

October 16, 2017

Backgrounder: CSA Staff Notice 51-352 *Issuers with U.S. Marijuana-Related Activities*

Disclosure requirements

Securities regimes in Canada are primarily disclosure-based. Securities laws have requirements for when and how companies that distribute securities (issuers) disclose information. These laws require issuers to provide timely and accurate information to help investors make informed investment decisions.

When a company plans to go public and offer securities in Canada, it must disclose certain information, typically in a prospectus that is reviewed and receipted by securities regulators. A prospectus includes specific, detailed disclosure about a company, its business and the securities being offered.

Public companies must regularly make certain information available to investors, including details about risks and uncertainties associated with their business. This information must be disclosed in documents such as an issuer's Annual Information Form (AIF), its Management's Discussion and Analysis (MD&A) and news releases. These types of documents are known as continuous disclosure documents and are filed on the System for Electronic Document Analysis and Retrieval (SEDAR) website.

Disclosure requirements for public companies are primarily set out in National Instrument 51-102 *Continuous Disclosure Obligations*.

Disclosure expectations for issuers with U.S. marijuana-related activities

Issuers with marijuana-related activities in the U.S. assume certain risks due to conflicting state and federal laws. While some U.S. states have authorized the use and sale of marijuana, it remains illegal under U.S. federal law. In 2013, the U.S. Department of Justice issued guidance, stating that it will generally focus enforcement on conduct that interferes with certain federal priorities relating to marijuana. The guidance further outlines that prosecutors and law enforcement will be less likely to interfere with U.S. states that have a strong and effective regulatory program for marijuana. Many issuers rely on this guidance in carrying on business in U.S. states that have legalized marijuana. However, this guidance does not alter the authority of the U.S. Department of Justice to enforce the federal law relating to marijuana at any time. Furthermore, this guidance could be revoked or changed by other federal government policy pronouncements. This puts these issuers at risk of being prosecuted and/or having their assets seized.

In light of these risks and uncertainties, CSA staff have set out specific disclosure expectations in CSA Staff Notice 51-352 *Issuers with U.S. Marijuana-Related Activities* for issuers that have, or are in the process of developing, marijuana-related activities in the U.S.. CSA staff expect all issuers with marijuana-related activities in the U.S. to disclose information about their compliance with state regulatory frameworks and discuss the risk of enforcement of U.S. federal laws relating to marijuana. CSA staff have also set out additional disclosure expectations based on the nature of an issuer's involvement in the U.S. marijuana industry.

These disclosures should be included in an issuer's prospectus filings and continuous disclosure documents such as an issuer's AIF and MD&A. Issuers that enter Canada's capital markets through a reverse takeover or spinoff transaction are expected to include these disclosures in their listing statement or other documents, as applicable, which are filed on SEDAR.

In the event that the U.S. federal government changes its approach to enforcement regarding marijuana, CSA staff would re-examine the views outlined in CSA Staff Notice 51-352 *Issuers with Marijuana-Related Activities*. CSA staff also recognize that there may be fact patterns and novel business models in the U.S. marijuana industry that cannot be addressed by disclosure. In these cases, CSA staff may consider regulatory action.

Exchange listings

In determining whether to list issuers with U.S. marijuana-related activities, each exchange applies its own listing requirements. These requirements are outlined in an exchange's rules, which include rules related to an issuer's 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. As a result, some exchanges may decide to list issuers with U.S. marijuana-related activities, while others may decide to reject listing applications from these companies.