

U.S. EMERGING COMPANY GUIDE  
TO LISTING ON THE  
CANADIAN SECURITIES EXCHANGE  
ACCESSING CANADIAN PUBLIC CAPITAL MARKETS



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Prepared by



## U.S. Emerging Company Guide to Listing on the Canadian Securities Exchange

ACCESSING CANADIAN PUBLIC CAPITAL MARKETS

**Dorsey & Whitney LLP** is an international law firm with offices throughout the United States, Canada, Europe and Asia with expertise assisting U.S. companies with accessing the Canadian public markets. Dorsey provides U.S. legal advice in Canada. This *U.S. Emerging Company Guide to Listing on the Canadian Securities Exchange* (CSE) was prepared by the following attorneys at Dorsey & Whitney LLP with the assistance of the Canadian Securities Exchange.

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*This guide is intended to provide general information for U.S. companies with respect to listing securities for trading on the Canadian Securities Exchange and is not intended to provide definitive legal or tax advice. No legal, tax or business decisions should be based solely on its content. None of Dorsey & Whitney LLP, Canadian Securities Exchange or any of their affiliates guarantees the completeness of the information contained in this Guide and we are not responsible for any errors or omissions in, or your use of, or reliance on, the information contained in this Guide.*

## INTRODUCTION

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Smaller emerging companies in the United States often struggle to find liquidity for their shareholders or access to needed capital. There are many reasons that emerging companies are unable or unwilling to access the public capital markets in the United States, including, among others:

- Lack of size necessary to list on a National Exchange in the United States. U.S. capital markets cater to large companies.
- The amount of capital needed is too small to attract the interest of investment banks.
- U.S. capital markets are too crowded to have success as a public company.
- Options for public market quotations for smaller companies in the U.S. often lump good companies with micro-cap fraudulent schemes.
- U.S. capital markets are too highly regulated and accounting and compliance costs related to U.S. securities laws, including the Sarbanes-Oxley Act of 2002<sup>1</sup> (**Sarbanes-Oxley**), are prohibitively expensive.
- Registration with the United States Securities and Exchange Commission (**SEC**) takes several months and the U.S. regulatory and reporting system is overly complicated and bureaucratic.
- Affiliates of U.S. listed companies are subject to increased liability and regulation.
- The business of the company has uncertain legal standing in the United States. This is true of many companies in the cannabis industry.

Over time emerging companies may become “captive” companies stuck between the status of private company with outside investors (i.e., angels, venture capital and/or private equity) and going public (without significant interest from investment banks). The pressures from outside investors, management and employees to obtain liquidity cause many U.S. emerging companies to look to the North in Canada to access one of the world’s largest public markets for smaller companies. Canada provides smaller emerging companies with access to capital and liquidity for shareholders. Canada is unique in that its public markets and regulatory regime accommodate and promote smaller, emerging companies listings.

Canada has evolved into the premier jurisdiction for public companies in the cannabis industry with the federal legalization and regulation of cannabis in Canada. A capital markets eco-system has developed in Canada (**Canadian Cannabis Ecosystem**) that consists of high profile companies, investment banks, institutional investors, investor relations professionals, accounting professionals, legal professionals and securities exchanges. The Canadian Cannabis Ecosystem provides an environment conducive for capital raising and an orderly public market for securities of cannabis companies. Several companies with U.S. cannabis operations have listed on the Canadian Securities Exchange (**CSE**), which has emerged as the premier public market for cannabis companies with U.S. operations.

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<sup>1</sup> The Sarbanes-Oxley Act of 2002 ([Pub.L. 107-204](#), 116 [Stat.](#) 745, enacted July 30, 2002), also known as the Public Company Accounting Reform and Investor Protection Act of 2002.

Recent changes to U.S. securities laws and regulations make Canada a viable option for U.S. emerging companies to access a regulated public market for its securities and source for needed capital. The CSE can provide a platform for U.S. companies to list securities in Canada and to provide liquidity to shareholders and access to needed capital.

This guide summarizes the following topics related to U.S. companies considering a listing on the CSE:

- Structuring Decisions;
- The Foreign Issuer Advantage;
- SEC Registration and Reporting Considerations;
- Capital Raising in Canada and the United States;
- U.S. Securities Law Liability; and
- U.S. Tax Considerations.

This guide is intended to provide general information for U.S. emerging companies related to planning to list equity securities on the CSE and is not intended to provide definitive legal or tax advice. No legal, tax or business decisions should be based solely on its content.

## STRUCTURING DECISIONS

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Corporate structure and jurisdiction of formation are important considerations for a U.S.-based company that is considering going public in Canada. Early planning can maximize a company's valuation, minimize regulatory compliance costs and offer an efficient capital-raising structure in the future.

U.S. incorporated companies may elect to list directly on Canadian Securities Exchange without changing their jurisdiction of incorporation. However, many U.S. incorporated companies decide to reincorporate in Canada or another non-U.S. jurisdiction prior to going public. With careful planning and under certain circumstances, the reincorporated company may qualify as a "Foreign Private Issuer" (see, "Foreign Private Issuer vs. U.S. Domestic Issuer" below) under the rules of the Securities and Exchange Commission (SEC). Being a Foreign Private Issuer provides certain exemptions and accommodations from the stricter reporting and compliance requirements and rules applicable to U.S. domestic companies.

While the CSE does not require listed companies to be incorporated in Canada, a company should consider if its existing articles of incorporation and by-laws are sufficient to ensure they meet the requirements for public companies, including protection of shareholder rights. A company may also need to form certain committees and adopt committee charters common for public companies, including an audit committee charter, a compensation committee charter, a corporate governance charter, a code of ethics, etc.

One of the most important decisions management will make early in the listing process is determining the public company's corporate structure. Management should evaluate the following considerations in determining what corporate structure will best achieve the company's and its shareholders' objectives:

- Jurisdiction of Incorporation
- Foreign Private Issuer versus U.S. Domestic Issuer
- SEC Registration and Reporting Considerations
- U.S. Tax Considerations
- Access to U.S. Capital
- Future Cross-Border Interlistings

Each of these considerations require thoughtful analysis by management to determine the best corporate structure to match a company's business, operations, industry sector, management, shareholder base, assets and long term objectives. There is no single solution that is right for every company. These decisions are inter-related and may have legal and tax implications for the company and its shareholders.

## Jurisdiction of Incorporation

A company does not need to be incorporated in Canada to go public on the CSE. Many U.S. domestic corporations have gone public in Canada and are listed on CSE. However, based on the considerations discussed below including the benefits of becoming a Foreign Private Issuer, U.S. corporations may want to consider reincorporation (or a change in the jurisdiction of incorporation) into a foreign jurisdiction, such as Canada, prior to going public on the CSE.

There may be good reasons for a U.S. company that is incorporated in a U.S. jurisdiction to go public in Canada and list on the CSE without changing its jurisdiction of incorporation. Typically these considerations center on the company's ability to otherwise qualify as a Foreign Private Issuer (as described below). If the company has a majority of its assets in the U.S., is principally governed in the U.S., or a majority of its voting shares (by voting power or in number) are held by shareholders resident in the U.S., the cost (tax, legal and otherwise) and complication of restructuring the company to qualify as a Foreign Private Issuer may be prohibitive. In other situations, the company may have substantial U.S. government contracts or other regulatory concerns that would complicate the process of becoming incorporated in a foreign jurisdiction.

In other circumstances, reincorporating into a foreign jurisdiction and qualifying as a Foreign Private Issuer may have significant advantages including more favorable tax planning, business and operational considerations, favorable exemptions under U.S. securities laws, single jurisdiction financial reporting, shareholder base considerations, and future fundraising and M&A considerations.

## THE FOREIGN ISSUER ADVANTAGE

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A primary reason to become a Foreign Private Issuer is to go public without an SEC registration and the application of Sarbanes Oxley. This can be especially important for small cap public companies wanting to reduce the time and cost of compliance. While companies listed on the CSE may not be subject to Sarbanes Oxley (particularly SOX 404), Canadian issuers are still required to comply with corporate governance requirements proportionate to company size.

