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To: Joint Legislative Justice Oversight Committee (the "Committee")
From: Michael Pieciak, Commissioner, Department of Financial Regulation ("DFR")
Emily Kisicki, Assistant General Counsel, DFR *ek*
Date: October 27, 2016
Re: Legal Marijuana Businesses; Access to Insurance

MSP

This memorandum follows up on testimony DFR delivered to the Committee on October 17th. During that testimony, the Committee: (i) requested DFR gather additional information regarding the accessibility and affordability of insurance coverages for existing marijuana businesses in Vermont; and (ii) inquired about the potential impacts of marijuana being reclassified as a Schedule II drug. Please find the information/answers to your requests below.

(i) **Access to Insurance Coverage for Vermont's Medical Marijuana Dispensaries**

DFR reached out to Vermont's medical marijuana dispensary license holders¹ to ask about the dispensaries' current coverages and whether it was difficult to obtain policies. Generally, each dispensary reported that it held some type of insurance coverage, but expressed difficulty finding policies and stated available policies are expensive.

Their specific responses are summarized below:

Dispensary 1: the dispensary reports it holds coverages for: (i) general liability with umbrella over it (through Knight Specialty and Next Wave); (ii) products completed (through HSB Insurance and Next Wave); (iii) auto (through Progressive); (iv) workers' compensation (through AIG); (v) dental/vision (through Delta Dental); and (vi) will soon have health insurance coverage. The dispensary reports insurance coverage is available, but it is not competitively priced. The dispensary reports that having higher insurance premiums is very challenging, particularly when coupled with other costs such as high security needs and regulatory compliance costs.

Dispensary 2: The dispensary reports it holds coverage for: (i) general liability (initially through Lloyds of London until it dropped all coverage for cannabis companies and now through New Venture); and (ii) workers' compensation insurance (through Ace). The dispensary estimates that its insurance costs are three times higher than a company of similar size and risk.

¹ The Department of Public Safety has issued four marijuana dispensary licenses to three corporate entities.



Dispensary 3: The dispensary reports it holds coverage for: (i) general liability (through Hanover Insurance); and (ii) product liability (through Hanover Insurance). The dispensary initially only carried general liability coverage, because it could not afford product liability. Further, the dispensary uses an insurance broker that specializes in finding coverage for cannabis companies - InsZone. A InsZone representative shared: “there is only one major player that will cover cannabis companies called Hanover Insurance, so there is some risk. Lloyds of London used to be the only major player in the space, and when they decided to pull out it became much more difficult to get reasonably priced policies with the necessary amount of coverage. Hanover has filled that gap along with a few other smaller providers. The other players in the space have more arduous application processes and less competitive pricing, so while there are options for cannabis companies, it is not as easy to get a policy and it's not a given that those providers will be always be serving the industry.”

(ii) **Difference between Schedule I and Schedule II Classification**

Additionally, the Committee asked about the difference between Schedule I and Schedule II drugs under the federal Controlled Substances Act (“CSA”).

- **Schedule I** drugs are determined to have no currently accepted medical use and a high potential for abuse.
- **Schedule II** drugs are determined to have a high potential for abuse and potentially leading to severe psychological or physical dependence, however, such drugs have a currently accepted medical use in the United States.

The CSA currently lists marijuana has a Schedule I drug. Reclassification of marijuana from Schedule I to Schedule II may enable banks to handle proceeds from the sale of medically prescribed marijuana without running afoul of federal law, but banks may still be uncomfortable handling such proceeds from a business perspective and it would not resolve the issues related to proceeds from state legalized marijuana.

Further, it appears more likely that a federal solution would exempt financial institutions from liability under the CSA, rather than reclassifying marijuana to be a Schedule II drug.

Conclusion

DFR would like to thank the Vermont dispensaries for sharing information related to their insurance coverage.

Further, the Commissioner would like to recognize and thank Emily Kisicki for her thorough and timely work both on DFR’s white paper and this memorandum. I encourage the committee to contact Emily Kisicki (phone: 802-828-2904; email Emily.G.Kisicki@vermont.gov) if it has any other questions.