

Texas Alcoholic Beverage Commission Protest Form

Protest Guidelines:

- Use this form to object to TABC issuing or renewing a permit to sell alcoholic beverages.
- **Complete all required sections** on the Protest Form and submit for filing with your closest TABC Office.
- Attach any supporting documentation if available.
- For more information about Protests or to locate the nearest TABC Office visit:
http://www.tabc.texas.gov/contact_us/local_field_office.asp

If you file a protest, you cannot remain anonymous. The Commission will only disclose your identity and contact information as required by law.

Required: Protestant Contact Information:

Protest is being filed by: Individual **Group** **Date:** 05/19/2016

Individual Name or Group Name: McLane Company, Inc.

Name of Point of Contact for Group: Brett Charhon

Mailing Address: Charhon Callahan Robson & Garza, PLLC, 3333 Lee Parkway, Suite 460

City: Dallas State: TX Zip Code: 75219

Phone: Day: (214) 521 - 6400 Evening: (469) 587 - 7250 Other: () -

Email Address: bcharhon@ccrglaw.com

Required: Applicant / Current Business:

Name of Business: Core-Mark Midcontinent, Inc.

Business Address: 6401 Will Rogers Blvd., Suite 200

City: Fort Worth State: TX Zip Code: 76134

Phone: (817) 293 - 5558 Other: () -

Name of Business Owner(s), if known: Core-Mark Holding Company, Inc.

Required: Grounds for Protest: (Select all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Traffic | <input type="checkbox"/> City/County Ordinance – type _____ |
| <input type="checkbox"/> Noise – type _____ | <input type="checkbox"/> False Ownership _____ |
| <input type="checkbox"/> Criminal Activity _____ | <input type="checkbox"/> Illegal sales of alcohol – type _____ |
| <input checked="" type="checkbox"/> Other - Type <u>Tied-House</u> | <input type="checkbox"/> Nuisance _____ |

Explain each selection (above) for legal ground for protest. Be as specific as possible and attach additional page if necessary.

Please see the attached letter and exhibits.

Have you attempted to resolve the problem with the business owner? If yes, please explain: Yes No

CHARHON CALLAHAN ROBSON & GARZA, PLLC

ATTORNEYS AND COUNSELORS AT LAW

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May 19, 2016

By FedEx and By E-Mail

Texas Alcoholic Beverage Commission
Arlington Regional Office
2225 E. Randol Mill Rd., Ste. 200
Arlington, TX 76011
complaints@tabc.texas.gov

RE: Permit X808338 and license BB808340 to Core-Mark Midcontinent, Inc.

Dear Sir or Madam:

I write on behalf of McLane Company, Inc. to protest permit X808338 and license BB808340, both expiring on May 24, 2016. The owner affiliated with the permits, Core-Mark Midcontinent, Inc.,¹ violates Chapter 102 of the Texas Alcoholic Beverage Code (the "Code"), as interpreted by the Texas Alcoholic Beverage Commission (the "TABC"). As a result, to maintain an impartial, equal, and consistent application of the law, the TABC must either refuse to renew the above-listed permit and license, which currently expire within the next sixty days, or change its current interpretation of the so-called "tied house" provisions of the Code. Absent the TABC changing its interpretation of the Code, we protest and contest the renewal of the permits, pursuant to at least TABC Policy No. LIC1.0.²

The TABC's "One Share" Interpretation of the Code's Tied-House Provisions. Section 102.07(a)(1) of the Code generally prohibits a person or entity who "owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, winery, or wine bottler" from "own[ing] or hav[ing] a direct or indirect interest in the business . . . of a retailer[.]" The Code prohibits "tied houses," which are defined as "any overlapping ownership . . . between those engaged in the alcoholic beverage industry at different levels, that is, between a manufacturer and a wholesaler or retailer, or between a wholesaler and a retailer[.]" Tex. Alco. Bev. Code §§ 102.01(a), 102.01(c). The TABC considers the tied-house statutes in determining whether to renew a permit. *Id.*, § 102.01(b). At least three sections of the Code specifically prohibit companies with interests in a wholesaler from holding interests in manufacturers or retailers:

- "No person having an interest in a permit issued under Subtitle A, Title 3, of this code may secure or hold, directly or indirectly, an ownership interest in the busi-

¹ The mailing address listed for permit X808338 and license BB808340 is 6401 Will Rogers Blvd., Suite 200, Fort Worth, Texas, 76134.

