

Recommendation 10

Prepare the biennial report to the Legislature as required by the ABC Law, including an analysis to determine the optimal number of investigators needed to enforce the ABC Law.

Status - Not Implemented

Agency Action - The ABC Law requires the Division to provide a biennial report to the Governor and Legislature with recommendations regarding a variety of Division operations, including licensing procedures and enforcement methodologies. This report is also to include an analysis of the costs of hiring additional investigators and the projected revenues these additional investigators would bring in. Division officials explained that they provide information about staffing needs - including the number of investigators needed to enforce the ABC Law - to the Office of General Services, which handles the Division's administrative functions. However, the Division does not issue the biennial report as required by the ABC Law.

Recommendation 11

Develop standards for how long it should take to process a case, establishing various benchmarks throughout the process. Monitor progress of cases against standards developed and look into cases that take longer than the standards established.

Status - Partially Implemented

Agency Action - Division officials stated that, because each case is unique, standards and benchmarks cannot be developed. However, we confirmed that Division management does monitor the progress made (in each case) by each investigator on a weekly basis. In addition, the Director of Wholesale stated that he monitors the status of each case using 30, 60, and 90 days as flags to trigger a review of the case and a determination of why it is still open.

Major contributors to this report were Frank Houston, Jennifer Paperman, and Raymond Barnes.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Division for the courtesies and cooperation extended to our auditor during this review.

Very truly yours,

Cindi Frieder
Audit Manager

cc: J. Mark Anderson, Division of Alcoholic Beverage Control
Tom Lukacs, Division of the Budget