



COLORADO
Department of Revenue
Always Help

**Colorado Department of Revenue
Marijuana Enforcement Division**

[HB19-1090](#)

MEASURES TO ALLOW GREATER INVESTMENT FLEXIBILITY

RULEMAKING WORK GROUP

June 17, 2019

1707 Cole Blvd., Ste. 300

Lakewood, CO 80401

The materials contained herein are for purposes of stakeholder discussion and feedback to inform rulemaking required for implementation of House Bill 19-1090. All summaries, outlines, and proposals reflected herein are subject to amendment.

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COLORADO MARIJUANA BUSINESS INTERESTS FRAMEWORK

PRE HB19-1090



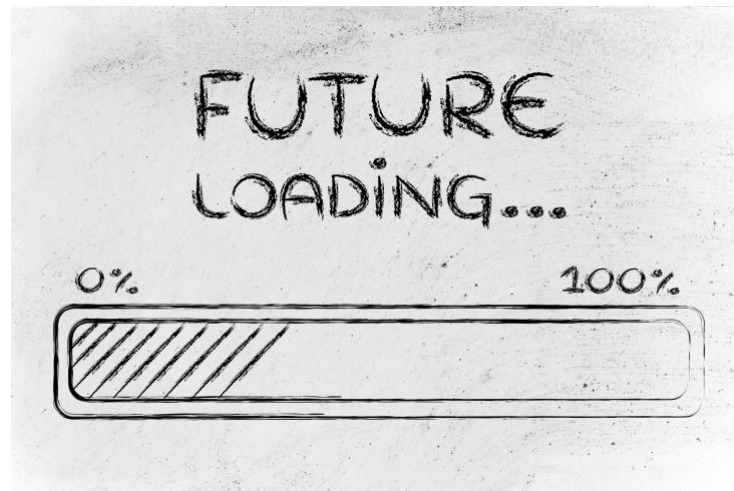
Statutorily Established Marijuana Business Interest Categories PRE-HB19-1090	
Direct Beneficial Interest Owner	Indirect Beneficial Interest Owner
A person owning a share or shares of stock in a marijuana business, including officers, directors, managing members, or partners of the marijuana business.	<p style="text-align: center;">Permitted Economic Interest</p> <p>A natural person and U.S. citizen holding an unsecured convertible debt instrument, option agreement, warrant, or any other right to obtain an ownership interest in a marijuana business and whose right to convert into an ownership interest is contingent on the holder qualifying and obtaining a license.</p>
<p style="text-align: center;">Qualified Limited Passive Investor</p> <p>A passive investor who is a natural person and U.S. citizen owning less than 5% shares of stock in a marijuana business.</p>	<p style="text-align: center;">Recipient of a Commercially Reasonable Royalty</p> <p>associated with the use of intellectual property by a licensee</p>
	<p style="text-align: center;">Employee Profit Sharing Plan</p> <p>An employee who receives a share of the profits from an employee benefit plan</p>
	<p style="text-align: center;">Qualified Institutional Investor (may own 30% or less)</p> <p>A bank, insurance company, federally registered investment company, federally registered investment adviser, collective trust fund, employee benefit plan, a state or federal government pension plan, or any other person or entity established by rule.</p>
	Other similarly situated persons or entities as determined by rule
Disclosure and Background-Related Statutory Requirements & Prohibitions PRE-HB19-1090	
General	
<p>Persons prohibited as licensees include - (a) a person with criminal history indicating he/she is not of good moral character, which also applies to officers, directors, and stockholders of a licensee and persons assisting or financing a licensee; (b) a person discharged of a sentence for felony conviction 5 years prior to application or 10 years prior to application, if a drug felony; (c) a publicly traded company.</p>	
<p>Financial assistance requirements – requires complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each marijuana business license, intended to prohibit the control of the outlets for the sale of marijuana by persons not possessing a license. Criminal history check exemption for state/federally regulated banks or savings and loan associations and FHA-approved mortgages.</p>	
<p>Residency – (a) a marijuana business with owners who have not established one-year residency must have at least one officer who has established one-year residency; (b) all officers with day-to-day operational control must establish one-year residency; (c) a marijuana business comprised of owners who have not established one-year residency are limited to no more than 15 owners, including parent and subsidiary entities.</p>	
<p>Operating Documents – Requires review of the marijuana business’s operating documents to ensure compliance with business/owner requirements.</p>	
Direct Beneficial Interest Owner	Indirect Beneficial Interest Owner
<p style="text-align: center;">Non-Residents: Pre-application finding of suitability required</p>	<p>Rulemaking authority to establish parameters and qualifications.</p>
<p style="text-align: center;">Qualified Limited Passive Investors</p> <p>(a) limited initial background check, and if reasonable cause, full investigation; (b) rulemaking authority to establish parameters and qualifications.</p>	