² To clarify, McLane disagrees with the TABC's interpretation of the tied-house provisions. But, if the TABC insists on its current interpretation, it must enforce the provisions evenhandedly against all entities, rather than selectively against entities disfavored by the TABC.

ness or corporate stocks, including a stock option, convertible debenture, or similar interest, in a permit or business of a permittee of a different level who maintains licensed premises in Texas.” § 102.01(c).

- “[No] person who has an interest in the business of a . . . wholesaler . . . may . . . have a direct or indirect interest in the business . . . of a mixed beverage establishment[.]” § 102.04(b)(1).
- “[N]o person who owns or has an interest in the business of a . . . wholesaler . . . may . . . own or have a direct or indirect interest in the business . . . of a retailer[.]” § 102.07(a)(1).

The TABC has interpreted the tied-house provisions of the Code stringently (and, we believe, erroneously). The TABC’s position is that “even one overlapping share of stock ownership, whether direct or indirect, would violate the statutory tied-house prohibitions[.]” *Cadena Comercial USA Corp. v. TABC*, 449 S.W.3d 154, 159 (Tex. App.—Austin 2014, pet. filed). In *Cadena*, the TABC’s Director of Licensing confirmed this strict interpretation while discussing FEMSA (a publicly traded company affiliated with Heineken, a manufacturer permittee) and Whole Foods and Walmart (publicly traded retailer permittees):

Q. And if one of those shareholders in FEMSA who has bought his shares on the New York Stock Exchange, let’s say it’s about ten shares of FEMSA, if he also owns ten shares of stock in a publicly traded retail company that has a TABC license, meaning Walmart, Whole Foods, would that create a three-tier violation ownership by that stockholder of ten shares in FEMSA and ten shares in a TABC-licensed retailer?

A. Yes, sir.

Ex. A at A1, 58:7-15 (Harrison testimony). The TABC’s Director of Licensing also stated that every shareholder in a company has an interest in that company’s business, for the purposes of the tied-house statutes, even if that shareholder holds only one share. *Id.* at A1-2, 58:1-6, 69:10-15.

A Public Company (Core-Mark Holding Company, Inc.) Owns or Has an Interest in Core-Mark Midcontinent’s Business. Core-Mark Holding Company, Inc. is a publicly traded company—investors may buy its shares on the NASDAQ stock exchange (symbol: CORE). *See* Ex. B at B33 (Core-Mark SEC Form 10-K). According to the TABC, holders of Core-Mark Holding Company stock have an ownership interest in the business of Core-Mark Holding Company.

Core-Mark Midcontinent owns the permit and license at issue. Core-Mark Midcontinent is a subsidiary of Core-Mark Holding Company. *See* Ex. B at B137. As a result, those that hold an interest in Core-Mark Holding Company stock have an indirect ownership interest in the business of Core-Mark Midcontinent.

Core-Mark Midcontinent Holds Permits in the Wholesaler Tier. Core-Mark Midcontinent owns the X permit (class B wholesaler’s permit) and BB license (general distributor’s license) at issue. X permits and BB licenses are associated with wholesalers. Thus, for tied-house purposes, Core-Mark Midcontinent is a wholesaler.

Many Institutional Investors Who Own Stock in Core-Mark Holding Company Violate the TABC's Interpretation of the Tied-House Statutes. According to recent filings with the U.S. Securities and Exchange Commission ("SEC"), the following are the four largest institutional holders of Core-Mark Holding Company stock:

- T. Rowe Price Associates, Inc. (around 3.1 million shares worth approximately \$260 million), *see* Ex. C at C22 (T. Rowe Price SEC Form 13-F);
- Vanguard Group, Inc. (around 1.7 million shares worth approximately \$140 million), *see* Ex. D at D90 (Vanguard SEC Form 13-F);
- Dimensional Fund Advisors (around 1.7 million shares worth approximately \$140 million), *see* Ex. E at E25 (Dimensional SEC Form 13-F); and
- Blackrock Fund Advisors (around 1.5 million shares worth approximately \$120 million), *see* Ex. F at F30 (Blackrock SEC Form 13-F).

