

Friday, September 3, 2021

## **RE: AGCO Cannabis Inducement Survey**

Please see below for the Ontario Chamber of Commerce's response to the AGCO's survey on inducements in the cannabis industry between cannabis retail stores and Licensed Producers.

The proposed amended and new Standards are outlined as follows:

### Current Standard:

*6.4 Licensees may not accept or request material inducements from Licensed Producers, their representatives, or suppliers of cannabis accessories.*

### Proposed Standard:

*6.4 Licensees and their representatives shall not, either directly or indirectly, accept or enter into any agreements for any item, benefit or service with a licensed producer or supplier of cannabis accessories. The following exemptions apply:*

- 1. a licensee and its representatives may accept items of nominal value,*
- 2. a licensee and its representatives may accept items, benefits or services exclusively for the provision of training or education related to cannabis,*
- 3. where a licensed producer has an ownership interest in the licensee, the licensee may enter into financing and lease agreements and*
- 4. a licensee may enter into a franchise agreement with a licensed producer or its affiliate.*

### New Record Keeping Requirement:

#### Current Standard:

*8.1 Licensees must ensure that the following records are maintained, retained a minimum of three (3) years, or longer as may be required by other laws and regulations, and made available to the AGCO in accordance with the Notification Requirements or upon request*

#### Proposed additional requirement for Standard 8.1:

*8.1.10. - When entering into any financing or lease agreement, or accepting any item, benefit or service pursuant to standard 6.4, a licensee shall maintain the following records:*

- i. Copy of the complete agreement*
- ii. Description of the item, benefit or service*
- iii. Date of receipt of item, benefit or service*
- iv. Name of licensed producer and representative and*
- v. Fair market value of the item, benefit or service*

#### *Survey Questions:*

- 1. Please provide the following:**
  - a. [Ontario Cannabis Policy Council](#)
  - b. Ontario Chamber of Commerce

2. **Select the category best identifies you/your organization:**
  - a. Cannabis Retail Operator
  - b. Cannabis Retail Licensed Manager
  - c. Licensed Cannabis Producer
  - d. Cannabis Industry Association Representative
  - e. Third Party Consultant
  - f. **None of the above – Non-profit association**
  
3. **Please select the option below that best aligns with your organization’s level of agreement that the proposed updates to Standard 6.4 and 8.1.10 would be effective at addressing cases of inducements in the industry.**
  - a. Strongly Agree
  - b. Agree
  - c. **Disagree**
  - d. Strongly Disagree
  
4. **Considering the AGCO’s objective of addressing the illicit market through promoting consumer choice and a level playing field , using the slider below, please indicate your organizations feelings on the policy amendments proposed by the AGCO.**
  - a. Slider scale of [Not Strict Enough (0) – Overly Strict (100)]  
**80 or above**
  
5. **Please select the option below that best aligns with your organization’s level of agreement on the following statements:**
  - a. It is clear to me in the language of proposed Standard 6.4 which activities will be prohibited.
    - i. Strongly Agree
    - ii. Agree
    - iii. **Disagree**
    - iv. Strongly Disagree
  - b. It is clear to me in the language of proposed Standard 6.4 which activities will be allowed.
    - i. Strongly Agree
    - ii. Agree
    - iii. **Disagree**
    - iv. Strongly Disagree
  
6. **Giving consideration to any amendments or revisions your organization will need to make to contracts or agreements, from the date of the Standards being published, how much time would you anticipate your organization needing in order to fully come into compliance with the new standards?**
  - a. 1-2 months
  - b. 3-5 months
  - c. **6+ months**
  - d. Not applicable to me

While the OCC itself would not be personally impacted by the proposed changes, typically Canadian governments have allowed a period of at least six months (up to two years in some cases) between the publication of new regulations. In absence of a reasonable implementation period, businesses won't have sufficient time to adapt their operations, resulting in avoidable economic losses and compromising the predictability and stability of an industry that is already grappling with the impacts of the pandemic and associated health restrictions.