A **Foreign Private Issuer** is an entity that is incorporated outside the United States and either:

- as of its most recently completed second fiscal quarter, a majority of its voting stock was beneficially held by persons resident outside the United States; or
- none of the following exist:
  - the business is principally administered in the United States,
  - a majority of the issuer's assets are in the United States, or
  - a majority of the directors or executive officers are United States citizens or residents.

Consequently, even foreign incorporated companies may not qualify as a Foreign Private Issuer if a majority of its voting stock is beneficially held in the U.S. and the company has a significant nexus to the United States, as

determined above. Companies that do not qualify as Foreign Private Issuers are treated as “**U.S. Domestic Issuers**” by the SEC and are required to comply with all rules and regulations applicable to U.S. companies.

In some circumstances, even foreign incorporated companies may not qualify as a Foreign Private Issuer if a majority of its voting stock is held in the U.S. and the company has a significant nexus to the U.S. Companies that do not qualify as Foreign Private Issuers are treated as U.S. Domestic Issuers by the SEC.

The U.S. securities laws and rules of the SEC provide several accommodations to Foreign Private Issuers, including:

- Ability to issue unrestricted “free trading” securities in off-shore transactions outside the United States without SEC registration under Regulation S of U.S. Securities Act (Regulation S)
- Exemption from reporting obligations under the U.S. Exchange Act in accordance with Rule 12g3-2(b) and requirements of Sarbanes Oxley
- Simplified resale of “restricted securities” by U.S. investors through the facilities of the CSE under Regulation S
- Availability of special forms for SEC registration and reporting
- Qualified Canadian corporations may use the Multi-Jurisdictional Disclosure System (MJDS), which simplifies public offerings of securities into the United States
- Foreign Private Issuers reporting with the SEC can report on a simplified basis and are exempt from the United States 14A proxy rules, certain tender offer rules and Section 16 insider trading and reporting requirements.



## Foreign Private Issuer vs. U.S. Domestic Issuer

There are advantages and disadvantages to qualifying as a U.S. Domestic Issuer v. Foreign Private Issuer:

<u><b>U.S. Domestic Issuer</b></u>
<p><b>ADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• No need to reorganize</li> <li>• Fewer U.S. tax implications related to reorganization</li> <li>• U.S. law applies to corporate matters</li> <li>• Well established corporate/SEC reporting</li> <li>• U.S. shareholder familiarity with U.S. corporations</li> <li>• U.S. SEC filings can serve as basis for Canadian reporting</li> <li>• Ease of eventual dual listing with a U.S. exchange</li> </ul> <p><b>DISADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• May require SEC registration or qualification under Regulation A+</li> <li>• No exemptions from SEC Exchange Act registration</li> <li>• All unregistered securities are subject to one year regulation s distribution compliance period</li> <li>• Cannot rely on exemptions and accommodations for Foreign Private Issuers</li> <li>• Sarbanes-Oxley requirements for SEC reporting issuers, including SOX 404 (requirement for internal controls and audit)</li> </ul>
<u><b>Foreign Private Issuer (FPI)</b></u>
<p><b>ADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• FPI exemptions for issuance of securities outside U.S. which can equal faster market access</li> <li>• FPI exemption from SEC Exchange Act reporting under 12g3-2(b)</li> <li>• No Sarbanes-Oxley requirements for non-SEC reporting issuers</li> <li>• Well established Canadian reporting requirements</li> <li>• FPI exemptions for M&amp;A transactions</li> <li>• Possible MJDS<sup>2</sup> availability for Canadian corporations</li> </ul> <p><b>DISADVANTAGES</b></p> <ul style="list-style-type: none"> <li>• Potential tax complications in reorganizing to off-shore jurisdiction</li> <li>• Potential securities law complications in reorganizing to off-shore jurisdiction</li> <li>• May require complicated capital structure (non-voting equity) to maintain FPI status</li> <li>• Reorganizing requires shareholder approval</li> <li>• Some industries may require compliance with U.S. export controls and regulation</li> <li>• Requires monitoring of number of shareholders so as not to trigger SEC registration</li> </ul>

<sup>2</sup> The Multi-Jurisdictional Disclosure System (MJDS) permits qualified issuers to register securities under the U.S. Exchange Act on Form 40-F and to satisfy ongoing U.S. filing requirements using Canadian disclosure materials.

Once a determination is made, a company may look to restructure to become a Foreign Private Issuer or remain a U.S. Domestic Issuer.

#### **A. Restructuring to Meet Foreign Private Issuer Status**

Many U.S. companies have a majority of their voting shares held by U.S. residents and a business that is principally administered in the U.S., a majority of its assets in the U.S. or a majority of its directors or executive officers are U.S. citizens or residents. These companies may still reincorporate to a foreign jurisdiction and qualify as a Foreign Private Issuer by restructuring the company's share capital to include non-voting stock or securities. The determination of a majority of voting shares held by U.S. residents is based on either voting power or quantitative number of shares. In order to facilitate the non-U.S. ownership requirements and to qualify as Foreign Private Issuer, some transactions are structured so that U.S. shareholders receive a portion of their securities in the public foreign corporation in the form of super-voting, super-conversion preferred stock that is exchangeable into the publicly traded common shares. The preferred stock can have the same economic and voting power (on an as converted basis as the publicly traded common shares. Normally, the company would impose predetermined conditions (such as conversion restrictions) or holding periods to preserve the Foreign Private Issuer status of the company. Due to the nature of public companies, often shareholders holding less than 50% of a public company's voting securities maintain sufficient control of the entity.

Any U.S. company that considers reincorporating to qualify as a Foreign Private Issuer should analyze the U.S. tax consequences of the transaction. See "U.S. Tax Considerations" below.

#### **B. Remaining a U.S. Domestic Issuer**

When a company plans to list in the U.S. concurrently or relatively soon after listing in Canada on the CSE, the company may conclude that the effort to reincorporate outside the U.S. outweigh the benefits and may choose to remain a U.S. Domestic Issuer. It is important to weigh the pros and cons against the ability to raise capital in Canada and the company's long term growth strategy.

## SEC REGISTRATION AND REPORTING CONSIDERATIONS

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A company, whether a U.S. Domestic Issuer or a Foreign Private Issuer, can generally raise capital in a Canadian IPO offering without filing a registration statement with the SEC. The U.S. Securities Act requires that all offers and sales of securities be registered with the SEC or exempt from such registration requirements. A traditional IPO offering in the United States requires filing of a registration statement (or qualification under Regulation A+) with the SEC. However, a company may or may not file an SEC registration in connection with a Canadian IPO offering and listing solely on a non-U.S. exchange such as the CSE. The options are based on the company's status as a U.S. Domestic Issuer or a Foreign Private Issuer.

### A. U.S. Domestic Issuer

#### OPTION 1: SEC REGISTRATION AND SEC REPORTING

A company may file a registration statement under the U.S. Securities Act on Form S-1 to register the offer and sale of securities to the public with the SEC.<sup>3</sup> The registered securities may be offered and sold in the United States and outside the United States and will be unrestricted securities under U.S. securities laws.

Once a registration statement is declared effective, the company will be subject to the ongoing reporting requirements of the U.S. Exchange Act pursuant to Section 15(d) of the U.S. Exchange Act, which requires a company to file annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. If the company elects to register the class of securities under Section 12 of the Exchange Act and become a U.S. reporting issuer, the company will become subject to the SEC 14A proxy rules and tender offer rules, and certain of its shareholders will be required to file beneficial ownership reports on Schedule 13D/G and Section 16 reports.

Finally, SEC reporting issuers are subject to the requirements of Sarbanes-Oxley, including Section 404, requiring auditor certification of internal controls over financial reporting.