Each of these companies also owns stock in manufacturer and/or retailer holders or beneficiaries of alcohol permits:

- T. Rowe Price owns:
 - Around 300,000 shares (worth approximately \$15 million) in **Bed Bath & Beyond (retailer)**, *see* Ex. C at C12;
 - Around 380,000 shares (worth approximately \$35 million) in **Brown Forman Corp. (manufacturer)**, *see id.* at C14;
 - Around 1.6 million shares (worth approximately \$150 million) in **Molson Coors Brewing Co. (manufacturer)**, *see id.* at C51; and
 - Around 240,000 shares (worth approximately \$14 million) in **Nordstrom Inc. (retailer)**, *see id.* at C54.
- Vanguard owns:
 - Around 13.7 million shares (worth approximately \$680 million) in **Bed Bath & Beyond (retailer)**, *see* Ex. D at D46;
 - Around 6.8 million shares (worth approximately \$670 million) in **Brown Forman Corp. (manufacturer)**, *see id.* at D57;
 - Around 15.3 million shares (worth approximately \$1.5 billion) in **Molson Coors Brewing Co. (manufacturer)**, *see id.* at D221; and
 - Around 11.9 million shares (worth approximately \$680 million) in **Nordstrom Inc. (retailer)**, *see id.* at D237.
- Dimensional owns:
 - Around 940,000 shares (worth approximately \$47 million) in **Bed Bath & Beyond (retailer)**, *see* Ex. E at E13;
 - Around 230,000 shares (worth approximately \$23 million) in **Brown Forman Corp. (manufacturer)**, *see id.* at E16;

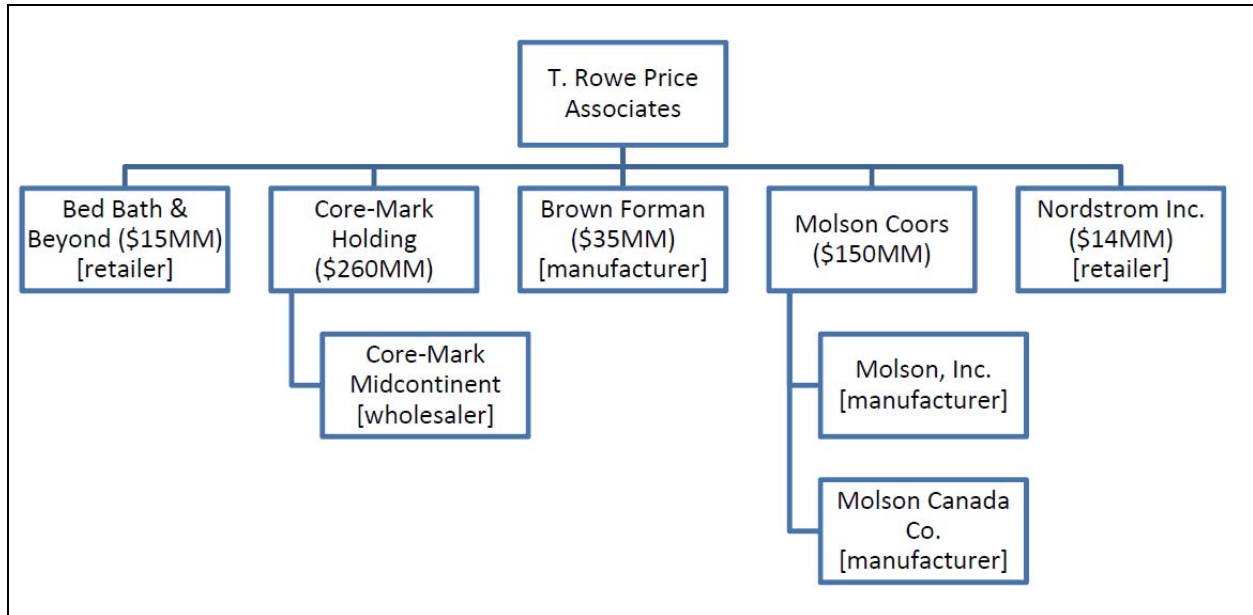
- Around 1.5 million shares (worth approximately \$145 million) in **Molson Coors Brewing Co. (manufacturer)**, *see id.* at E58; and
- Around 685,000 shares (worth approximately \$40 million) in **Nordstrom Inc. (retailer)**, *see id.* at E61.
- Blackrock owns:
 - Around 2.6 million shares (worth approximately \$130 million) in **Bed Bath & Beyond (retailer)**, *see Ex. F* at F17;
 - Around 1.8 million shares (worth approximately \$180 million) in **Brown Forman Corp. (manufacturer)**, *see id.* at F20;
 - Around 2.6 million shares (worth approximately \$250 million) in **Molson Coors Brewing Co. (manufacturer)**, *see id.* at F73; and
 - Around 2.2 million shares (worth approximately \$120 million) in **Nordstrom Inc. (retailer)**, *see id.* at F78.

