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CHAPTER 6 – LICENSEE OPERATIONS

016 TRADE PRACTICE POLICIES

016.08 CONSIGNMENT SALES; CONDITIONAL SALES; RETURNS

016.08A Consignment Sales Prohibited. No industry member shall sell, offer for sale, or contract to sell to any retail licensee, nor shall retail licensee purchase, or contract to purchase from any industry member an alcoholic beverages on consignment or under conditional sale, or with privilege or return, or any basis other that a bona fide cash or 30 day credit sale. For purposes of the Rule, a consignment sale is any transaction in which title to the merchandise is not transferred at the time of shipment or delivery and which does not involve some form of full cash settlement. No industry member shall contract or agree with a retail licensee to retain title to the alcoholic beverages conditional upon whether those products are sold by the retail licensee.

016.08B Privilege of Return. No industry member and retail licensee shall enter into any agreement whereby the retailer has an expressed or implied right to return alcoholic beverages that it cannot sell on the basis of overstock or the fact that a product is slow moving. Any acceptance by an industry member of merchandise returned by the retailer on this basis is considered a strong indication that the “privilege of return” existed at the time of sale, and repeated practice of accepting returned merchandise from a retailer would establish an implied privilege of return, even though no formal agreement has been made.

016.08C Sales Conditional on Acquisition of Other Merchandise. No industry member shall make any agreement with any retailer with terms that allow the industry member to remove the retailer’s inventory conditioned upon present or future sales.

016.08D Exceptions: This rule does not apply to the following transactions:

016.08D1 Defective Products: Products which are unmarketable because of product deterioration, leaking containers, damaged labels, or missing or mutilated tamper evident closures may be exchanged for an equal quantity of identical products or may be returned for cash or credit against outstanding indebtedness.

016.08D2 Error in products delivered. Any discrepancies between products ordered and products delivered may be corrected, within a reasonable period after delivery by exchange of the products delivered for those which were ordered or by a return for cash or credit against outstanding indebtedness.

016.08D3 Products which may no longer be lawfully sold. Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in law or regulation or administrative procedure over which industry members has no control, a particular size or brand is no longer permitted to be sold.

016.08D4 Termination of business. Products on hand at the time a retail licensee terminates operations may be returned for cash or credit against outstanding indebtedness, provided the retail license is still active.

016.08D5 Change in product. A retail licensee inventory of a product which has been changed in formula label or container may be exchanged for equal quantities of the new version of that product.

016.08D6 Discontinued Products. When supplier or importer discontinues the production or importation of a product, a retail licensee’s inventory of that product may be returned for cash or credit against outstanding indebtedness.

016.08D7 Seasonal Retail Licensees. Industry members may accept the return of products from a retail licensee who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

016.08D8 Freshness Dates: Malt Beverage Products past their freshness date may be returned to the selling industry member for cash or credit against outstanding indebtedness or exchange of such malt beverages.

016.08D9 Exchanges and Returns not considered Ordinary and Usual.

a. Overstocked and Slow Moving Products. The return or exchange of product because it is overstocked or slow moving does not constitute a return for ordinary and usual commercial reasons.

b. Seasonal Products. The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for ordinary and usual commercial reasons.