#### OPTION 2: REGULATION A+ OFFERINGS

A company may qualify an offering under Regulation A of the U.S. Securities Act (referred to as "**Regulation A+**")<sup>4</sup> on Form 1-A to register the offer and sale of securities to the public with the SEC. The qualified securities may be offered and sold in the United States and outside the United States and will be unrestricted securities under U.S. securities laws.

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3 A company may register a public offering of securities with the SEC by filing a long form registration statement. The registration statement must comply with the requirements of Form S-1, including financial statements audited by a member in good standing with the Public Company Accounting Oversight Board. The registration statement is subject to review by the SEC.

4 The SEC adopted new rules to amend existing Regulation A under the U.S. Securities Act to implement Title IV of the Jumpstart Our Business Startup ("JOBS") Act with the goal of increasing access to the capital markets for smaller issuers.

Regulation A+ permits private companies to access the capital markets and raise up to US\$50 million in a 12 month period. Regulation A+ is available only to U.S. and Canadian companies that have their principal place of business in the United States or Canada. Regulation A+ creates two tiers under which an issuer can conduct exempt offerings to the public without registration under the Securities Act:

- Tier 1 consists of exempt offerings of up to \$20 million in a 12-month period; and
- Tier 2 consists of exempt offerings of up to \$50 million in a 12-month period.

An issuer may elect to proceed under Tier 1 or Tier 2, but offerings under Tier 2 will be subject to additional requirements.

One of the most significant aspects of Regulation A+ is that companies are not subject to the ongoing reporting requirements of the Exchange Act.<sup>5</sup> However, if Tier 2 issuers do not voluntarily register under the Exchange Act, they are required to file annual reports on a new Form 1-K, semiannual updates on a new Form 1-SA and current reports on a new Form 1-U. These reports are simplified versions of Forms 10-K, 10-Q and 8-K and based on the informational requirements of Form 1-A. The reports are required to be filed via EDGAR 120 days after the fiscal year-end, in the case of Form 1-K, 90 days after the end of the second fiscal quarter, in the case of Form 1-SA, and within four business days of the relevant event, in the case of Form 1-U. Issuers must have filed all required ongoing reports under Regulation A+ during the two years immediately preceding the filing of a new offering statement (or for such shorter period that the issuer was required to file such reports) to remain eligible to conduct offerings pursuant to the rules.

For additional information related to Regulation A+ offerings, see, "Regulation A+ Cheat Sheet", attached as [Appendix A](#).

### OPTION 3: EXEMPT OFFERING AND NO SEC REPORTING

A U.S. Domestic Issuer may offer and sale securities outside the U.S. to non-U.S. Persons in reliance upon exclusions from the registration requirements of the U.S. Securities Act available under Regulation S. The securities issued would be restricted securities and the company will need to comply with Regulation S Resale Restrictions by adding a ".s" designation to its Canadian trading symbol. The ability of U.S. investors to trade in these securities is limited, so the availability of trading support in the aftermath is a key consideration.

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<sup>5</sup> Regulation A+ is not available to a company that is a reporting issuer under the Exchange Act, investment companies and "blank check" companies, as well as those offerings involving participants subject to "bad actor" disqualification. Development stage companies with a specific plan or purpose are eligible issuers.

The securities may be concurrently offered in the U.S. to:

- Accredited Investors<sup>6</sup> under Regulation D of the U.S. Securities Act (Regulation D) or
- Qualified Institutional Buyers (QIB)<sup>7</sup> under Rule 144A of the U.S. Securities Act (Rule 144A).<sup>8</sup>

A company may qualify for exclusions from U.S. Exchange Act reporting obligations based on the number of its shareholder of record and other factors. Non-SEC reporting issuers are not subject to the requirements of Sarbanes-Oxley.

## **B. Foreign Private Issuer**

### **OPTION 1: EXEMPT OFFERING AND NO SEC REPORTING**

A Foreign Private Issuer can rely upon exemptions from the registration requirements of the U.S. Securities Act and issue securities in off-shore transactions outside the U.S. in reliance upon Regulation S. The securities issued in accordance with Regulation S are unrestricted “free trading” securities and bear no restrictive U.S. legend.

A Foreign Private Issuer may offer securities concurrently in the U.S. to Accredited Investors under Regulation D or QIBs under Rule 144A. Securities issued in the U.S. are “restricted securities” and will bear a U.S. restrictive legend. A holder of restricted securities of a Foreign Private Issuer may resell the securities on the CSE pursuant to exclusions available under Regulation S.

Foreign Private Issuers may be exempt from U.S. Exchange Act reporting obligations under Section 12g3-2(b), subject to certain disclosure requirements. Non-SEC reporting issuers are not subject to the requirements of Sarbanes-Oxley.

### **OPTION 2: SEC REGISTRATION AND SEC REPORTING**

A Foreign Private Issuer may file a registration statement under the U.S. Securities Act on Form F-1 or Form S-1 to register the offer and sale of securities to the public<sup>9</sup> with the SEC. The registered securities may be offered and sold in the U.S. and outside the U.S. and will be unrestricted securities.

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6 Accredited Investor - Defined in Rule 501(a) of Regulation D and includes banks, insurance companies, registered investment companies, certain employee benefit plans, entities with total assets in excess of US\$5 million and wealthy individuals (based on income or net worth).

7 Qualified Institutional Buyers (QIB) - Generally, institutions holding at least US\$100 million in securities and registered broker-dealers holding at least US\$10 million in securities.

8 Rule 144A - Another safe harbor provision, exempts resales of securities to QIBs.

9 A Foreign Private Issuer may register a public offering of securities with the SEC by filing a long form registration statement. The registration statement must comply with the requirements of Form F-1 or Form S-1, including financial statements reconciled to U.S. GAAP and audited by a member in good standing with the Public Company Accounting Oversight Board. The registration statement is subject to review by the SEC.

Once a registration statement is declared effective, the company will be subject to ongoing reporting requirements of the U.S. Exchange Act pursuant to Section 15(d) of the U.S. Exchange Act. A Foreign Private Issuer may file annual reports on Form 20-F (or Form 40-F, if eligible) and current reports on Form 6-K. Certain shareholders are required to file beneficial ownership reports on Schedule 13D/G if the company elects to register the class of securities under Section 12 of the Exchange Act and becomes a reporting issuer. A Foreign Private Issuer is generally exempt from the SEC proxy rules, Section 16 and SEC tender offer rules.

All SEC reporting issuers are subject to the requirements of Sarbanes-Oxley, including Section 404, requiring auditor attestation of internal control over financial reporting.

### **OPTION 3: REGULATION A+ OFFERINGS**

A Canadian company may qualify an offering under Regulation A+ as described in “U.S. Domestic Issuer – Option 2: Regulation A+ Offerings” above.

## U.S. TAX CONSIDERATIONS

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A company, whether a U.S. Domestic Issuer or a Foreign Private Issuer, can generally raise capital by issuing shares or other securities without adverse tax consequences. However, a U.S. Domestic Issuer that elects to reincorporate into a foreign jurisdiction may subject itself and its shareholders to significant and adverse U.S. federal income tax consequences. Generally, the exchange of a U.S. corporation's securities for securities of a foreign corporation will be a taxable transaction for U.S. taxpayers. However, such tax consequences can be mitigated or avoided in some cases.

**Cross-Border Acquisition Rules of Section 367** - Under Section 367 of the U.S. Internal Revenue Code (the "Code") a reincorporation of a U.S. corporation or partnership may trigger a taxable event for U.S. holders and potentially trigger a taxable event for the U.S. corporation or partnership. Certain exceptions may apply to avoid tax under Section 367 if a U.S. corporation is acquired by a larger Canadian company that has had an active trade or business in Canada for three years prior to the acquisition. A transaction that satisfies the requirements of Section 367 may provide tax-free "roll-over" for a U.S. corporation and its U.S. shareholders.