Each of the publicly traded manufacturers and retailers listed above has interests in the business of certain manufacturer and retailer permits and licenses:

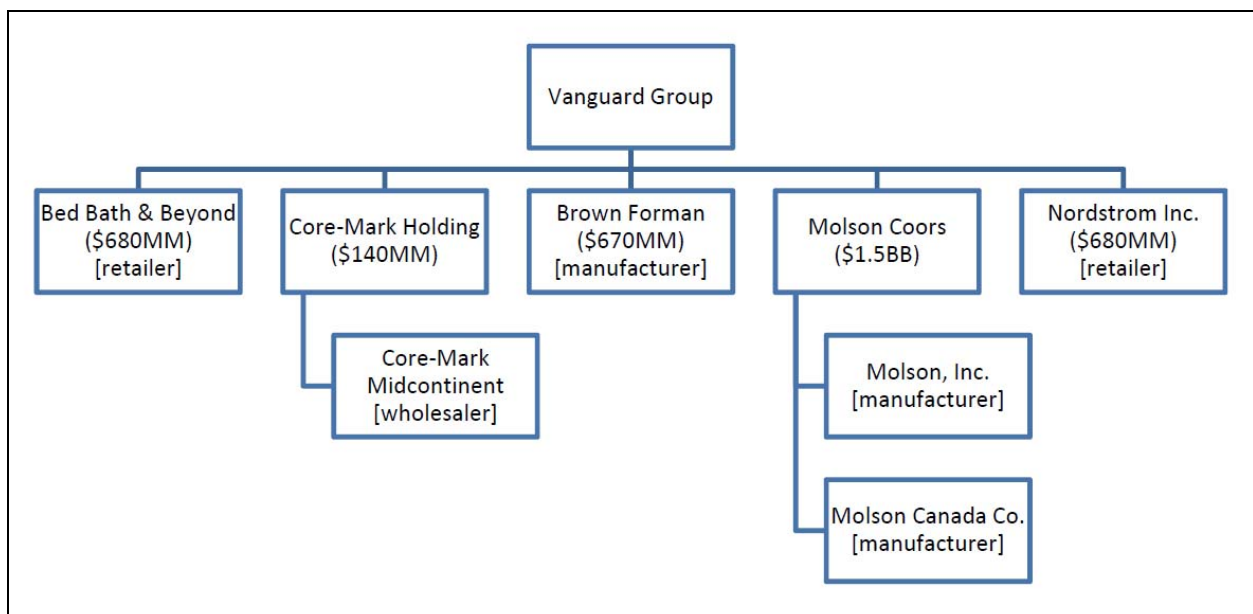
- **Bed Bath & Beyond** owns one permit directly—BQ860975 (retailer permit). Bed Bath & Beyond also owns **Cost Plus, Inc.**, *see Ex. G* at G5, G18, G71 (Bed Bath & Beyond SEC Form 10-K), which, in turn, owns **Cost Plus of Texas, Inc.**, *see Ex. H* at H58 (Cost Plus Inc. SEC Form 10-K). Through Cost Plus of Texas, Inc., Bed Bath & Beyond owns an additional 33 BQ retailer permits, including BQ630351 and BQ311867.
- **Brown Forman Corporation** is the listed owner of two permits and a license—BS530144 (manufacturing license), S202090 (manufacturing permit), and S601604 (manufacturing permit).
- **Nordstrom Inc.** is the listed owner of six permits: two BG retailer permits (BG605854 and BG539881), three MB retailer permits (MB875581, MB612706, and MB796500), and one RM retailer permit (RM768333).
- **Molson Coors Brewing Co.** owns Molson Inc. and Molson Canada Co., *see Ex. I* (Molson Coors SEC Form 10-K, at I293), which are the listed owners of eight permits and licenses, including BS427866 (manufacturing license) and S427864 (manufacturing permit).

