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Supplemental Guidance Regarding Split-Payment Arrangements Involving Tribal Cannabis Enterprises

The Nevada Cannabis Compliance Board ("CCB" or "Board") previously issued guidance concerning split-payment arrangements involving unlicensed entities. That guidance explains that a Nevada cannabis establishment generally may not divide payment for cannabis or cannabis products between a licensed cannabis establishment and an unlicensed third party. The characterization of a payment as a brand royalty, intellectual-property fee, licensing fee, technology fee, or similar charge does not determine whether the payment is permissible.

Questions have arisen concerning how that guidance applies to cannabis and cannabis products produced or sold by Indian tribes and tribal enterprises operating pursuant to cannabis compacts with the State of Nevada.

This supplemental guidance clarifies the meaning of "unlicensed entity" as used in the prior guidance and its application to transactions authorized under a State-Tribal cannabis compact.

I. STATE-TRIBAL CANNABIS COMPACTS

NRS 223.250 authorizes the Governor or the Governor's designee to enter into agreements with tribal governments to coordinate the administration of state and tribal laws relating to cannabis. These agreements may address the possession, delivery, production, processing, transportation, and use of cannabis and cannabis products, as well as taxation, immunity, preemption, conflicts of law, and dispute resolution.

NRS 223.250 also requires such agreements to establish provisions governing cannabis business that passes between tribal and non-tribal land in Nevada. Nevada law therefore expressly contemplates cannabis transactions between tribal enterprises and Nevada cannabis establishments when authorized by an applicable compact.

II. TRIBES AND TRIBAL ENTERPRISES

Tribal cannabis establishments are not licensed by the CCB. Their authority to conduct cannabis activities arises instead from applicable tribal law and, for transactions between tribal and non-tribal land, the applicable State-Tribal cannabis compact.

State-Tribal cannabis compacts expressly authorize transactions between a Tribe or Tribal Enterprise and cannabis establishments licensed by the State of Nevada. For purposes of the Board's prior split-payment guidance, a Tribe or Tribal Enterprise authorized under a valid cannabis compact with the State of Nevada to engage in cannabis transactions with State Licensees is therefore not considered an "unlicensed entity" merely because the Tribe or Tribal Enterprise does not hold a cannabis establishment license issued by the Board. Tribal products that are manufactured on tribal land under tribal authorization by an authorized tribal enterprise are treated the same as state licensed products.

The term "unlicensed entity," as used in the prior guidance, refers to an entity that lacks authorization under Nevada law or an applicable State-Tribal cannabis compact to participate in the cannabis transaction at issue.

III. BRAND-LICENSING AND SIMILAR ARRANGEMENTS

The prior guidance addressed transactions involving brand licensors, intellectual-property owners, and other third parties that are not authorized to participate in the acquisition or sale of cannabis or cannabis products.

A transaction involving a Tribe or Tribal Enterprise operating under a valid State-Tribal cannabis compact is different. A Nevada cannabis establishment may acquire cannabis or cannabis products from a Tribe or Tribal Enterprise when the transaction is authorized by the applicable compact.

The existence of a trademark, brand-licensing, royalty, intellectual-property, or similar agreement associated with a product produced or sold by the Tribe or Tribal Enterprise does not, by itself, make an otherwise authorized transaction a prohibited split-payment arrangement.

This guidance does not constitute Board approval of any particular licensing agreement or payment arrangement. It clarifies only that a Tribe or Tribal Enterprise authorized to participate in a transaction under a State-Tribal cannabis compact is not an "unlicensed entity" for purposes of the prior guidance.

IV. CONTINUING COMPLIANCE REQUIREMENTS

This clarification applies only to transactions involving a Tribe or Tribal Enterprise authorized to engage in the transaction under a valid cannabis compact between the State of Nevada and a federally recognized Indian tribe.

Cannabis and cannabis products transferred from tribal land to a Nevada cannabis establishment remain subject to the testing, tracking, transportation, labeling, taxation, and other requirements applicable to the transaction under Nevada law and the applicable compact.

Nevada cannabis licensees remain responsible for confirming that transactions with a Tribe or Tribal Enterprise are authorized by the applicable compact and for complying with requirements applicable to the Nevada licensee.

This guidance does not authorize the use of a Tribe or Tribal Enterprise to circumvent requirements otherwise applicable to Nevada cannabis licensees or authorize transactions beyond those permitted by the applicable compact.

V. EFFECT ON PRIOR GUIDANCE

The prior Industry Guidance Bulletin, “Split-Payment Arrangements Involving Unlicensed Entities: Prohibited Conduct and Compliance Requirements”, should not be read to characterize a Tribe or Tribal Enterprise operating under a valid State-Tribal cannabis compact as an "unlicensed entity" merely because it does not hold a cannabis establishment license issued by the Board.

References in the prior guidance to transactions between Nevada licensed cannabis establishments address transactions governed by Nevada's state licensing framework. They do not prohibit transactions separately authorized under NRS 223.250 and an applicable State-Tribal cannabis compact.

Except for this clarification, the Board's prior guidance concerning split-payment arrangements remains unchanged.