Regulatory Structure for Marijuana Business Interests PRE-HB-1090				
Business Interests Rules M & R 103				
Financial Interests Rules M & R 103		Affiliated Interests Rules M & R 103		
Direct Beneficial Interest Owner		Indirect Beneficial Interest Owner		
A person owning a share or shares of stock in a marijuana business, including officers, directors, managing members, or partners of the marijuana business	<p>Qualified Limited Passive Investor</p> <p>A passive investor who is a natural person and U.S. citizen owning less than 5% shares of stock in a marijuana business.</p>	<p>Commercially Reasonable Royalty Interest Holder (receiving 30% or less of the gross revenue/profit of a marijuana business)</p>	<p>Profit-Sharing Plan Employee</p> <p>An employee receiving a share of a marijuana business's profits through a Profit-Sharing Plan.</p>	<p>Qualified Institutional Investor</p> <p>A bank, insurance company, federally registered investment company or investment adviser, collective trust fund, employee benefit plan, a state or federal government pension plan, or any other person or entity established by rule.</p>
Indirect Beneficial Interest Owner		Other		
<p>Commercially Reasonable Royalty Interest Holder (receiving more than 30% of the gross revenue/profit of a marijuana business)</p>	<p>Permitted Economic Interest</p> <p>A natural person and U.S. citizen holding an unsecured convertible debt instrument, option agreement, warrant, or any other right to obtain an ownership interest in a marijuana business and whose right to convert into an ownership interest is contingent on the holder qualifying and obtaining a license.</p>	<ol style="list-style-type: none"> 1. An indirect financial interest 2. Lease agreement 3. Secured or unsecured loan 4. Security interest in fixtures or equipment with a direct nexus to the cultivation, manufacture, transfer, transportation, or testing of marijuana 5. Any other Business Interest related to a marijuana business that does not rise to the level of a Financial Interest 		
Other				
Any other Person who controls or is positioned so as to enable the exercise of control over a marijuana business.				

Disclosure & Suitability Requirements for Marijuana Business Interests PRE-HB19-1090					
Required Disclosure of All Business Interests at Initial Application & Renewal					
Business Interests					
Pre-Approval Required for all Financial Interests Scope of Background Investigation Varies by Category Financial Interests			Pre-Approval Requirements Vary by Category Discretionary Background Investigation for all Affiliated Interests Affiliated Interests		
Direct Beneficial Interest Owner			Indirect Beneficial Interest Owner		
Required Finding of Pre-Suitability Prior for Non-Residents Prior to Application	Full Background Required	Limited Initial Background with Full Investigation Upon Reasonable Cause	Pre-Approval Not Required Must Disclose Disqualifying Events within 10 Days of Occurrence		Pre-Approval Required
A person owning a share or shares of stock in a marijuana business, including officers, directors, managing members, or partners of the marijuana business		Qualified Limited Passive Investor	Commercially Reasonable Royalty Interest Holder (receiving 30% or less of the gross revenue/profit of a marijuana business).	Profit-Sharing Plan Employee	Qualified Institutional Investor
Full Background Required Must Disclose Disqualifying Events Within 10 Days of Occurrence Indirect Beneficial Interest Owner			Pre-Approval Not Required Subject to Discretionary Background Investigation Other		
Commercially Reasonable Royalty Interest Holder (receiving more than 30% of the gross revenue/profit of a marijuana business).		Permitted Economic Interest	<ol style="list-style-type: none"> 1. An indirect financial interest 2. Lease agreement 3. Secured or unsecured loan 4. Security interest in fixtures or equipment with a direct nexus to the cultivation, manufacture, transfer, transportation, or testing of marijuana 5. Any other Business Interest related to a marijuana business that does not rise to the level of a Financial Interest 		
Full Background Required Other					
Any other Person who controls or is positioned so as to enable the exercise of control over a marijuana business.					