In summary, under the TABC's interpretation of the tied-house provisions:

- T. Rowe Price owns stock in Bed Bath & Beyond, Brown Forman Corp., Core-Mark Holding Company, Molson Coors Brewing Co., and Nordstrom Inc., and thus has an overlapping interest in each of the three tiers: an interest in Brown Forman Corp., Molson Inc., and Molson Canada Co. (manufacturer permittees); Bed Bath & Beyond, Inc. and Nordstrom Inc. (retailer permittees); and Core-Mark Midcontinent (wholesaler permittee). **Through T. Rowe Price, Core-Mark Midcontinent (a wholesaler) has overlapping ownership with the manufacturer and retailer tiers, as shown in the chart below.**

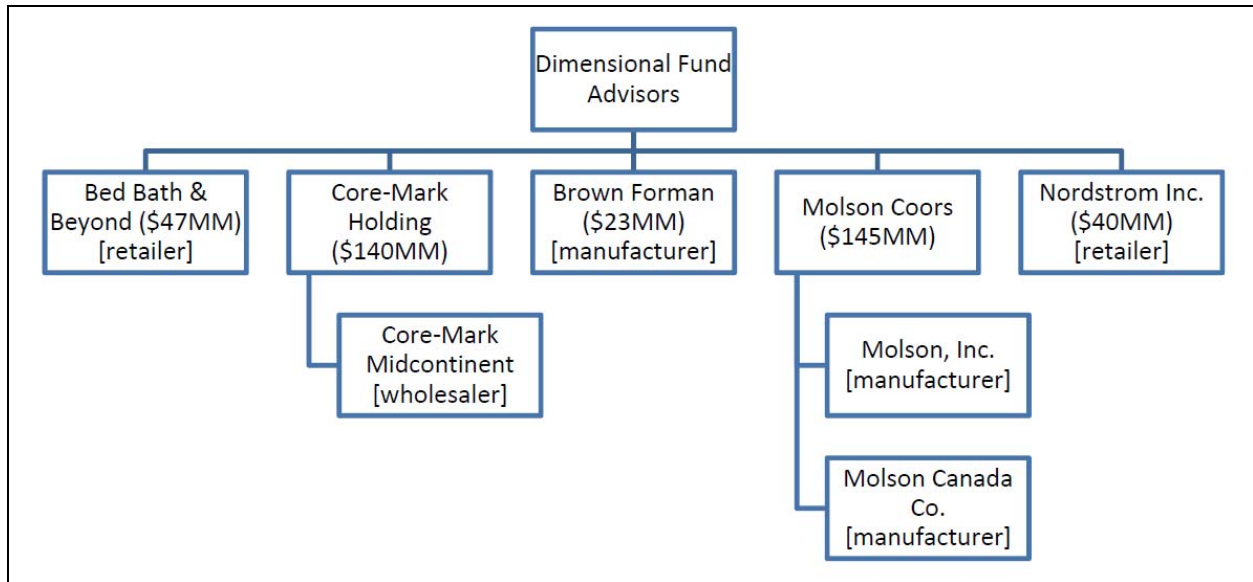


- Vanguard owns stock in Bed Bath & Beyond, Brown Forman Corp., Core-Mark Holding Company, Molson Coors Brewing Co., and Nordstrom Inc., and thus has an overlapping interest in each of the three tiers: an interest in Brown Forman Corp., Molson