

TMX GROUP AND CSA PROVIDE GUIDANCE TO CANADIAN-LISTED CANNABIS ISSUERS WITH CONNECTIONS TO THE US

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On October 16, 2017, the TMX Group, which operates the Toronto Stock Exchange (TSX) and the TSX Venture Exchange (TSXV), issued a Staff Notice which advised that with regard to the listing requirements of the TSX and TSXV, United States (U.S.) federal law shall take precedence over state laws that have legalized cannabis medically and/or recreationally. Given that marijuana remains a Schedule I drug under the U.S. federal *Controlled Substances Act*, issuers listed on the TSX or the TSXV with ongoing business activities that violate U.S. federal law regarding marijuana are not complying with the listing requirements of the TMX Group.

In particular, the Staff Notice provides that such business activities may include, in order of concern to TMX Group: (i) direct or indirect ownership of, or investment in entities engaging in activities related to the cultivation, distribution or possession of marijuana in the United States ("**Subject Entities**"); (ii) commercial interests or arrangements with Subject Entities 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 described in (iii). The business activities in (iii) and (iv) are referred to as "Ancillary Services Activities".

In the context of its continued listing review of listed issuers in the marijuana sector, the TSX and TSXV expect to group issuers into two categories. The first category is composed of issuers with business activities that involve the cultivation, distribution or possession of marijuana in any jurisdiction. The second category is composed of issuers that do not cultivate, distribute or possess marijuana, but that appear to be engaging in Ancillary Services Activities. The TSX and TSXV expect to contact listed issuers identified in its continued listing review by the end of the year for a more comprehensive review.

Canadian Securities Administrators

Also on October 16, 2017, the Canadian Securities Administrators (CSA), an umbrella organization of Canada's provincial and territorial securities regulators, issued a Staff Notice that outlines CSA staff's specific disclosure expectations for issuers that have, or are in the process of developing, marijuana-related activities in the U.S.

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Given the similar reasons provided by the TMX Group about the uncertain legal framework in the U.S. with regard to marijuana, the CSA Staff Notice advised that issuers with marijuana-related activities in the U.S. assume certain risks due to conflicting state and federal laws. While some states have authorized the use and sale of marijuana, it remains illegal under federal law. According to the CSA, the federal law relating to marijuana could be enforced at any time, and this would put issuers with U.S. marijuana-related activities at risk of being prosecuted and having their assets seized.

"We expect issuers with marijuana-related activities in the U.S. to address the current legal and regulatory environment in their disclosures, including any risks that result from changes in the approach to enforcement of U.S. federal law," said Louis Morisset, CSA Chair and President and CEO of the Autorité des marchés financiers.

The CSA's disclosure expectations apply to all issuers with U.S. marijuana-related activities, including those with direct and indirect involvement in the cultivation and distribution of marijuana, as well as issuers that provide goods and services to third parties involved in the U.S. marijuana industry. Issuers are expected to provide these disclosures in prospectus filings and other required documents, such as their Annual Information Form and Management's Discussion and Analysis. In the Staff Notice, the CSA provides a disclosure matrix based on the issuer's connection with the U.S. which is similar to the analysis used by the TMX Group in terms of direct involvement, indirect involvement and ancillary activities.

Canadian Securities Exchange

The Canadian Securities Exchange (CSE) has been more permissive than the TMX Group in terms of listing cannabis issuers with business interests in the U.S.. The CSE has focused on companies providing fulsome risk disclosure for investors.

Richard Carleton, CEO of the CSE, called the CSA's move an "extremely positive step. This is exactly what the industry has been looking for, and I think it will spur more companies involved in the U.S. cannabis space to look to Canada for growth capital."