COLORADO MARIJUANA BUSINESS INTERESTS FRAMEWORK

POST HB19-1090



HB19-1090 CONTROLLING BENEFICIAL OWNERS			
Natural Person			
Privately held company¹			
Organized under the laws of one of the states or territories of the U.S. or District of Columbia + Principal place of business in one of the states or territories of the U.S. or District of Columbia			
Publicly Traded Corporation			
Organized under the laws of one of the states or territories of the U.S. or District of Columbia or another country that authorizes the sale of MJ + Principal place of business in one of the states or territories of the U.S. or District of Columbia or another country that authorizes the sale of MJ +			10% or more of the Owner's Interest of the MJ Business OR An Affiliate that Controls the MJ Business OR Otherwise in a position to Control the MJ Business
<p>Has securities registered under Section 12 of the "Securities Exchange Act of 1934" + ["Covered Securities" pursuant to the "Securities Act of 1933" OR Securities qualified and quoted on the OTCQX or OTCQB Tier + Filing reports on a current basis with the SEC as if the securities constituted "Covered Securities" + Has established and is in compliance with corporate governance measures consistent with obligations imposed on OTCQX tier securities]</p>	<p>Has securities listed on the Canadian Securities Exchange, Toronto Stock Exchange, TSX Venture Exchange, or other equity securities exchange recognized by rule + Constitutes a "Foreign Private Issuer" pursuant to the federal "Securities Act of 1933" (exempt from registration) + For the preceding 365 days or since the formation of the entity, has been in compliance with all governance and reporting obligations imposed by the relevant exchange</p>	<p>"Blank Check Company" OR Issuer in an offering of "Penny Stock" OR "Shell Company" + Filing reports on a current basis with the SEC as if the securities constituted "Covered Securities" + Prior to becoming a Publicly Traded Corporation, was licensed in CO for at least 2 years with a demonstrated history of operations in CO and during such time was not subject to suspension or revocation</p>	
Qualified Private Fund (Non-QII)			
<p>Issuer that is advised or managed by a registered Investment Adviser² + Investment adviser is current in all applicable reporting and record-keeping requirements under the "Investment Advisers Act of 1940" + Organized under the law of a state or the United States - OR - Organized, operated by a U.S. Person³ - OR - Sells securities to a U.S. Person</p>			
Qualified Institutional Investor (QII)⁴			More than 30% of the Owner's Interest of a MJ Business
<p>1. Bank 2. Registered Bank Holding Company 3. Insurance Company</p>	<p>4. Registered Investment Company 5. Employee Benefit Plan or Pension Fund⁵ 6. State or Federal Government Pension Plan</p>		

¹ Entity defined in Section 7-90-102(20), C.R.S.

² As defined and registered under Sections 80b-1-21, Title 15 of the "Investment Advisers Act of 1940"

³ As defined under subsection 17 CFR 230.902(k)

⁴ These institutions are limited to those defined in federal law, subject to applicable federal registration requirements, and current in all applicable reporting and record-keeping requirements. Applicable federal statutes include the "Securities Exchange Act of 1934", "Bank Holding Company Act of 1956", "Investment Company Act of 1940", and the "Employee Retirement Income Security Act of 1974".

⁵ Applies to funds sponsored by a licensee or an intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee.

HB19-1090 PASSIVE BENEFICIAL OWNER		
Any Person acquiring any interest that is not otherwise a Controlling Beneficial Owner or in Control, including:		
Owns less than 10% Owner's Interest or Securities in a MJ business + Not an Affiliate of a MJ Business + Not in a position to Control the MJ Business		
Qualified Institutional Investor		30% or less of the Owner's Interest of a MJ Business
1. Bank 2. Registered Bank Holding Company 3. Insurance Company	4. Registered Investment Company 5. Employee Benefit Plan or Pension Fund ⁶ 6. State or Federal Government Pension Plan	

HB19-1090 INDIRECT FINANCIAL INTEREST HOLDER		
Holder of a Commercially Reasonable Royalty + The royalty is in exchange for the MJ Business's use of intellectual property		Not an Affiliate, a Controlling Beneficial Owner, or a Passive Beneficial Owner of a MJ Business
Permitted Economic Interest + Issued prior to January 1, 2020 + Not converted into an ownership interest		
Contract Counterparty⁷ + Direct nexus to the cultivation, manufacture, or sale of regulated marijuana, including but not limited to a lease of real property, lease of equipment, secured or unsecured financing agreement, security contract, or management agreement + The contract does not compensate the contract counterparty with a % of revenue for profits of the MJ Business.		