Inc., and Molson Canada Co. (manufacturer permittees); Bed Bath & Beyond, Inc. and Nordstrom Inc. (retailer permittees); and Core-Mark Midcontinent (wholesaler permittee). **Through Vanguard, Core-Mark Midcontinent (a wholesaler) has overlapping ownership with the manufacturer and retailer tiers, as shown in the chart below.**

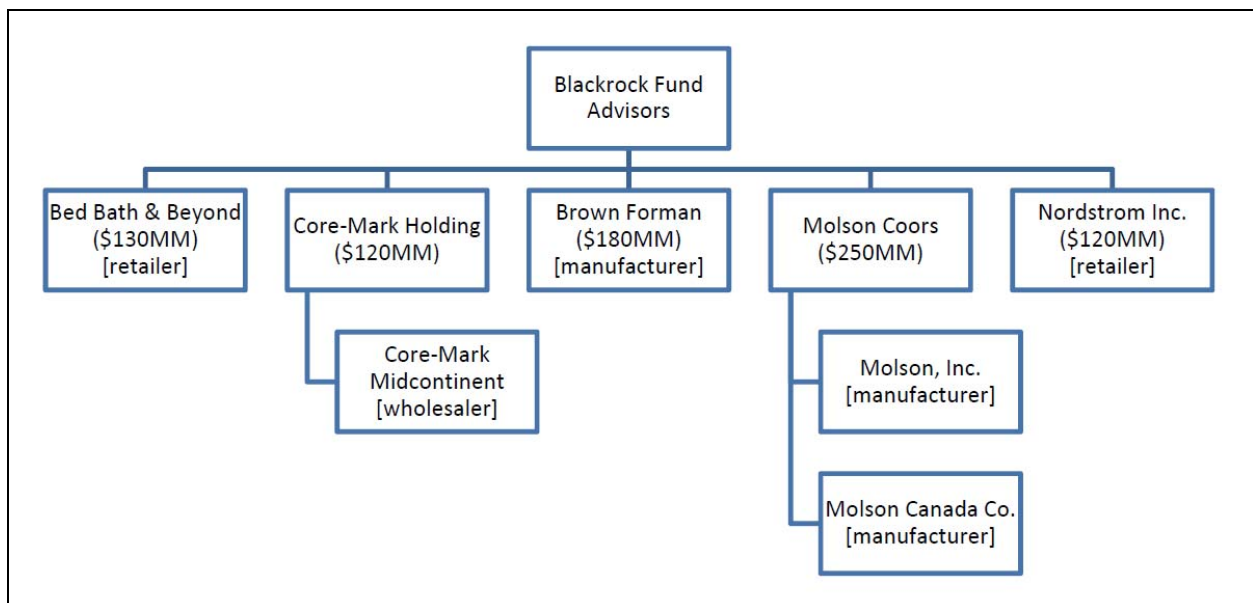


- Dimensional owns stock in Bed Bath & Beyond, Brown Forman Corp., Core-Mark Holding Company, Molson Coors Brewing Co., and Nordstrom Inc., and thus has an overlapping interest in each of the three tiers: an interest in Brown Forman Corp., Molson Inc., and Molson Canada Co. (manufacturer permittees);

Bed Bath & Beyond, Inc. and Nordstrom Inc. (retailer permittees); and Core-Mark Midcontinent (wholesaler permittee). **Through Dimensional, Core-Mark Midcontinent (a wholesaler) has overlapping ownership with the manufacturer and retailer tiers, as shown in the chart below.**