**7. The AGCO intends to publish a guidance document alongside the updated Standards. What additional information or clarity would be helpful for your organization in supporting your understanding of the AGCO's expectations on inducements?**

It would be helpful to better understand the reasons driving the proposed standards around the two types of inducements under consideration (retailer-driven inducements that come from a licensed producer or supplier and consumer-driven inducements that would be offered by the retailer). Greater transparency on the objectives and what problems the proposed standards are intended to address would be helpful.

The proposed changes to standard 6.4 include:

*Licensees and their representatives shall not, either directly or indirectly, accept or enter into any agreements for any item, **benefit or service with a licensed producer or supplier of cannabis accessories.** The following exemptions apply:*

1. *a licensee and its representatives may accept items of **nominal value**,*
2. *a licensee and its representatives may accept items, benefits or services exclusively for the provision of training or education related to cannabis,*
3. *where a licensed producer has an ownership interest in the licensee, the licensee may enter into financing and lease agreements and*
4. *a licensee may enter into a franchise agreement with a licensed producer or its affiliate*

*The proposed Standard provides greater certainty and clarity regarding what types of items, benefits or services are prohibited. It allows licensees to accept things of nominal value or **benefits that the AGCO considers to be of legitimate benefit to the sector**, such as education and training. Under this revised Standard, activities such as the sale of advertising space, travel costs, and data insights would be prohibited.*

The following information would also help clarify the sector's understanding of the AGCO's expectations on inducements:

- What is the definition of nominal value?
- What criteria is being used by the AGCO to evaluate whether an item is of "legitimate benefit to the sector"?
- A correlation has been made between business intelligence data programs and policies on inducements and its not clear to the sector why this is the case.
- Greater clarity on the specific types of inducements that clearly outline what offerings would be prohibited.

- There is a cost component to enforce the newly proposed Standards. What plans does the AGCO have to bolster enforcement capabilities?
- Similarly, could the AGCO provide more details surrounding the thresholds which might trigger enforcement action?

**8. Are there any changes, that you do not see here, to the AGCO's approach to inducements that are desired by your organization?**

Given the legal cannabis retail industry comprises of small, medium, and large actors, it would be helpful, particularly for smaller independent retailers, to have access to AGCO training on the proposed Standards to ensure new rules are fully understood and can be adhered to.

**9. Is there anything else you would like the AGCO to know on understanding the impacts of inducements on your business?**

The OCPC agrees that inducements should be restricted, however, these restrictions should not extend to the compilation, analysis and sharing of data as it's a critical aspect of the sector and helps both businesses and consumers make more informed decisions.

Other retail sectors can create a trade marketing program to build brand awareness, create product differentiation and tailor products to specific markets. The cannabis sector should be no different. In a typical retail market, retailers are allowed to capture their own business data and leverage that information for strategic purposes. For instance, retailers use data to connect elements of the customer experience together, as part of an overall strategy for marketing and business development. Given how nascent the legal cannabis industry is and how quickly consumer preferences are changing, anonymized business intelligence data is critical for licensed producers as they look to make growing decisions to best meet market demand.

It is also worth noting that this is not uncharted water. The precedent for sharing business intelligence data as a nominal asset that would not be classified as an inducement is already being offered by the AGCO through the Ontario Cannabis Store.

**10. Do you have any additional comments for us?**

The OCPC concerns are largely focused on better understanding the underlying problem the AGCO is trying to address and whether the proposed Standards are the best mechanism to address the issue(s).

The OCPC would be happy to engage in a consultation with the AGCO on how best to support the capture and usage of business intelligence data related to the cannabis industry. We also encourage the AGCO to evaluate these amendments within the broader regulatory environment for the legal cannabis sector and economic crisis stemming from the pandemic with the aim of protecting against any chilling effect it might have, particularly on prospective legal retailers.

As we approach the three-year anniversary of the legalization of cannabis, entrenched illegal actors still account for more than half of household spending on cannabis in Ontario. Effectively displacing the illegal market will only occur when the legal sector is able to effectively compete. Understanding consumer behaviour, regulated trade marketing programs and evidence-based decision making are critical aspects to an efficient and competitive market.

The OCPC supports meaningful action to curb inducements and to continue growing the industry in a positive way. We look forward to continuing to work and consult with the government and the AGCO as industry regulations continue to evolve.