⁶ Applies to funds sponsored by a licensee or an intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee.

⁷ Does not include "customary employment agreements".

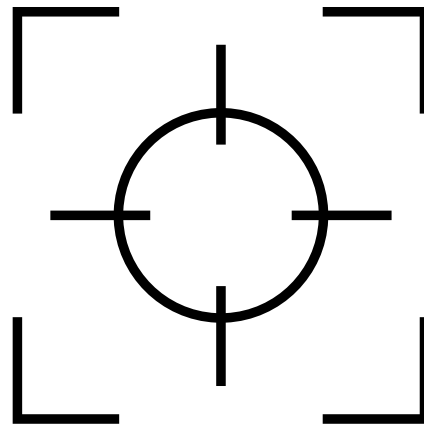
HB19-1090

SUMMARY OF STATUTORY DISCLOSURE REQUIREMENTS UPON APPLICATION FOR THE ISSUANCE OF A STATE LICENSE

	MANDATORY	DISCRETIONARY	REASONABLE CAUSE
REGULATED MARIJUANA BUSINESS (RMB)	1. Organizational chart reflecting the Controlling Beneficial Owners of the RMB	1. Affiliates 2. Beneficial Owners	1. Publicly Traded Corporation – List of Non-objecting Beneficial Owners (NOBO) 2. Private Entity – Passive Beneficial Interest Owners and, for any entity its Managers
CONTROLLING BENEFICIAL OWNER OF THE RMB THAT IS A PUBLICLY TRADED CORPORATION	1. Managers 2. 10% and greater Beneficial Owner(s)		1. List of Non-objecting Beneficial Owners
CONTROLLING BENEFICIAL OWNER OF THE RMB THAT IS A PRIVATE ENTITY	1. Managers 2. 10% and greater Beneficial Owner(s)	1. Affiliates 2. Beneficial Owners	
CONTROLLING BENEFICIAL OWNER OF THE RMB THAT IS A NATURAL PERSON	1. Identifying Information		
CONTROLLING BENEFICIAL OWNER OF THE RMB THAT IS A QUALIFIED PRIVATE FUND	1. Organizational chart reflecting the Managers, investment advisers, investment adviser representatives, any trustee or equivalent 2. Any other Person that controls the investment in, or management or operations of, the RMB	1. Affiliates	1. List of Beneficial Owners of Qualified Private Fund
PASSIVE BENEFICIAL OWNER	1. A Person that is both a Passive Beneficial Owner and an Indirect Financial Interest Holder in the RMB		1. Passive Beneficial Owners of the RMB 2. If an entity, Managers and 10% and greater Beneficial Owners of the Passive Beneficial Owner

<p>INDIRECT FINANCIAL INTEREST HOLDERS</p>	<ol style="list-style-type: none"> 1. A Person that is both a Passive Beneficial Owner and an Indirect Financial Interest Holder in the RMB 2. Holder of two or more Indirect Financial Interests in the RMB 3. Indirect Financial Interest Holder contributing over 50% of the operating capital of the RMB 		<ol style="list-style-type: none"> 1. Indirect Financial Interest Holders of the RMB 2. If an entity, 10% and greater Beneficial Owners of the Indirect Financial Interest Holder
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WORK GROUP DISCUSSION
PRIORITIZED TOPICS



Focus

PRIORITIZED TOPIC #1

DOCUMENT SUBMISSION AND RETENTION

- 1. For Publicly Traded Corporations, Qualified Institutional Investors, and Qualified Private Funds, what types of records can an Applicant/Regulated Marijuana Business provide to allow the MED to more readily verify participants authorized by HB19-1090?**
 - a. Identify records that are publicly accessible for this purpose and consider the extent to which the MED should rely on SEC filings and similar mandated disclosures?