- Blackrock owns stock in Bed Bath & Beyond, Brown Forman Corp., Core-Mark Holding Company, Molson Coors Brewing Co., and Nordstrom Inc., and thus has an overlapping interest in each of the three tiers: an interest in Brown Forman Corp., Molson Inc., and Molson Canada Co. (manufacturer permittees); Bed Bath & Beyond, Inc. and Nordstrom Inc. (retailer permittees); and Core-Mark Midcontinent (wholesaler permittee). **Through Blackrock, Core-Mark Midcontinent (a wholesaler) has overlapping ownership with the manufacturer and retailer tiers, as shown in the chart below.**



Vanguard, a 5% Owner of Core-Mark Holding Company, Owns More than 5% of Companies in Other Tiers. As shown in the table below, Vanguard owns more than 5% of the stock of Core-Mark Holding Company, Bed Bath & Beyond, and Nordstrom:

	Total Outstanding Shares	Vanguard Owned Shares	Vanguard Ownership Percentage
Bed Bath & Beyond [retailer]	156MM (Ex. G at G1)	13.7MM (Ex. D at D46)	9%
Core-Mark Holding Co. [wholesaler]	23.1MM (Ex. B at B2)	1.7MM (Ex. D at D90)	7%
Nordstrom Inc. [retailer]	173MM (Ex. J at J2)	11.9MM (Ex. D at D237)	7%

This further supports cancellation of the challenged Core-Mark Midcontinent license and permit, especially in light of the TABC's recent statement to the Texas Supreme Court in *Cadena v. TABC* that,

If a hedge fund or investment firm acquired 5% of the shares of both a manufacturer and a retailer, for example, the investment manager could pressure the retailer for discounts, shelf space, or other favorable treatment for the manufacturer's product. While some may argue that cross-tier influence and vertical integration are acceptable (or even desirable) business practices as a general matter, the Legislature has determined otherwise for the alcoholic-beverage industry.

See Ex. K at K71 (TABC's December 9, 2015 Br. on the Merits).

Core-Mark Holding Company Is Widely Held. As with any public company, shares in Core-Mark Holding Company stock are widely held—Core-Mark reports that it has over 1,800 shareholders. Ex. B at B33. The stock is held by individual investors, institutional investors, and mutual funds—the four institutional investors identified above are simply examples. For any publicly traded company that holds an interest in an alcohol-wholesaler permit or license, the TABC should infer that thousands of investors or mutual funds that hold stock in that company hold stock in publicly traded companies that hold an interest in retailer and/or manufacturer permits/licenses.

The TABC Must Refuse to Renew Core-Mark Midcontinent's Permit and License Due to the TABC's Interpretation of the Tied-House Provisions, or Abandon Its Erroneous Interpretation. Each of the four institutional investors identified above violates the TABC's "one share" interpretation of the Texas tied-house statutes, including Sections 102.01(c), 102.04(b)(1), and 102.07(a)(1) of the Code. In particular, these institutional investors have interests in the wholesaler-holder of the permit and license at issue (Core-Mark Midcontinent), as well as manufacturers and retailers who hold permits (e.g., Brown Forman Corp., Nordstrom Inc.). Because the four largest institutional investors of Core-Mark Midcontinent's parent company hold ownership interests in companies that benefit from manufacturer and retailer permits, Core-Mark Midcontinent's overlapping ownership violates the TABC's "one share" interpretation of Chapter 102 of the Code. As such, the TABC must suspend the challenged permit and license and refuse to renew them for violation of the tied-house statutes, as construed by the

TABC. *See* Tex. Alco. Bev. Code §§ 102.01(b), 102.01(j); *see also* §§ 6.01(b), 6.03(i). Alternatively, the TABC must change its interpretation of the tied-house provisions. The TABC has no other options under the law.

Request for Investigation. We request that the TABC investigate Core-Mark Midcontinent's ownership, as allowed by Section 102.01(b) of the Code, to determine the accuracy of the allegations in this letter—and then act on the results of that investigation as required by law.

Sincerely,



Brett Charhon

Enclosures

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