Rick,

I wanted to contact you on behalf of my client, Jewel-Osco, in order to make a comment on one of the proposed distributor's rules converting substantial portions of Trade Practice Policy 2 into a formal administrative rule. The specific rule we would like to comment on is proposed rule 100.210, titled "Unlawful Inducements" and it's accompanying subsections.

In proposed rule 100.210, significant portions of Trade Practice Policy 2 regarding specific items which are considered to be "of value" violations under 235 ILCS 5/6-5 and 6-6 are incorporated into a formal rule. Specifically absent from this proposed rule however is any mention of TPP-2 (13) relating to End of Month (EOM), End of Year (EOY), and other variously identified credits (Rebates) for purchases at or in excess of agreed upon quantities.

We believe that this new rule should include the language previously approved by the Commission from TPP-2(13) in order to be clear that these types of credits are not an "of value" violation, as has traditionally been the Commission's position.

Per TPP-2(13), "[t]raditionally, the Commission has not involved itself in the pricing of alcoholic beverages, nor has it unduly involved itself in the commercial relationships between manufacturers, distributors and importing distributors, and retailers, other that[sic] specifically provided for in Sec. 5/6-5. The use of product credits, such as end of month, quarter, year, etc. credits is viewed as an adjustment of the purchase price based upon volume purchasing, rather than a prohibited 'of value' payment. So, the general treatment of such payments is that they are allowable, if broadly offered to similarly situated retailers."

We believe that this is the correct position for the Commission to take in terms of pricing and believe that the current rule, as proposed, is unclear as to whether these types of credits would be allowed. In order to avoid confusion and to continue the Commission's traditional view point, we believe that this rule should be modified to specifically mention that EOM, EOY and Rebates do not constitute an "of value" violation. We believe that including these types of credits and specifically mentioning that they are allowed will provide clarity to licensees, provide assistance to the Commission in enforcing this rule, and further the purpose of converting the TPP's into rules.

Additionally, we believe that the Commissions traditional position is supported by the Department of Treasury Alcohol and Tobacco Tax and Trade Bureau's rulings, the Code of Federal Regulations regarding Unlawful Inducements, as well as Federal Case law interpreting these rulings and regulations.

Specifically, I would point you to ATF Ruling 54-161, ATF Ruling 76-16, Department of Treasury Bureau of Alcohol, Tobacco and Firearms Industry Circuluar 81-2, copies of which are attached to this email. The Industry Circular summarizes Rulings 54-161 and

76-16 and interprets them in light of National Distributing Company v. U.S. Treasury Department, 626 F.2d 997, a copy of which is also attached to this email.

In summary, it is the position of the TTB based on these rulings and the above case that price reductions, rebates, refunds and other discounts given by liquor wholesale dealers to a retail liquor dealer pursuant to an agreement made at the time of the sale of the merchandise are considered a part of the sales transaction and are not a violation of the Federal rules prohibiting the giving of something "of value." In fact, the National Distributing case indicates that even a below wholesaler's cost pricing agreement is not a violation of these "of value" provisions unless there is a specific requirement in the agreement that the retailer will buy other products of the wholesaler to the exclusion of competitors.

We believe that the above rulings, cases and industry circular outlining the TTB's position on rebates supports and strengthens the traditional position of the Commission as outlined in TTB-2(13). We believe that it is important to have that traditional position clarified and specifically outlined in the proposed rule 100.210, to avoid any confusion or questions on this issue in the future from licensees or Commission staff. We would therefore ask the Commission to modify the proposed distributor rule 100.210 to include language from TTP-2(13) outlining that these types of credits are not an "of value" violation and will be allowed under the Illinois Liquor Control Act, as they traditionally have been.