

CSA, TSX release guidance regarding marijuana-related activities in the United States for issuers of securities

OCTOBER 19, 2017 3 MIN READ

Related Expertise

- [Cannabis](#)
- [Health](#)
- [Retail and Consumer Products](#)

Authors: [Michael Watts](#), [Rob Lando](#), [Marty Putyra](#)

On October 16, 2017, the Canadian Securities Administrators (the CSA) released “CSA Staff Notice 51-352 *Issuers with U.S. Marijuana-Related Activities*” outlining the CSA’s specific disclosure expectations for issuers that have, or are in the process of developing, marijuana-related activities in the United States.^[1]

Despite the legalization of marijuana for medical use in many states in the United States and the legalization for recreational use in eight states and the District of Columbia, the cultivation, distribution and possession of marijuana remains illegal under United States federal law. The United States federal government regulates drugs through the *Controlled Substances Act* (21 U.S.C. § 811), which does distinguish between medical and recreational use of cannabis. The conflict between state and federal law means that issuers with marijuana-related activities in the United States assume certain risks, including the risk of prosecution or seizure of assets. As a result, the CSA has set forth specific disclosure expectations for all issuers with marijuana-related activity in the United States, including that the nature of an issuer’s involvement in the United States marijuana industry is to be disclosed in prospectus filings as well as continuous disclosure documents such as an issuers annual information form and management’s discussion and analysis.^[2]

Additional details regarding this new CSA staff notice can be found [here](#).

Separately, the Toronto Stock Exchange (TSX) provided guidance stating that it will launch a review of listed companies engaged in the marijuana business, whether directly or indirectly, in the United States. The TSX staff notice, also released on October 16, 2017, indicates that the TSX will be undertaking “in-depth” reviews of all applicants and listed issuers in the marijuana sector, including issuers engaging in activities related to the cultivation, distribution or possession of marijuana in the United States (Subject Entities) as well as issuers that engage in ancillary activities, by way of (i) direct or indirect ownership of, or investment in, Subject Entities, (ii) commercial interests or arrangements that are similar in substance to ownership of, or investment in, Subject Entities, (iii) providing services or products that are specifically designed for, or targeted at, Subject Entities, or (iv) commercial interests or arrangements with entities engaging in the business activities set forth in (iii).^[3] TSX has further indicated that “issuers with ongoing business activities that violate U.S. federal law regarding marijuana are not complying with [TSX listing requirements]” and that issuers may be the subject of de-listing review in the event of gaps in compliance or failure to comply such TSX listing requirements.^[4]

The TSX has indicated its expectation that listed issuers work proactively to address any gaps in compliance and that all qualified applicants conducting business activities in the marijuana sector that operate within Canada and comply with applicable Canadian law will continue to be welcomed for listing by the TSX.^[5]

Additional information regarding the TSX guidance can be found [here](#).

[1] Canadian Securities Administrators, "Canadian Securities Regulators Outline Disclosure Expectations and Certain Risks for Issuers with U.S. Marijuana-Related Activities," (October 16, 2017) available: [Canadian Securities Administrators](#).

[2] *Ibid.*

[3] Toronto Stock Exchange, "Staff Notice to Applicants, Listed Issuers, Securities Lawyers and Participating Organizations," (October 16, 2017) available: [TMX](#).

[4] *Ibid.*

[5] *Ibid.*