**The "Anti-Inversion" Rules of Section 7874** - If a U.S. corporation or partnership reincorporates in a foreign jurisdiction, or is acquired by a foreign corporation, it may trigger the "anti-inversion" rules of Section 7874 of the Code. If these rules apply, it would result in adverse tax consequences, including the loss of tax attributes or the newly reincorporated foreign corporation (or the acquiring foreign corporation) being treated by the U.S. Internal Revenue Service as a U.S. corporation. An inversion transaction is generally deemed to occur when the following three conditions are met:

- 1) a foreign corporation makes a "direct or indirect" acquisition of substantially all of the assets held directly or indirectly by a U.S. corporation;
- 2) after the acquisition, the former shareholders of the U.S. corporation own at least 60% of the acquiring foreign corporation "by reason of" their previous interest in the U.S. corporation; and
- 3) after the acquisition the affiliated group to which the acquiring foreign corporation belongs does not conduct "substantial business activities" in the foreign country under which the acquiring corporation was organized, when compared to the total business activities of the "expanded affiliated group."

Where these conditions are satisfied, the taxable income of the domestic target for the year of the transaction and for the ten subsequent years attributable to corporate transfers associated with the inversion (the "inversion gain") may not be offset by current losses or loss carryovers and the resulting tax may not be offset by credits (including foreign tax credits). Where former target shareholders own at least 80% (instead of just 60%) of the acquiring foreign corporation after the transaction (and the other two conditions are satisfied), Section 7874 goes further by simply treating the acquiring foreign corporation as a U.S. domestic corporation.

Stock offered in a public offering or private placement made in connection with the acquisition may be disregarded in determining the percentage owned by the former shareholders, if certain requirements are met.

An exception to the “anti-inversion” rules exists where the acquiring corporation has a substantial trade or business in the foreign country.

***Note that California does not recognize the “Anti-Inversion” Rules of Section 7874 for California state income tax purposes, which may result in a taxable transaction for California state taxpayers and a tax deferred transaction for federal income tax purposes. California taxpayers should consult their state tax advisors in connection with any transaction structured so that the acquiring foreign corporation is treated as a U.S. domestic corporation under the Anti-Inversion Rules of Section 7874.***

**Tax-free Roll-over Structure** - Under certain circumstances, a reincorporation transaction may not satisfy the requirements of Section 367, which could result in a taxable transaction for a U.S. corporation and its U.S. shareholders. Because the exchange of a U.S. corporation's securities for securities of a foreign corporation is frequently a taxable transaction for U.S. taxpayers the application of the “anti-inversion” rules to the successor corporation may have the effect of treating the transaction as among two U.S. corporations. This permits the transaction to be structured as a tax-free “roll-over” for the U.S. Corporation and its U.S. shareholders under the requirements of Section 368 or Section 351.

In order to facilitate the 80% or more of the stock (by vote or value) ownership requirements under Section 7874 and to qualify as a Foreign Private Issuer, some transactions are structured so that U.S. shareholders receive a portion of their securities in the surviving public foreign corporation in the form of non-voting stock that is exchangeable into voting stock upon satisfaction of predetermined conditions or holding periods. Due to the nature of public companies, often shareholders holding less than 50% of a public company's voting securities is sufficient to maintain control of the entity.

Tax consequences to the company and its shareholders should be considered when determining the method of going public (e.g. Initial Public Offering versus a reverse merger transaction, commonly called a reverse takeover or RTO in Canada.)

**Up-C Structures** – In addition to direct acquisition structures regarding U.S. limited liability companies, a business combination may be structured using an “**Up-C Structure**” to provide target company (“**Target LLC**”) U.S. taxpayer shareholders tax deferred benefits. The Up-C Structure is particularly attractive for California taxpayers, who may be subject to California taxation on anti-inversion structured transactions. Under the Up-C Structure, U.S. taxpayers (“**U.S. Holders**”) continue to hold membership interests (“**Target LLC Interests**”) in the U.S. Target LLC and the Canadian public company (“**Pubco**”)(through a U.S. management company subsidiary, “**U.S. Manageco**”) invests in U.S. Target LLC and holds Target LLC Interests. U.S. Manageco is appointed as manager of U.S. Target LLC and manages all U.S. Target LLC decisions. The US Target LLC Interests have “**Redemption - Exchange Rights**”, which permit the U.S. Holders to put their Holdco Interests on U.S. Holdco, which may be satisfied by U.S. Target LLC in cash or Pubco shares, at the election of the US Target LLC. In addition, some Up-C structures include a tax receivables agreement under which the US Target LLC holders and U.S. Manageco share the benefits from tax benefits arising from the exercise of the Redemption – Exchange Rights. Similar structures are available where the U.S. target entity is a corporation. The issuance of the Pubco shares is governed by a support agreement. In some circumstances, a limited number of principal holders of



Target are issued a class of voting shares of Pubco for nominal consideration to provide voting rights at the Pubco level. Careful structuring is required to comply with securities, tax and corporate law considerations.

**On-Going Tax Filing Obligations** - If the inversion rules are triggered, and the reincorporated company or the acquiring parent is treated as a U.S. corporation, such corporation will be required to file U.S. tax returns and pay U.S. income tax on its worldwide income, regardless of source. In addition, distributions to non-U.S. shareholders would be subject to U.S. withholding tax.

**Additional Rules Concerning U.S. Investors in a Foreign Corporation** - There are additional U.S. federal income tax rules which may impact U.S. investors in certain foreign corporations. For example, if a foreign corporation does not have significant active business operations, and its primary sources of income are passive investment assets, the corporation may be considered a "passive foreign investment corporation," (PFIC). Or, if a foreign corporation has a small group of U.S. shareholders that own at least 50% of the stock of the company, the corporation may be considered a "controlled foreign corporation" (CFC). There are significant and adverse tax consequences for U.S. investors owning shares in a PFIC or a CFC, and the corporation and its investors should consult their tax advisors regarding the PFIC and CFC rules before reincorporating into Canada or investing in a foreign corporation. Foreign corporations that are subject to the "anti-inversion" rules and are treated as U.S. corporations for tax purposes would not be subject to the PFIC or CFC rules.

In addition to PFIC and CFC rules, a U.S. corporation that holds U.S. real property (such as mining properties) may be considered a U.S. Real Property Holding Company and reincorporation to a foreign jurisdiction may trigger consequences under the Foreign Investment Real Property Tax Act (FIRPTA). FIRPTA was adopted to impose a tax on gains derived by foreign persons from the sale of U.S. real property. Under Section 897(a)(1) of the U.S. Internal Revenue Code of 1986, as amended (Code), gain or loss recognized by a foreign person on the disposition of a U.S. real property interest (a USRPI) is generally taxable in the U.S. as gain or loss effectively connected with a U.S. trade or business. Foreign corporations that are subject to the "anti-inversion" rules and are treated as U.S. corporations for tax purposes would not be subject to FIRPTA. Unless an exception applies, non-US shareholders of a U.S. Real Property Holding Company (including a foreign corporation that is classified as a US corporation under the anti-inversion rules) will be subject to FIRPTA income and withholding taxes upon a disposition of their shares.

This is only a brief summary of these highlighted tax rules, and numerous exceptions and additional requirements may apply. The tax consequences of Section 367 and the anti-inversion rules of Section 7874 are significant, and should be well considered by the corporation and its tax advisors.

## ACCESS TO U.S. CAPITAL

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Companies listing on the CSE ideally want access to U.S. capital, particularly if they are a U.S. company. Companies listed solely on a Canadian exchange, can still raise money and attract trading from U.S. sources.

**Company Financings** - Qualified Investors in the U.S. may invest in CSE listed companies, particularly through a private placement (often referred to as a Private Investment in Public Equity or PIPE in the U.S.). A company may offer and sell securities in the U.S. without registration under the U.S. Securities Act to Accredited Investors under Regulation D or QIBs under Rule 144A. Securities issued in the U.S. without registration are “restricted securities” and will bear a U.S. restrictive legend. There is no limitation on the amount that can be raised in the U.S. pursuant to exemptions under Regulation D or Rule 144A.

