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Ms. Martha Otton
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Alcohol and Gaming Commission of Ontario
90 Sheppard Avenue East, Suite 200
Toronto, ON M2N 0A4

October 8, 2019

Re: Report from the Fairness Monitor regarding the Cannabis Retail Store Allocation Lottery for Cannabis Retail Store Licensing

Dear Ms. Otton,

The Alcohol and Gaming Commission of Ontario (AGCO) retained KPMG LLP (KPMG) to monitor the fairness of its Allocation Process. The lottery was held to identify 42 Applicants who may apply for a Retail Operator Licence to operate a cannabis retail store. AGCO conducted the lottery on August 20, 2019 and published the results on its website on August 21, 2019.

As further described in this report although KPMG identified two noteworthy variances to the fairness principles, KPMG is satisfied that the Allocation Process was undertaken in accordance with KPMG's pre-established *Fairness Principles* appended to this report and was therefore fair to all Applicants and potential Applicants throughout the Allocation Process up to posting of the lottery results on the AGCO website. This report summarizes KPMG's observations and conclusions regarding the fairness of the Allocation Process. It also presents KPMG's scope of work, KPMG's methodology to assess fairness, an overview of the Allocation Process through to August 21, 2019, and an analysis of notable issues.

Capitalized terms in the report, if not defined herein, have the meaning ascribed to them in the Expression of Interest Allocation Lottery Rules (Rules) published on the AGCO website on July 3, 2019. The term Applicant is intended to capture both potential Applicants (who were interested in participating in the Allocation Process prior to the application deadline) and Applicants (who submitted an Expression of Interest Application prior to the application deadline). All times indicated throughout the report reflect Eastern Daylight Time.

I. Restrictions

This report is pursuant to our amended engagement letter dated May 31, 2019. It is solely for the stated purpose and is not to be used, circulated, quoted or otherwise referred to for any other purpose. Notwithstanding the foregoing, KPMG expressly authorizes the addressee to share this report with employees of AGCO who were involved in the Allocation Process, and to publicly disclose this report without further express written permission.



KPMG reserves the right, but will be under no obligation, to revise our conclusions in light of any information existing as of the time the Lottery results were posted (i.e., August 21, 2019) but made known to us subsequent to submission of our report to AGCO.

KPMG has not compiled, examined or applied agreed-upon procedures in accordance with standards established by the Auditing and Assurance Standards Board or any other standard; therefore, we do not express an opinion or any other form of assurance. Additionally, nothing contained in this report is to be construed as a legal interpretation of, or an opinion on, any contract, document, legal or otherwise, nor is it to be interpreted as a recommendation to invest or divest.

This report and the observations and conclusions expressed herein are valid only in the context of the whole report, including the appendices. Select observations or conclusions should not be examined or quoted outside of the context of the report in its entirety.

This report is not to be relied upon by any party other than AGCO, and KPMG accepts no responsibility for any losses incurred by any third parties as a result of the use of this report.

II. Scope of Work

KPMG was engaged to monitor the fairness of the Allocation Process whereby 42 Applicants were selected to have the opportunity to apply for a Retail Operator Licence and a Retail Store Authorization to operate a cannabis retail store in Ontario. KPMG's mandate was to observe and comment on the fairness of the Allocation Process, beginning with a review of the Rules prior to publication on the AGCO website up to posting of the Lottery results (i.e., the Selected List and the Wait List) on the AGCO website.

Specifically, KPMG's mandate incorporated the following:

- Review of AGCO's allocation process materials including: the draft Rules, procedures (internal and external), and forms, that would guide the random draw process and provide suggestions regarding areas that would benefit from additional clarity. This included review of procedures that would be followed by the Registrar both prior to and after the draw. KPMG was to support AGCO's communications to better ensure that potential Applicants understood the allocation opportunity. This included consultations with AGCO's staff from time to time in order to confirm our understanding of the draft Rules, procedures (internal/external), and forms, confirmation of how the Rules and procedures would be applied in practice, and providing comments related to potential fairness issues. KPMG was also required to review the final Rules and procedures, prior to publicly posting these documents on AGCO's website.
- Support implementation of the Allocation Process. KPMG was required to:
 - confirm that the Applicants entered in the draw submitted their application to the Registrar through the iAGCO system prior to the specified deadline and that the Applicants have been pre-qualified in accordance with the Rules;
 - receive and maintain exclusive control of a separate data key containing the applicants' information that was loaded onto the random number generator for the draw;
 - attend the draw and monitor whether the Rules and procedures were followed; and
 - validate that the list of applicants posted on the AGCO website was the same as the list of Applicants selected during the Allocation Process.



- Provide fairness advice on potential amendments to the Rules and procedures. Promptly report events that may compromise the fairness of the Allocation Process to AGCO.
- Develop a fairness report for the Allocation Process for the period of May 10, 2019 to completion of the Lottery draw for the Allocation Process and establishment of the selected and wait lists for the store authorization opportunities.

