

CSA Staff Notice 51-352 (Revised)

Issuers with U.S. Marijuana-Related Activities

February 8, 2018

I. Background

The marijuana industry has accelerated in recent years as a number of jurisdictions, including Canada and certain U.S. states, continue to explore liberalization measures around marijuana law. While most jurisdictions have a uniform national framework for marijuana regulation, in the U.S., there is a conflict between state and federal law related to marijuana with certain U.S. states permitting its use and sale within a regulatory framework notwithstanding that marijuana continues to be listed as a controlled substance under U.S. federal law. As such, marijuana-related practices or activities, including the cultivation, possession or distribution of marijuana, are illegal under U.S. federal law (these activities are referred to in this notice as **marijuana-related activities**).

II. Purpose

This notice has been revised to provide further guidance on CSA staff's disclosure expectations for issuers with U.S. marijuana-related activities. This guidance recognizes that the political and regulatory circumstances surrounding the treatment of U.S. marijuana-related activities are uncertain. In the event that U.S. federal law against marijuana is enforced, there could be material consequences for any issuer with U.S. marijuana-related activities, including prosecution and asset seizure.

Given the critical importance of the legal and regulatory environment to issuers operating in this industry, we expect issuers to carefully consider any legal or regulatory actions or changes in order to determine whether they would result in material changes that trigger timely disclosure obligations.¹

III. CSA Disclosure Expectations

Securities regimes across Canada are primarily disclosure-based, with requirements for timely and accurate disclosure of information. These principles require that each issuer's disclosure fairly presents all material facts and risks so that investors can make informed investment decisions.

Consistent with these principles, the purpose of this notice is to provide CSA staff's specific disclosure expectations for issuers that currently have, or are in the process of developing, marijuana-related activities in U.S. states where such activity has been authorized within a state

¹ Under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) a material change includes a change in the business, operations or capital of the reporting issuer that would reasonably be expected to have a significant effect on the market price or value of any of its securities.

regulatory framework (**U.S. Marijuana Issuers**). Our disclosure-based approach, as outlined in the table below, is premised on the assumption that marijuana-related activities are conducted in compliance with the current laws and regulations of a U.S. state where such activities are legal.

| Industry Involvement | Specific Disclosure Necessary to Fairly Present all Material Facts, Risks and Uncertainties ² |
|--|---|
| All Issuers with U.S. Marijuana-Related Activities | Describe the nature of the issuer’s involvement in the U.S. marijuana industry and include the disclosures indicated for at least one of the direct, indirect and ancillary industry involvement types noted in this table. |
| | Prominently state that marijuana is illegal under U.S. federal law and that enforcement of relevant laws is a significant risk. |
| | Discuss any statements and other available guidance made by federal authorities or prosecutors regarding the risk of enforcement action in any jurisdiction where the issuer conducts U.S. marijuana-related activities. |
| | Outline related risks including, among others, the risk that third party service providers could suspend or withdraw services and the risk that regulatory bodies could impose certain restrictions on the issuer’s ability to operate in the U.S. |
| | Given the illegality of marijuana under U.S. federal law, discuss the issuer’s ability to access both public and private capital and indicate what financing options are / are not available in order to support continuing operations. |
| | Quantify the issuer’s balance sheet and operating statement exposure to U.S. marijuana-related activities. |
| | Disclose if legal advice has not been obtained, either in the form of a legal opinion or otherwise, regarding (a) compliance with applicable state regulatory frameworks and (b) potential exposure and implications arising from U.S. federal law. |
| U.S. Marijuana Issuers with direct involvement in cultivation or distribution ³ | Outline the regulations for U.S. states in which the issuer operates and confirm how the issuer complies with applicable licensing requirements and the regulatory framework enacted by the applicable U.S. state. |
| | Discuss the issuer’s program for monitoring compliance with U.S. state law on an ongoing basis, outline internal compliance procedures and provide a positive statement indicating that the issuer is in compliance with U.S. state law and the related licensing framework. Promptly disclose any non-compliance, citations or notices of violation which may have an impact on the issuer’s licence, business activities or operations. |

² All issuers are expected to provide these disclosures. We expect these disclosures to be clearly and prominently disclosed in prospectus filings and other required documents such as an issuer’s AIF, marketing materials, and MD&A (see for example Part 2, Item 1.2 of Form 51-102F1 – *Management’s Discussion & Analysis* of NI 51-102). In the context of a prospectus, such disclosure should include bold boxed cover page disclosure about the illegal nature of marijuana under U.S. federal law and the potential risks associated with this circumstance. We also expect issuers who enter our capital markets through a reverse takeover or spinoff transaction to include these disclosures in their listing statement, or other documents, as applicable.