**Trading CSE Stocks** - A holder of restricted securities of a Foreign Private Issuer may resell the securities on the CSE pursuant to exclusions available under Regulation S or after one year under Rule 144 of the U.S. Securities Act. If the company is a Foreign Private Issuer, restricted securities may generally be resold through the facilities of the CSE under Regulation S, subject only to applicable Canadian hold periods and resale restrictions. Many major U.S. broker-dealers can facilitate trading through the facilities of the CSE, subject to U.S. securities laws.

**Secondary Trading on U.S. Over-the-Counter Markets** - CSE issuers can access U.S. investors by being quoted on a U.S. over-the-counter (OTC) market such as the OTCQX, OTCQB, OTC Pink and other secondary markets. A secondary market may develop on OTCQX, OTCQB, OTC Pink without SEC registration. The OTC Markets Group routinely accepts CSE listed companies for quotation on the OTCQB and OTCQX markets, which are the preferred markets at most broker-dealers. Issuers may facilitate development of a U.S. secondary market through qualifying for certain exemptions under state blue sky laws such as manual listing with Mergent.<sup>10</sup>

**Interlisting on a U.S. Market** - Companies listed on the CSE can also access U.S. capital by interlisting on a U.S. Exchange, subject to satisfying the listing requirements of the exchange. The primary benefit of a second listing is access to another pool of growth capital and exposure to new analysts and institutional and retail investors. See the next section for more information on interlisting.

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<sup>10</sup> Certain states provide an exemption from registration of secondary transactions of securities where the issuer of such securities must publish certain disclosure information on an ongoing basis in a securities manual published by Mergent (formerly known as Moody's).

## CROSS-BORDER LISTINGS

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A CSE listed company may seek a secondary listings on a U.S. exchange (e.g., NYSE, NASDAQ, NYSE American) based in part on trading and pricing histories in Canada. A company must register its securities under the U.S. Exchange Act to qualify for a listing on a U.S. exchange and the issuer must satisfy the listing requirements of the exchange.

An issuer that has filed a registration statement to register an offering of securities under the U.S. Securities Act can register the class of securities under the U.S. Exchange Act by filing a Form 8-A with the SEC.

An issuer that has not filed a registration statement to register an offering of securities under the U.S. Securities Act can register the class of securities under the U.S. Exchange Act by filing a Form 10 with the SEC or, in the case of a Foreign Private Issuer, a Form 20-F. Form 10 and Form 20-F are long form registration statements requiring prospectus level disclosure and are subject to an SEC review and comment process.

Foreign Private Issuers that are incorporated in Canada may be able to take advantage of the SEC's multi-jurisdictional disclosure system (MJDS), which permits qualified issuers to register securities under the U.S. Exchange Act on Form 40-F and to satisfy ongoing U.S. filing requirements using Canadian disclosure materials. Form 40-F is a short form registration statement that incorporates a Canadian issuer's Canadian disclosure materials into the filing and is not normally subject to extensive review by the SEC.

Companies that are required to file reports under the U.S. Exchange Act are subject to the requirements of Sarbanes-Oxley, including Section 404 reporting requirements related to internal control over financial reporting.

## U.S. CANNABIS COMPANY CONSIDERATIONS

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The cannabis industry is a fast growing, emerging industry in the United States and Canada. Legalization of cannabis for medical and recreational use in a number of states in the United States and in Canada has presented a variety of opportunities and legal challenges for pioneering companies that are creating a multi-billion dollar industry. This guide summarizes some key considerations under United States laws and regulations for cannabis companies doing business in the United States and Canada.

### U.S. Federal Law

The United States federal government regulates drugs through the Controlled Substances Act (21 U.S.C. § 811), which places controlled substances, including cannabis, in a schedule. Cannabis is classified as a Schedule I drug. A Schedule I controlled substance is defined as a substance that has no currently accepted medical use in the United States, a lack of safety for use under medical supervision and a high potential for abuse. The Department of Justice defines Schedule 1 controlled substances as “the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence.”

The United States Federal Drug Administration has not approved the sale of marijuana for any medical application. State laws regulating Cannabis are in direct conflict with the federal Controlled Substances Act, which makes cannabis use and possession federally illegal.

## State Law

As of November 4, 2018, there are 33 states and Washington D.C. that have legalized medical marijuana, and 9 jurisdictions have gone on to legalize recreational use of marijuana, including Colorado, Washington, Alaska, Oregon, the District of Columbia, Nevada, Massachusetts, Maine, California and Vermont. In the November 6, 2018 elections, Michigan became the 10<sup>th</sup> state to legalize recreational use of marijuana (by voter initiative) and Missouri and conservative Utah voted to legalize medical marijuana. While a voter initiative in North Dakota failed. There are numerous states that have indicated interest in putting recreational use of marijuana to a vote in future ballot measures.

State regulatory requirements vary enormously from state-to-state, and business structures and practices developed for compliance in one state frequently will violate the laws and regulatory policies of other states.

## DOJ Enforcement

**Ogden and Cole Memos:** Beginning in 2009, the U.S. Department of Justice (“**DOJ**”) issued a series of memorandum providing that where states and local governments enact laws authorizing cannabis-related use, and implement strong and effective regulatory and enforcement systems, the federal government will rely upon states and local enforcement agencies to address cannabis activity through the enforcement of their own state and local narcotics laws. On October 19, 2009, United States Deputy Attorney General David W. Ogden issued a memorandum (the “**Ogden Memo**”), which provided the following clarification and guidance in states that have enacted laws authorizing the medical use of cannabis, “Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these states on core federal enforcement priorities.” On August 29, 2013, United States Deputy Attorney General James Cole (the “**Cole Memo**”) issued the most notable memorandum on cannabis enforcement priorities to United States Attorneys guiding them to prioritize enforcement of Federal law away from the cannabis industry operating as permitted under certain state laws, subject to certain guidelines.

**Rescission of Ogden and Cole Memos:** On January 4, 2018, U.S. Attorney General Jeff Sessions (“**Sessions**”) issued a memorandum (the “**Sessions Memo**”) that expressly rescinded previous DOJ guidance on cannabis enforcement priorities, including the Ogden Memo and the Cole Memo. The Sessions Memo is three short paragraphs:

In the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana. 21 U.S.C. § 801 *et seq.* It has established significant penalties for these crimes, 21 U.S.C. § 841 *et seq.* These activities also may serve as the basis for prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and

Bank Secrecy Act. 18 U.S.C. §§ 1956-57, 1969; 31 U.S.C. § 5318. These statutes reflect Congress's determination that marijuana is a dangerous drug and that marijuana is a serious crime.

In deciding which marijuana activities to prosecute under these laws with Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions. Attorney General Benjamin Civiletti originally set forth these principles in 1980, and they have been refined over time, as reflected in chapter 9-27.000 of the U.S. Attorneys' Manual. These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.

Given the Department's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately. [footnote added specific to the Ogden Memo and Cole Memo] This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion in accordance with all applicable laws, regulations, and appropriations. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

Prior to his appointment by President Donald Trump to head DOJ, Sessions voiced a strong opposition to state marijuana laws that he believes directly contravene the federal Controlled Substances Act. Accordingly, the Sessions Memo may significantly increase enforcement risk for cannabis companies in the United States and those engaged in businesses that support the cannabis industry.

The provincial securities commissions in Canada, acting together as the "CSA" have issued notices that prescribe the inclusion of risk disclosure, in offering documents and listing statements, that specifically addresses the possible ramifications of the legal contradictions in the United States

## U.S. Banking Regulation

Since the use of cannabis is illegal under federal law, Cannabis companies may have difficulty acquiring or maintaining bank accounts in the United States. The Financial Crimes Enforcement Network ("**FinCEN**") provided guidance on February 14, 2014 about how financial institutions can provide services to cannabis-related businesses consistent with their Bank Secrecy Act obligations ("**BSA**"). In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment

On February 14, 2014, FinCEN issued guidance under the BSA relating to FinCEN's and the FDIC's expectations regarding BSA compliance for cannabis-related businesses. The FinCEN guidance was issued in light of recent state initiatives to legalize certain cannabis-related activity and the related guidance by the DOJ outlined in the Ogden Memo and the Cole Memo.

