

CSA Staff Notice 51-352

Issuers with U.S. Marijuana-Related Activities

October 16, 2017

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**).

The U.S. Department of Justice issued guidance in 2013¹ indicating that it will focus on certain enforcement priorities, outside of which it will generally not enforce federal prohibitions on marijuana in U.S. states that have authorized this conduct so long as the U.S. state has implemented a strong and effective regulatory program. This federal guidance is subject to change, rescission or alteration by other federal government policy pronouncements at any time.

We remind investors 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 changes in order to determine whether they would result in material changes that trigger timely disclosure obligations.²

II. CSA Disclosure Expectations

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

¹ See the memoranda issued by former Deputy Attorney General James M. Cole, U.S. Department of Justice entitled *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013).

² 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.

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 regulatory framework (**U.S. Marijuana Issuers**). Our disclosure-based approach 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, and the understanding that a U.S. federal government forbearance approach to the enforcement of federal laws remains in place. As a result, disclosure about how a U.S. Marijuana Issuer ensures compliance with state level regulatory frameworks forms an important part of our disclosure expectations, which are outlined in the table below.

Industry Involvement	Specific Disclosure Necessary to Fairly Present all Material Facts, Risks and Uncertainties³
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.
	Explain that marijuana remains illegal under U.S. federal law and that the approach to enforcement of U.S. federal laws against marijuana is subject to change, and discuss the resultant risks, including the risk of adverse enforcement action.
	State whether and how the issuer’s U.S. marijuana-related activities are conducted in a manner consistent with any U.S. federal enforcement priorities.
	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.
U.S. Marijuana Issuers with direct involvement in cultivation or distribution ⁴	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 and outline internal compliance procedures. Disclose any material non-compliance as well as material citations or notices of violation.
U.S. Marijuana Issuers with indirect involvement in cultivation or distribution ⁵	Outline the regulations for U.S. states in which the issuer’s investee(s) operate.
	Provide reasonable assurance, through either positive or negative statements ⁶ , that the investee’s business is in compliance with applicable licensing requirements and the regulatory framework enacted by the applicable U.S. state.

³ 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 and MD&A (see for example Part 2, Item 1.2 of Form 51-102F1 – *Management’s Discussion & Analysis* of NI 51-102). We 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.

⁴ 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.

⁵ 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.

⁶ 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.

Industry Involvement	Specific Disclosure Necessary to Fairly Present all Material Facts, Risks and Uncertainties³
U.S. Marijuana Issuers with material ancillary involvement ⁷	Provide reasonable assurance, through either positive or negative statements ⁸ , 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.

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 federal enforcement priorities, 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.

III. 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.

IV. Ongoing Assessment

We would re-examine our views in the event that the U.S. federal government's forbearance-based enforcement approach (as articulated by non-legally binding guidance or statements from federal authorities) were to change.

We also acknowledge that 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

⁷ 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.

⁸ Negative statements may include statements indicating that the issuer is not aware of non-compliance.

circumstances, consideration will be given as to whether regulatory action is appropriate and warranted.

V. Questions

Please refer your questions to any of the following:

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