- 2. What records should a Regulated Marijuana Business provide at renewal to support transparency and promote best practices?⁸**
 - a. Examples: new financing agreements (e.g. loans, options, warrants, etc.); royalty agreements; financial statements for previous fiscal year-end (e.g. balance sheet, income statement, cash flow statement); shareholder lists obtained in conjunction with proxy filings.
 - b. Consider whether the nature of the investment or percentage of Owner's Interest should inform the above.

⁸ HB19-1090 provides that business owner and financial interest disclosure requirements for applications for the issuance of a state license does not restrict the State Licensing Authority's ability to reasonably request information or records at renewal or as part of any other investigation following initial licensure.

**STAKEHOLDER NOTES FOR PRIORITIZED TOPIC #1
DOCUMENT SUBMISSION AND RETENTION**

PRIORITIZED TOPIC #2

BUSINESS OWNER AND FINANCIAL INTEREST DISCLOSURE

1. Indirect Financial Interest Holders contributing over 50% of the operating capital of the Regulated Marijuana Business are subject to mandatory disclosure under HB19-1090.
 - a. **How can rules reasonably define “contributions to operating capital” when determining whether disclosure is required?** Consider both equity and debt contributions and the nature of the lender.
 - b. **Should debt and equity contributions be combined for measurement purposes? If not, why not?**
 - c. **Are there financial statement components that can be used to assist in this measurement?**

2. HB19-1090 requires an Applicant or Regulated Marijuana Business to affirm it exercised “reasonable care” to confirm that certain parties exempt from disclosure are not persons prohibited from holding an interest.
 - a. **How can rules define or otherwise inform the “reasonable care” standard (in an effort to provide clear guidance or support a mutual understanding regarding compliance with this standard)?**
 - i. **What measures might a Regulated Marijuana Business take to meet this standard?**
 - ii. **How might the “know your customer” rules of the federal Bank Secrecy Act and Anti-Money Laundering rules be used as guidance for this standard?**
 - iii. **What resources are available to an Applicant or Regulated Marijuana Business to meet this standard?**
 - iv. **Is there supplemental information an Applicant or Regulated Marijuana Business should submit or maintain to support it took appropriate measures to meet this standard?**

**STAKEHOLDER NOTES FOR PRIORITIZED TOPIC #2
BUSINESS OWNER AND FINANCIAL INTEREST DISCLOSURE**

PRIORITIZED TOPIC #3

PUBLICLY TRADED CORPORATION DIRECT INVESTMENT, MERGER, AND PUBLIC OFFERINGS

- 1. What types of Publicly Traded Corporation transactions should the rules contemplate?**
 - a. Publicly Traded Corporation investing in a Regulated Marijuana Business
 - b. Merger of a Regulated Marijuana Business and a Publicly Traded Corporation
 - c. Public offering by a Regulated Marijuana Business
 - d. Other types of transactions?

- 2. Are there limitations imposed by the Federal Securities and Exchange Commission or any securities exchange that make certain transactions more or less likely than others?**

- 3. How should the structure of these transactions or filing requirements imposed by the Federal Securities and Exchange Commission or a securities exchange inform the timing of application, disclosure, notice requirements in rule? For example, under what circumstances should the MED receive advance notice of any stock exchange or other regulatory filing?**

**STAKEHOLDER NOTES FOR PRIORITIZED TOPIC #3
PUBLICLY TRADED CORPORATION DIRECT INVESTMENT, MERGER, AND PUBLIC OFFERINGS**

PRIORITIZED TOPIC #4

DIVESTITURE OF UNSUITABLE PARTIES

- 1. What measures might a Regulated Marijuana Businesses implement for purposes of divesting the Beneficial Ownership of any person found unsuitable (e.g. persons prohibited by statute)?**
 - a. Consider distinctions between divestiture of Beneficial Ownership in a Publicly Traded Corporation, Qualified Private Fund, Qualified Institutional Investor, and Entity?
- 2. What is a reasonable time period for divestiture of a person found unsuitable?**
- 3. For Publicly Traded Corporation transactions, are there limitations imposed by the Federal Securities and Exchange Commission or other applicable exchanges that impact divestiture options available to Regulated Marijuana Businesses?**
- 4. Any other practical limitations on divestiture requirements the rules should consider?**

**STAKEHOLDER NOTES FOR PRIORITIZED TOPIC #4
DIVESTITURE OF UNSUITABLE PARTIES**