The FinCEN guidance clarifies how banks can offer services to cannabis-related businesses consistent with their BSA reporting obligations by filing suspicious activity reports ("**SARs**") and provides three categories of SAR

filings for cannabis-related business: "marijuana limited," "marijuana priority," and "marijuana termination." If a financial institution provides financial services to a cannabis-related business that it reasonably believes, based on its customer due diligence review, does not implicate one of the Cole Memo priorities or violate state law, it should file a "marijuana limited" SAR. Since the eight priorities of the Cole Memo principally deal with the illegal cultivation and distribution of cannabis and we do not engage in these activities, we anticipate that financial institutions providing financial services to us will file, if deemed required, "marijuana limited" SARs relating to our activities. In addition to our compliance with state laws and regulations, we will seek to meet FinCEN's guidance to the extent that it indirectly affects our business, through our systems, procedures, and protocols to review customer licensing and identification procedures of customers and retail customers.

FinCEN guidance expanded on the "know your customer" guidelines and clarified how financial institutions can provide services to cannabis-related businesses consistent with their BSA obligations and stated:

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As a practical matter, prospective investors in or acquirors of a business in the cannabis industry would be well advised to conduct thorough due diligence of the businesses' financial service providers. It should be verified that the providers understand the business and are comfortable with providing the services necessary to implement the business plan. In particular, some institutions that are willing to "bank" intrastate cannabis businesses have been reluctant to engage in interstate or international transactions and fund transfers.

## U.S. Taxation

In states that have decriminalized cannabis through voter initiatives or legislative processes, states have adopted legislation to tax cannabis through sales, excise or producer tax structures. Each state has used differing taxation structures.

Even though cannabis is illegal, enterprises engaged in the cannabis industry are still subject to federal taxation in the United States. Under the U.S. Internal Revenue Code, 26 U.S.C. § 280E, cannabis businesses are subject to significantly higher income tax burden relative to other types of businesses by eliminating business expenses deductions for those selling drugs on Schedules I and II of the Controlled Substances Act.

Some cannabis business, if held through a non-U.S. company, may constitute a “passive foreign investment company” as defined in the U.S. Internal Revenue Code, 26 U.S.C. § 1297. For example, a non-U.S. company which holds royalty interests or minority interests in other entities may constitute a passive foreign investment company.

You should consult legal and tax advisors for the applicable tax requirements in each jurisdiction.

## Branding and Intellectual Property Protections

The direct conflict that exists between the federal Controlled Substances Act, which makes cannabis use and possession federally illegal, and state laws regulating cannabis (as described above), has created an uncertain legal environment for the protection and enforcement of cannabis brand names in the U.S.

At the federal level, the U.S. Patent and Trademark Office (USPTO) can refuse to register a trademark for cannabis or related products and services that violate the Controlled Substances Act, on the basis that this violates the USPTO’s rule that trademarks must be in “lawful use in commerce.” The lawful use requirement is rooted in Sections 1 and 45 of the Lanham (Trademark) Act, 15 U.S.C. §§ 1051, 1127.

Even where an applicant uses a broad identification of goods or services so as not to mention cannabis specifically as the subject of such goods or services, or relies on foreign registration rights, where no proof of use of the mark would be required, the USPTO may still refuse the application as covering goods or services that are illegal under federal law. This is because examiners often look more closely into an applicant’s background, they examine an applicant’s website, or they ask questions to have an applicant admit whether its goods or services relate to cannabis. Cannabis brand owners can seek to obtain federal registration protection for ancillary goods or services that do not have cannabis as their focus, such as clothing or food, although these types of filings would be subject to the same level of USPTO scrutiny.

Despite a trademark owner’s inability to register at the federal level for goods or services that are prohibited under the Controlled Substances Act, registration for cannabis brands is available at the state level in those states where cannabis is legal. Also, brand owners can also rely on common law (i.e., unregistered) rights to gain trademark protection, which automatically arise upon the commercialization of a brand. Common law rights are only established in the geographic areas in which a trademark is used.

Despite the uncertain status of registration and enforcement of brands, a comprehensive trademark clearance search is still advisable. This is because it will be important for a business to know whether its proposed mark has been used on a common law basis or is the subject of a state or federal trademark registration.

## Stock Trade Clearance

**CDS Clearance:** The Canadian Depository for Securities Ltd. (“**CDS**”) is the clearing house which processes all Canadian equity trades. CDS is owned by the TMX Group, which owns and operates the Toronto Stock Exchange and the TSX Venture Exchange. TSX Staff Notice 2017-0009 and the equivalent TSXV Notice to Issuers effectively



banned issuers engaged in cannabis activities in the United States from listing on the Toronto Stock Exchange and the TSX Venture Exchange and provided notice to issuers already listed that they faced the possibility of delisting. In August 2017, the TMX Group also announced that CDS was examining its policies related to clearing securities of issuers with cannabis activities in the United States. On February 8, 2018, the CSA issued a press release stating that “CDS will continue to clear the securities of issuers with U.S. marijuana-related activities.”

**U.S. Clearance:** Recently, in reaction to the Sessions Memo, several major U.S. securities clearing companies that provide clearing, custody and settlement services in the United States (including BNY Mellon’s Pershing) have terminated providing clearing services to issuers in the cannabis industry, including those that operate entirely outside the United States. Although The Depository Trust Company (“**DTC**”) is the primary depository for securities in the United States, securities clearing companies play an important role in processing securities for deposit in the DTC system and for settlement of transactions and trades in securities for U.S. securityholders. As a result of the U.S. securities clearing companies’ and other market participants’ decisions to stop processing transactions of securities for issuers in the cannabis industry, U.S. securityholders may be unable to deposit their securities in the DTC system or to resell their securities in open market transactions, including transactions facilitated through the CSE. Many larger U.S. broker-dealers own U.S. securities clearing companies that self-clear transactions. U.S. securityholders are advised to contact their broker-dealer for additional information on clearing transactions of securities for issuers in the cannabis industry.

## U.S. Border Control and Immigration

For purposes of U.S. immigration and nationality law, cannabis is classified as a Schedule I substance under the U.S. Controlled Substances Act. Accordingly, Canadians and other non-citizens seeking admission to the U.S. must be aware that engaging in cannabis-related activities, even if they are lawful under U.S. state and/or Canadian laws, may present issues at the U.S. port of entry and result in a finding of inadmissibility by the U.S. Customs and Border Protection (“**USCBP**”) officer. If such a finding is made, a person will be denied entry or subject to a ban from entering the United States. These USCBP restrictions do not apply to U.S. citizens,

According to guidance issued by USCBP (October 9, 2018):

Generally, any arriving alien who is determined to be a drug abuser or addict, or who is convicted of, admits having committed, or admits committing, acts which constitute the essential elements of a violation of (or an attempt or conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, is inadmissible to the United States.

A Canadian citizen working in or facilitating the proliferation of the legal marijuana industry in Canada, coming to the U.S. for reasons unrelated to the marijuana industry will generally be admissible to the U.S. however, if a traveler is found to be coming to the U.S. for reason related to the marijuana industry, they may be deemed inadmissible.

Because engaging in cannabis-related activities may have significant U.S. immigration consequences, non-citizens involved in licensed cannabis businesses as shareholders, officers or employees may want to seek the advice of counsel prior to travelling to the U.S. or seeking other U.S. immigration benefits.



## QUESTIONS AND ANSWERS

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### AS A U.S. COMPANY CONSIDERING A LISTING ON THE CSE, YOU MAY BE ASKING...