³ Direct industry involvement arises when an issuer, or a subsidiary that it controls, is directly engaged in the cultivation or distribution of marijuana in accordance with a U.S. state license.

| Industry Involvement | Specific Disclosure Necessary to Fairly Present all Material Facts, Risks and Uncertainties ² |
|--|---|
| U.S. Marijuana Issuers with indirect involvement in cultivation or distribution ⁴ | <p data-bbox="391 275 1317 306">Outline the regulations for U.S. states in which the issuer's investee(s) operate.</p> <p data-bbox="391 323 1479 489">Provide reasonable assurance, through either positive or negative statements⁵, that the investee's business is in compliance with applicable licensing requirements and the regulatory framework enacted by the applicable U.S. state. Promptly disclose any non-compliance, citations or notices of violation, of which the issuer is aware, that may have an impact on the investee's licence, business activities or operations.</p> |
| U.S. Marijuana Issuers with material ancillary involvement ⁶ | <p data-bbox="391 527 1479 625">Provide reasonable assurance, through either positive or negative statements⁷, that the applicable customer's or investee's business is in compliance with applicable licensing requirements and the regulatory framework enacted by the applicable U.S. state.</p> |

Staff expect that these disclosures, and any related risks, will be evaluated, monitored and reassessed by U.S. Marijuana Issuers on an ongoing basis and will be supplemented, amended and communicated forthwith to investors in public filings, including in the event of government policy changes or the introduction of new or amended guidance, laws or regulations regarding marijuana regulation.

Responsibility remains with each U.S. Marijuana Issuer to ensure that it meets our disclosure expectations and the other requirements of securities laws.

U.S. Marijuana Issuers who do not provide appropriate disclosure, including confirming how they comply with applicable regulatory frameworks, may be subject to regulatory action such as:

- Receipt refusal in the context of prospectus offerings.
- Requests for restatements of non-compliant filings.
- Referrals for appropriate enforcement action.

IV. Exchange Listings

In determining whether to list entities with U.S. marijuana-related activities, each exchange applies its own listing requirements as outlined in its rules, including rules related to compliance with applicable laws.

Different exchanges may make their own judgements in the application of their listing requirements and an independent assessment of compliance and risk-analysis. Investors should be aware that even if an exchange lists a U.S. Marijuana Issuer that discloses the risks in accordance with this notice, the listing does not change the treatment of the issuer's marijuana-related activities under U.S. federal law.

⁴ Indirect industry involvement arises when an issuer has a non-controlling investment in an entity who is directly involved in the U.S. marijuana industry.

⁵ In circumstances where an issuer with indirect U.S. marijuana exposure holds one or more investments which are in the aggregate significant to the issuer, staff may consider whether negative statements (for example, indicating that the issuer is not aware of non-compliance) are sufficient.

⁶ Ancillary industry involvement arises when an issuer provides goods and/or services not limited to financing, branding, recipes, leasing, consulting or administrative services to third parties who are directly involved in the U.S. marijuana industry.

⁷ Negative statements may include statements indicating that the issuer is not aware of non-compliance.

V. Ongoing Monitoring

We continue monitoring industry developments. In the normal course, we consider the facts and circumstances of each issuer. In this context, there may exist fact patterns and novel business models in the U.S. marijuana industry, or in other industries engaged in U.S. marijuana-related activity, which may give rise to public interest concerns which cannot be addressed by disclosure. In these circumstances, consideration will be given as to whether regulatory action is appropriate and warranted.

VI. Questions

Please refer your questions to any of the following:

Ontario Securities Commission

Sonny Randhawa
Deputy Director, Corporate Finance
416-204-4959
srandhawa@osc.gov.on.ca

Katrina Janke
Senior Legal Counsel, Corporate Finance
416-593-8297
kjanke@osc.gov.on.ca

Jonathan Blackwell
Senior Accountant, Corporate Finance
416-593-8138
jblackwell@osc.gov.on.ca

British Columbia Securities Commission

Mike Moretto
Chief of Corporate Disclosure, Corporate Finance
604-899-6767
mmoretto@bcsc.bc.ca

Allan Lim
Manager, Corporate Disclosure
604-899-6780
alim@bcsc.bc.ca

Alberta Securities Commission

Tom Graham
Director, Corporate Finance
403-297-5355
tom.graham@asc.ca

Roger Persaud
Senior Securities Analyst, Corporate Finance
403-297-4324
roger.persaud@asc.ca

Autorité des marchés financiers

Lucie J. Roy
Senior Director, Corporate Finance
514-395-0337, ext. 4361
lucie.roy@lautorite.qc.ca

Kristina Beauclair
Analyst, Corporate Finance
514-395-0337, ext. 4397
kristina.beauclair@lautorite.qc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Tony Herdzik
Deputy Director, Corporate Finance
306-787-5849
tony.herdzik@gov.sk.ca

Financial and Consumer Services Commission (New Brunswick)

Susan Powell
Deputy Director, Securities
506-643-7697
susan.powell@fcnb.ca

Manitoba Securities Commission

Wayne Bridgeman
Deputy Director, Corporate Finance
204-945-4905
wayne.bridgeman@gov.mb.ca

Nova Scotia Securities Commission

Abel Lazarus
Director, Corporate Finance
902-424-6859
abel.lazarus@novascotia.ca