Pursuant to the authority vested in the Cannabis Control Board by sections 10, 13, 64, 76, and 85 of the Cannabis Law, Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

Paragraph (88) of subdivision (a) of section 118.1 is repealed and paragraphs (89) through (107) are renumbered to (88) through (106).

Subdivision (a) of section 119.4 is amended to read as follows:

No retail dispensary license or microbusiness license shall be granted for any retail premises [which shall be] that is:[1]

(1) within a 1,000-foot radius of a registered organization, ROD, or any other premises for which a retail dispensary license or a retail location for a microbusiness has been issued, in a municipality having a population of 20,000 or more, unless the[2] licensee or

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[1] **Section 119.4(a)** - The inclusion of the proposed language—"The State of New York has a regulatory interest in the economic development of the cannabis market; ensuring that market growth proceeds in a manner that is reasonable, ordered, transparent; and the minimization of the collateral consequences resulting from inattention to the pace of growth"—raises significant legal concerns.

Under New York's separation of powers doctrine and established principles of administrative law, the State's regulatory interests are set by the Legislature through duly enacted statutes—in this case, the Marihuana Regulation and Taxation Act (the "MRTA"). An administrative agency such as OCM is charged with implementing legislative directives; it is not empowered to independently define, reinterpret or expand the State's regulatory priorities beyond the statutory text. We note that this type of prefatory language is not found anywhere else in the New York adult-use cannabis regulations and clearly deviates from the drafting style of the New York adult-use cannabis regulations.

The proposed language appears to declare new policy intent, rather than a straightforward implementation of the MRTA's express mandates. This **risks blurring** the essential line between policymaking (a legislative function) and regulatory implementation (an executive/administrative function).

We are concerned that this language risks being construed as exceeding OCM's authority under the MRTA and may invite legal challenge. We recommend striking.

[2] **[New] Section 119.4(a)(3) [renumbered to Section 119.4(a)(1)] -** The requirement that an existing dispensary be operational for nine (9) months before a PCA Waiver may be considered arbitrary and lacks any basis in the MRTA or legislative history. See Sections II, III, IV and V of our comment letter, which is incorporated by reference herein.

applicant seeking waiver has demonstrated to the board that issuing the license for the location would promote public convenience and advantage, except that distance requirements between a retail dispensary or microbusiness and registered organization shall cease to be a requirement past December 2023; or[3]

(2)[4] within a 2,000-foot radius of a registered organization, ROD, or any other premises for which a retail dispensary license or a retail location for a microbusiness has been issued, in a municipality having a population of less than 20,000[5], unless the[6] licensee or applicant has demonstrated to the board that issuing the license would promote public convenience and advantage, except that distance requirements between a retail dispensary or microbusiness and registered organizations shall cease to be a requirement past December 2023.[7][8]

Subdivision (b) of section 119.4 is amended to read as follows:

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[3] **[New] Section 119.4(a)(3) [renumbered to Section 119.4(a)(1)]** - Subdivision (1) of Section 119.4(a) has been deleted. Subdivision (3) of Section 119.4(a) has been modified to restore the references to the 1,000-foot radius rule, but permitting a PCA waiver in the same manner as under the current regulations. See Sections II, III, IV and V of our comment letter, which are incorporated by reference herein.

[4] **[New] Section 119.4(a)(4) [renumbered to Section 119.4(a)(2)]** - Subdivision (2) of Section 119.4(a) has been deleted. Subdivision (4) of Section 119.4(a) has been modified to restore the references to the 2,000-foot radius rule, but permitting a PCA waiver in the same manner as under the current regulations. See Sections II, III, IV and V of our comment letter, which are incorporated by reference herein.

[5] **[New] Section 119.4(a)(4) [renumbered to Section 119.4(a)(2)]** - Section 119.1(a)(3) contemplates covering a population of 20,000 or more, while Section 119.1(a)(4) contemplates covering a population of 20,000 or less. A population of exactly 20,000 is covered in both Sections, which is duplicative and conflicting if a municipality had a population of exactly 20,000. Accordingly, we recommend that for the sake of clarity, Section 119.1(a)(4) should be revised to say "a population of less than 20,000".

[6] **[New] Section 119.4(a)(4) [renumbered to Section 119.4(a)(2)]** - See comment in footnote #2 above (incorporated herein by reference) for newly proposed Section 119.4(a)(3) (now renumbered to Section 119.4(a)(1)) as it relates to a 9-month operational timeline of an existing location prior to consideration of PCA Waivers.

[7] **[New] Section 119.4(a)(5)** - Newly proposed subdivisions (5) and (6) of Section 119.4(a) have been deleted. The "Triangle Rule" is arbitrary, not based in any Legislative intent, and artificially limits the number of dispensaries, which would have the effect of continuing to incentivize and foster illicit market activity. See Sections II, III, IV and V of this comment letter (which are incorporated by reference herein) for an explanation of why drawing this arbitrary line is counterproductive and disadvantages the public, particularly in terms of convenience and advantage.