**Q. *What is the Canadian Securities Exchange?***

- A. The CSE is a recognized stock exchange designed to meet the needs of small cap companies and their investors. It provides a low cost listing regime notable for its streamlined approach to regulation. It employs an advanced trading system that focuses liquidity in a single electronic order book that ensures client priority while enabling participating dealers to act as market makers. The CSE is recognized by the United States Securities and Exchange Commission as a “*Designated Offshore Securities Market*” for the purposes of Regulation S.

**Q. *Why should we list on the CSE?***

- A. Listed companies get the benefit of the lowest cost to access public capital to grow their businesses. The CSE employs an enhanced disclosure philosophy that extends from the transparency of the trading system through the disclosure by listed companies to the comprehensive investor information displayed on the CSE website.

**Q. *Do we meet the general requirements for listing on the CSE?***

- A. Generally, any issuer may qualify for listing on the CSE by satisfying financial and disclosure standards applicable under Canadian securities law requirements. These requirements include:
- adequate financial resources to carry out the company’s business plan for the next 12 months.
  - 150 public investors holding freely tradable (unrestricted) shares.
  - qualified management and Board of Directors with a satisfactory compliance history.

A complete description of the listing requirements of the CSE can be found in Policy 2 on the exchange’s website, [thecse.com](http://thecse.com)

<https://www.thecse.com/support/listed-companies/policies>

Companies should consider legal, tax and business considerations and consult professional advisors before joining.

**Q. *What are the steps and regulatory requirements to list my company on the CSE?***

- A. First, the company must qualify as a reporting issuer in Canada by filing an offering or non-offering prospectus or by entering into a go-public transaction with an existing reporting issuer in good standing that lacks a current active business.

The prospectus or a listing statement is filed with the exchange as the fundamental disclosure document. The company insiders file confidential 'personal information forms' to enable the exchange to conduct background checks.

Ancillary documentation including a legal opinion is submitted and annual (audited) and quarterly (unaudited) financial statements are posted on the CSE website.

There are CSE specific forms for a listing application and listing statement that are provided on the CSE website.

The approval process usually takes about 60 days and can be less if circumstances allow.

**Q. *What fees can we expect for listing on the CSE?***

A. The CSE charges an initial fee to list of Cdn \$13,500 and thereafter charges a flat fee of Cdn \$650 per month. There are no fees levied on financings or filings and no charges based on market capitalization. You should consult with your professional advisors as fees for professionals will vary depending on your company's individual circumstances.

**Q. *Are companies in the Cannabis Industry able to list on the CSE?***

A. Yes. The CSE is the only market in Canada that will list Cannabis companies with operations in the United States.

**Q. *Does my company need to be incorporated in Canada or have Canadian operations?***

A. No. A number of companies incorporated in the United States and many other jurisdictions have listed on the CSE. A company is not required to have Canadian operations, management or directors to list on the CSE. Notwithstanding the ability to remain a U.S. corporation, there may be certain advantages to re-incorporating or restructuring your company to be a Canadian corporation. See, "The Foreign Issuer Advantage", above.

**Q. *Will my company automatically be subject to reporting requirements in the United States and compliance with Sarbanes-Oxley if my company lists on the CSE?***

A. No. There are exemptions, such as Rule 12g-1<sup>11</sup> or 12g3-2(b)<sup>12</sup>, available from the registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the requirements of Sarbanes-Oxley. The CSE does not require U.S. companies to be registered or reporting under the Exchange Act. Consequently, your company may qualify for an exemption and list on the CSE

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<sup>11</sup> Rule 12g-1 under the Exchange Act exempts issuers from the requirement to register a class of equity securities and comply with Exchange Act reporting requirements if the calls of equity securities was held of record by fewer than 2,000 persons or 500 persons who are not "accredited investors" (as defined in Rule 501(a) of Regulation D under the U.S. Securities Act).

<sup>12</sup> Rule 12g3-2(b) under the Exchange Act exempts foreign private issuers from the requirement to register a class of equity securities and comply with Exchange Act reporting requirements if the issuer maintains a listing of the subject class of securities on one or more exchanges in non-U.S. jurisdictions that constitute the primary trading market for the securities and certain information required by the laws of its incorporation, principal exchange, applicable securities laws is made public (on the Internet) and to its security holders.

without registration or reporting under the Exchange Act.

**Q. Will listing on the CSE prevent me from raising capital in the United States?**

A. No. Listing on the CSE will not affect a company's ability to raise capital in the United States. Companies listed on the CSE can still raise capital in the United States through either private placements exempt from the registration requirements of the Securities Act, and applicable state securities laws or in public registered offerings under the Securities Act and state securities laws.

**Q. Will investors in the United States and Canada be able to freely purchase and sell our securities on CSE?**

A. Yes, in most cases, unrestricted securities may be purchased and sold on CSE in the same way that similar securities are sold on NYSE, NYSE MKT or NASDAQ. United States registered broker-dealers can effect purchase and sale transactions in securities that are quoted on CSE in compliance with applicable Canadian and U.S. securities law<sup>13</sup> either through a correspondent relationship with an investment dealer registered in Canada or in a US OTC marketplace. CSE listed companies automatically qualify for acceptance on the OTCQB and OTCQX markets. Restricted securities<sup>14</sup> may only be resold pursuant to exemptions under the Securities Act.

**Q. Will my company incur Canadian corporate taxes for listing on the CSE?**

A. No. There are no Canadian tax consequences to a company for simply listing on the CSE. Similar to investments in other securities, U.S. investors may have tax consequences as a result of making investments in foreign companies and they should consult their tax professionals before making any investment. If your company conducts business in Canada, your company may be subject to Canadian tax consequences and you should consult your tax advisor. Also, if your company re-incorporates or restructures to become a Canadian company, your company will become subject to Canadian tax consequences and you should consult your tax advisor.

**Q. Does listing on the CSE increase our exposure to liability in the United States?**

A. The question of liability under securities laws is complex. Companies that do not register with the SEC generally have less exposure to regulatory action by the SEC. However, every company that makes use of interstate commerce in the United States is subject to compliance with and liability under U.S. securities laws. Some of the key considerations are outlined under "U.S. Securities Law Liability", above.

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<sup>13</sup> All purchases and sales through a broker-dealer must be made in compliance with applicable state securities laws and state broker-dealer registration requirements. Issuers listed in the Mergent manual are exempt in approximately 40 states pursuant to the manual exemption for blue sky purposes. Other exemptions (or registration) may be available in states that do not recognize a securities manual exemption.

<sup>14</sup> Rule 144(a)(3) under the Securities Act sets forth the definition of "restricted securities." Generally, securities that are issued without registration in private transactions (such as private placements under Section 4(a)(2) of the Securities Act or pursuant to Rule 505 or 506 of Regulation D) and securities issued in off-shore transactions by U.S. Issuers under Rule 903 of Regulation S are deemed to be restricted securities. See, "The Foreign Issuer Advantage", above.

## APPENDIX A – REGULATION A+ CHEAT SHEET

	United States Public Offerings		
	Registered Offering	Regulation A+ Tier 1	Regulation A+ Tier 2
Type of Offering	Traditional IPO	Mini-IPO	Mini-IPO
Filing Requirement	Form S-1 or F-1 (Full Registration)	Form 1-A (Simplified Offering Statement)	
Issuer Type	All Issuers	United States Canadian (Incorporation and Business) (Non-reporting, non-shell)	
Maximum Offering	Unlimited	\$20m	\$50m
Investor Type	All Investors	All Investors	All Investors
Investment Amount Limitation	None	None	Yes Non-accredited Investors: Individual – 10% income or net worth Entities – 10% revenue or assets
Selling Shareholders	Yes	Yes (30% limitation)	Yes (30% limitation)
Continuous/Delayed Offerings	Yes	Yes	Yes
Broker Dealer Offerings	Yes	Yes	Yes
Financial Statement Requirements	Audited Financial Statements (PCOAB)	Unaudited Financial Statements	Audited Financial Statements (IASB or PCOAB)
Confidential Filing Option <sup>15</sup>	Yes	Yes	Yes
SEC Review	Yes	Yes	Yes
Test the Waters	Yes <sup>16</sup>		
SEC Reporting	Yes Full SEC Reporting Annual: Form 10-K Quarterly: Form	No	Yes <sup>17</sup> Moderate SEC Reporting Annual: Form 1-K Semi-annual:

<sup>15</sup> Available for “emerging growth companies” for first time registrants filing Form S-1 or issuers filing Form 1-A. A minimum 21 day waiting period before sales can commence after the “live” public filing.

