

CSA reconsiders disclosure policy for marijuana companies

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On February 8, 2018, the Canadian Securities Administrators (the CSA) released a revised "CSA Staff Notice 51-352 *Issuers with U.S. Marijuana-Related Activities*." The revised notice provides further guidance on the CSA staff's disclosure expectations for issuers with U.S. marijuana-related activities.^[1] Under the updated guidance, the amount of disclosure required has been expanded; however, no additional restrictions were implemented.^[2]

A response to U.S. federal law enforcement policy

The CSA had previously issued guidance setting forth specific disclosure expectations for all issuers with marijuana-related activity in the United States. This previous guidance, however, was released in contemplation of the Obama-era policy that directed the federal government to adopt a "hands-off" approach to the enforcement of federal law relating to marijuana. This policy reflected the fact that, while many U.S. states have legalized the use of marijuana, it is still illegal under federal law in the United States. On January 4, 2018, United States Attorney General Jeff Sessions issued a memorandum to rescind all previous guidance that had adopted the policy of non-interference in states with decriminalized or legalized marijuana use.^[3] The enforcement of U.S. federal marijuana law could have material consequences for such issuers operating in the United States, such as seizure of assets or prosecution.^[4] Accordingly, the CSA announced it would reconsider if a disclosure-based approach was still appropriate given this shift in policy.^[5] As a result, it was unclear until now what requirements issuers with marijuana-related operations in the United States would have to meet.^[6] According to the CSA, a disclosure-based approach remains appropriate in the current circumstances.^[7]

Expanded disclosure expectations

The revised guidance now includes additional disclosure expectations that apply to all issuers with marijuana-related activity in the United States, including, among other things, describing the nature of the issuer's involvement in the U.S. marijuana industry, prominently stating in the disclosure documents that marijuana is illegal under U.S. federal law and quantifying the issuer's balance sheet and operating statement exposure to U.S. marijuana-related activities. It also provides additional requirements for issuers depending on if they have direct involvement in cultivation or distribution, indirect involvement in cultivation or distribution or if they are limited to material ancillary involvement (including those that provide goods and services to third parties involved in the U.S. marijuana industry). The disclosure must be made "clearly and prominently" in prospectus filings, marketing materials, news releases and other required disclosure documents, such as Annual Information Forms and Management's Discussion and Analyses.^[8] The CSA has also indicated that issuers that enter the Canadian capital markets through a reverse take-over or spinoff transaction must also include this disclosure in their listing statement or other

applicable documents.^[9] [View full details](#) [PDF] of the disclosure obligations.

In addition, the CSA reminds issuers with U.S. marijuana-related activities that in making a determination to list, each exchange has its own listing requirements as outlined in each such exchange's rules.^[10]

Potential regulatory action

Issuers with U.S. marijuana-related activities that do not meet the required disclosure expectations may be subject to regulatory action, including receipt refusal in the context of prospectus offerings, requests for restatements of non-compliant filings or referrals for appropriate enforcement action.^[11]

For further detail on the cannabis sector and a look back at developments in 2017, please see our [Osler 2017 Legal Year in Review](#).

[1] Canadian Securities Administrators, "CSA Staff Notice 51-352 (Revised) *Issuers with U.S. Marijuana-Related Activities*" (February 8, 2018), online: [Ontario Securities Commission](#) [PDF].

[2] Mark Rendell, "Canada-U.S. cannabis deals back on after regulators go easy" (February 8, 2018), online: [Financial Post](#).

[3] Ontario Securities Commission, "Canadian securities regulators issue statement following rescission of the Cole Memorandum" (January 12, 2018), online: [Ontario Securities Commission](#).

[4] *Supra*, note 1.

[5] Ontario Securities Commission, "Canadian securities regulators issue statement following rescission of the Cole Memorandum" (January 12, 2018), online: [Ontario Securities Commission](#).

[6] Mark Rendell, "Canada-U.S. cannabis deals back on after regulators go easy" (February 8, 2018), online: [Financial Post](#).

[7] The Canadian Press, "CSA clarifies guidance for issuers with U.S. marijuana-related activities" (February 9, 2018), online: [Advisor.ca](#).

[8] *Supra*, note 1; *Supra*, note 3.

[9] *Supra*, note 1.

[10] *Supra*, note 1.

[11] *Supra*, note 1.