[8] **[New] Section 119.4(a)(6)** – See comment in footnote #7 above (incorporated herein by reference).

(b) A licensee or applicant seeking to demonstrate that granting a license for its location would promote public convenience and advantage must submit a request in accordance with subdivision (c) of this section. The licensee or applicant must demonstrate to the satisfaction of t[T]he [B]board [may determine] that approving a premises in such location [granting a license] would promote public convenience and advantage [as described in paragraphs (1) and (2) of subdivision (a) of this section by] based upon consideration of[ing], at a minimum, the following factors, which include:

[(1) the number, classes, and character of other licenses in proximity to the premises and in the particular municipality or subdivision thereof;

(2) evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies;

(3) whether there is a demonstrated need for such license;

(4) effect of the grant of the license on pedestrian or vehicular traffic, and

(5) parking, in proximity to the premises;

(6) the existing noise level at the premises and any increase in noise level that would be generated by the proposed premises;

(7) the history of cannabis violations and reported criminal activity at the proposed premises; and

(8) any other factors specified by law or regulation that are relevant to determine that granting a license would promote public convenience and advantage of the community.]

(1) the distance from any other existing approved licensee locations within:

(i) 1,000 feet of the location in jurisdictions having a population of 20,000 or more; or[9]

(ii) 2,000 feet of the location in jurisdictions having a population of less than 20,000;[10]

(2) any geographic, structural, or topographic barriers that separate the proposed location from any existing retail dispensary locations, e.g., waterways, major roadways or

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[9] **[New] Section 119.4(b)(1)(i)** - The reference to a 500-foot minimum was deleted. See Sections II, III, IV and V of our comment letter, which are incorporated by reference herein.

[10] **[New] Section 119.4(b)(1)(ii)** - The reference to a 1,000-foot minimum was deleted. See Sections II, III, IV and V of our comment letter, which are incorporated by reference herein.

highways, and significant travel distance, impediments or inconvenience[11] required to get between the proposed location and any existing locations;[12]

(3) the distance between the proposed location and any existing retail dispensary location, when measured as a pedestrian or car would travel;

(4) any factors unique to the proposed location, including any environmental or economic, or circumstantial considerations that justify its placement and/or a need for greater adult-use cannabis consumer access in the local area, including, but not limited to:

(i) economic justification that highlights high consumer demand for additional retail dispensaries or retail microbusinesses in the area;

(ii) the number of illicit cannabis dispensaries or former illicit dispensaries in close proximity to both the existing and proposed locations;

(iii) existing social and economic equity licensees within the applicable radius of the location; and

(iv) any other factors submitted by the requestor.

Subdivisions (c) through (l) of section 119.4 are re-lettered to (e) through (n) and new subdivisions (c) and (d) of section 119.4 are added to read as follows:

(c) Any requests submitted pursuant to subdivision (b) of this section must attach copies of the following notices, which must be made prior to submission of the request:

(1) A notice, to the applicable local municipality or local community board, of the licensee or applicant's intention to submit a public convenience and advantage request from the board pursuant to this section on a form provided by the office. Pursuant to section 76 of the Cannabis Law and section 119.3(b) of this Part, that notice must include a copy of the application to be submitted to the board and state that the municipality or community board

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[11] **[New] Section 119.4(b)(2)** – This Section was modified to clarify and provide additional examples of geographic, structural or topographic barriers that should be considered by the Board when granting a PCA Waiver.

[12] **[New] Section 119.4(b)(1)(ii)** – This Section was slightly modified to implement the removal of the Triangle Rule.

has a maximum of 30 days to submit a response prior to consideration of the application by the board. The board cannot act on the request until the municipality or community board submits a response or the expiration of the 30-day period, whichever happens first. If the municipality or community board fails to submit a response within the 30-day period, such non-response shall be deemed as no objection to the application, and the board may proceed with consideration of the application accordingly.[13]

(2) Notice to all existing licensees located within the applicable radius under paragraphs (1) or (2) of subdivision (a) of this section. Such notification must be made at the same time or promptly after the municipal or community board notification in paragraph (1) of this subdivision.[14]

(d) Parties receiving notices pursuant to subdivision (c) of this section may submit responses to the request directly to the board prior to consideration of the request and be heard during the board meeting in which the public convenience and advantage request is considered. The procedures to submit responses and be heard will be set by the office and subject to approval by the board.

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[13] **[New] Section 119.4(c)(1)** – This Section was modified to strengthen procedural fairness by adding language stating that if a municipality or community board fails to submit a response within a 30-day timeframe, such non-response shall be deemed as no objection. This ensures that silence cannot be used as a procedural block to delay the PCA Waiver process unnecessarily, allowing the Board to proceed efficiently and fairly in the approval process. Also, the response timeframe was change from 45 days to 30 days in order to synchronize with other municipal notice requirements set forth in Section 119.3 of the current adult-use cannabis regulations.

[14] **[New] Section 119.4(c)(2)** – This Section was modified to provide more flexibility to applicants and licensees by slightly modifying the notice process.