<sup>16</sup> Test the water materials must contain specified legends and are required to be filed with the SEC.

<sup>17</sup> Two year exemption from Section 12(g) reporting requirements for issuers otherwise required to report.

	10-Q		Form 1-SA Current: Form 1-U
National Market Listings (Nasdaq/NYSE/NYSE-American)	Yes Form 8-A	No	Yes (Requires SEC Reporting) Form 8-A
Blue Sky Exemption	No (National Market Listings Exempt)	No	Yes
Secondary Trading	National Market Listings Exempt for Secondary Trading — Disclosure provides basis for Form 211	No	National Market Listings Exempt for Secondary Trading — Disclosure provides basis for Form 211
Rule 144 Eligibility	Exchange Act Reporting provides basis for Rule 144 <sup>18</sup>	No	Supplemental Q1 and Q3 Submissions provide basis for Rule 144 <sup>18</sup>
Other Restrictions		Bad Actor Shell Companies 1934 Act Reporting Issuers Investment Companies 12j Issuers Fractional Interest Holders (Oil/Mineral)	

<sup>18</sup> Subject to "shell company" limitations of Rule 144.

## APPENDIX B – AT A GLANCE CONSIDERATIONS FOR U.S. COMPANIES

Considerations	U.S. Domestic Issuer	Foreign Private Issuer (FPI)
<b>Canadian Prospectus</b>	A Canadian prospectus or Information Statement (in a qualifying transaction with a CPC) is required regardless of jurisdiction of incorporation when listing on a Canadian exchange.	
<b>Canadian Reporting</b>	All Canadian public companies are subject to reporting requirements in Canada. Note that SEC filings may satisfy these reporting requirements. Consult Canadian legal advisors for guidance on these requirements.	
<b>U.S. Registration of Offering</b>	A U.S. Domestic Issuer that does not file a registration statement with the SEC in connection with its IPO (or other financing) must qualify for an exemption under the U.S. Securities Act. In most cases, the securities issued will be “restricted securities” for U.S. securities law purposes and any trading on the CSE would be limited.	A FPI will not generally file a registration statement with the SEC in connection with its IPO. Instead, a FPI normally relies on exclusions available under Regulation S to issue unrestricted shares outside the United States. A FPI may issue shares, which are “restricted securities”, to qualified investors in the United States in private placements. Holders of restricted securities may resell the shares on the CSE, subject to the requirements of Regulation S.
<b>U.S. Reporting</b>	A U.S. Domestic Issuer that does not file a registration statement with the SEC to register securities offered in the IPO and has fewer than 2,000 shareholders of record or 500 shareholders of record that are non-accredited investors would qualify for an exemption from the reporting obligations under the U.S. Exchange Act.	A FPI that does not file a registration statement with the SEC to register securities offered in the IPO and has fewer than 2,000 shareholders of record or 500 shareholders of record that are non-accredited investors would qualify for an exemption from the reporting obligations under the U.S. Exchange Act. Alternatively, a FPI may qualify for an exemption from registration available under Rule 12g3-2(b).
	A U.S. Domestic Issuer that files a registration statement on Form S-1 to register securities offered in the IPO will become a reporting issuer and be required to file periodic reports with the SEC on Form 10-K, Form 10-Q and Form 8-K. If the company elects to register the class of securities under Section 12 of the Exchange Act and become a reporting issuer, the company will become subject to the SEC 14A proxy rules and tender offer rules, and certain of its shareholders will be required to file beneficial ownership reports on Schedule 13D/G and Section 16 reports.	A FPI that files a registration statement on Form S-1 or Form F-1 to register securities offered in the IPO will become a reporting issuer and be required to file periodic reports with the SEC reports on Form 20-F (or 40-F, if eligible) and Form 6-K. Shareholders are subject to beneficial ownership reporting on Schedule 13G/13D if the company elects to register a class of securities under Section 12 of the Exchange Act.
<b>Sarbanes Oxley</b>	Non-SEC reporting issuers are not subject to the requirements of Sarbanes-Oxley. Issuers that are required to file reports under the U.S. Exchange Act are subject to the requirements of Sarbanes Oxley, including Section 404 reporting requirements related to internal control over financial reporting.	
<b>U.S. GAAP Financial Statements</b>	A U.S. Domestic Issuer that is a reporting issuer is required to prepare financial statements in accordance with U.S. GAAP. Annual financial statements are required to be audited by a member in good standing with the Public	FPI that is a reporting issuer with the SEC is permitted to prepare financial statements in accordance with home country GAAP. Annual financial statements must be reconciled to U.S. GAAP and audited by a member in good standing with the Public Company Accounting

Considerations	U.S. Domestic Issuer	Foreign Private Issuer (FPI)
	Company Accounting Oversight Board. Interim financial statements are required to be reviewed by the issuer's auditor.	Oversight Board. Interim financial statements are not required to be reviewed by the issuer's auditor or reconciled to U.S. GAAP unless included in a U.S. Securities Act registration statement.
<b>U.S. Resale Restrictions</b>	Unless registered under the U.S. Securities Act, all securities issued in the IPO are restricted securities and subject to a one year distribution compliance period or hold period. <sup>19</sup> Restricted securities continue to be restricted securities even following a resale transaction (Rule 904) on the CSE.	Securities issued by a FPI outside the United States in accordance with Regulation S are unrestricted securities and may be freely transferred on the CSE. Securities issued in the United States to qualified investors in the U.S. in private placements are "restricted securities" and may be resold on the CSE in accordance with the requirements of Regulation S (Rule 904).
<b>Subsequent Financings</b>	<p>A U.S. Domestic Issuer must register securities with the SEC under the U.S. Securities Act (by filing a registration statement on Form S-1 or, if available Form S-3) or an exemption from such registration requirements must be available.</p> <p>Exempt financings are completed on a "private placement" or offshore financings outside the U.S. under Regulation S, and involve, in either case, the sale of restricted securities and subject to a one-year distribution compliance period or hold period.<sup>20</sup> Restricted securities continue to be restricted securities even following a resale transaction (Rule 904) on the CSE.</p>	<p>Securities issued by a FPI outside the U.S. in accordance with Regulation S are unrestricted securities and may be freely transferred on the CSE. Securities issued by a FPI in the United States to qualified investors in private placements are "restricted securities" and may be resold on the CSE in accordance with the requirements of Regulation S (Rule 904).</p> <p>A public offering of securities into the U.S. may be made by filing a registration statement under the U.S. Securities Act with the SEC on Forms F-1 or S-1 or, if available, Forms F-3 or S-3. Additionally, certain FPIs may qualify for the Multi-Jurisdictional Disclosure System, which permits the FPI to register securities under the U.S. Securities Act pursuant to a Canadian prospectus filed under cover of Form F-10. Filing a registration statement with the SEC will subject the FPI to the ongoing reporting requirements under the U.S. Exchange Act pursuant to Section 15(d).</p>

<sup>19</sup> Regulation A+ provides a limited exception from the registration requirements of the U.S. Securities Act for offers and sales during a 12 month period of up to US\$50 million. The issuer would be required to file a Form 1-A with the SEC and the securities would be free trading securities.

<sup>20</sup> Regulation S requires a one-year distribution compliance period during which securities issued under Regulation S by U.S. Domestic Issuers may not be sold in the U.S. or to, or for the account or benefit of, a U.S. person. The distribution compliance period is six months for U.S. Domestic Issuers that file reports under the U.S. Exchange Act and are current in their filings.



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