KPMG's assessment of fairness is limited to the question of whether the Allocation Process has been undertaken in accordance with KPMG's pre-established Fairness Principles, which are appended to this report. That is, KPMG assessed whether the Allocation Process up to the posting of the Selected List and Wait Lists to AGCO's website complied with KPMG's pre-established fairness principles.

KPMG's scope of work excludes:

- Evaluation and verification of the lottery software program. Through a separate contract that KPMG was not a party to, AGCO engaged Gaming Laboratories International LLC to certify that the computerized lottery would draw Expressions of Interest Applications in a random fashion. To the extent the lottery software program affects the elements of the Allocation Process that are within our scope, KPMG has relied on assurances provided by Gaming Laboratories International LLC and AGCO.
- AGCO's ongoing assessment of whether selected Applicants met the requirements set out in the Rules following the initial publication of lottery results. Note that AGCO will continue to review Expression of Interest Applications and some Applicants on the originally posted Selected List may subsequently be disqualified for non-compliance with the Rules.
- AGCO's assessment of whether selected Applicants met the requirements to obtain a Retail Operator Licence, Retail Store Authorization, as well as the appropriateness of the mandatory, technical, and financial requirements for licensing and authorization.
- Any consideration of a legal nature; for example, whether the Rules contravene any laws or regulations, including any laws or regulations specific to the supply, sale and use of cannabis in Ontario.
- Consideration of any other cannabis allocation process undertaken by AGCO, including the first lottery process conducted by the AGCO in January 2019 and the allocation of eight cannabis retail stores on First Nations reserves. These are separate processes and subject to their own rules and procedures.

Please note that KPMG has read and discussed various information provided by AGCO and Gaming Laboratories International LLC, but has not audited or otherwise independently verified the accuracy of the information. In the event that there are errors or omissions in the information provided by AGCO and Gaming Laboratories International LLC, such errors or omissions may impact KPMG's assessment and conclusions.

III. KPMG's Methodology to Assess Fairness

KPMG's approach to fairness monitoring is based on a pre-established set of fairness principles which describe the foundation of a fair selection process. These principles have been developed by KPMG based on our experience in conducting procurements and monitoring fairness, and have been restated where appropriate to reflect how they apply to the Allocation Process.

The fairness principles for the Allocation Process are:

1. All potential Applicants have the same opportunity made available to them to access information.
2. The information made available to Applicants is sufficient to fully understand the opportunity.



3. All Applicants have reasonable access to the opportunity.
4. The Rules reflect the objectives of the Allocation Process.
5. The Rules and lottery procedures are established in advance of implementation.
6. The Rules and lottery procedures are internally consistent.
7. The Rules and lottery procedures are followed and applied consistently to all Applications.

In applying these fairness principles, KPMG used the following guidelines to help determine the fairness of the Allocation Processes.

- **Variations:** A variance from the fairness principles is deemed to have occurred if one or more circumstances, situations, or events during the Allocation Process was treated in a manner inconsistent with or departs from one or more of the fairness principles.
- **Violations – Individual Variations:** A violation of the fairness principles is deemed to have occurred if an individual variance is deemed to have resulted in a process where one or more Applicant(s) enjoyed a material advantage over any other, or — conversely — was subject to a material disadvantage, and the material advantage or disadvantage affected the results of the Allocation Process. Consequently, the Allocation Process would be deemed to be unfair in that respect.
- **Violations – Collective Variations:** A violation of the fairness principles is deemed to have occurred if individual variations, when considered collectively, resulted in a process where one or more Applicant(s) enjoyed a material advantage over any other, or — conversely — was subject to a material disadvantage, and the material advantage or disadvantage affected the results of the Allocation Process. Consequently, the overall Allocation Process would be deemed to be unfair.

KPMG based its assessment of the Allocation Process on our:

- Reading of select documentation and records, including:
 - The Cannabis Retail Store Allocation Lottery Rules, posted to AGCO's website.
 - Lottery procedures established by AGCO in advance of implementation.
 - Communications published on the AGCO website, including frequently asked questions and responses, the explanatory videos, and the Lottery results.
- Monitoring of key activities such as:
 - AGCO's implementation of established Lottery procedures, up to and including the Lottery draw held on August 20, 2019.
 - Meetings that took place on August 14, 2019 and August 15, 2019, during which AGCO reviewed Applications submitted via iAGCO (the web-based portal used for the application process) and determined which Applications violated certain Rules based on information identified in each Applicant's Expression of Interest application form and were consequently disqualified and excluded from the Lottery draw.
 - Meetings that took place on August 20, 2019, during which AGCO reviewed Applications on the initial Selected List and determined which Applications violated certain Rules based on information identified in each Applicant's Expression of Interest application form and were subsequently disqualified and excluded from the Lottery draw.

- Responses received from the lottery working group and cannabis executive leads with respect to KPMG's questions regarding the Allocation Process.

IV. Overview of the Allocation Process

On July 3, 2019, the Government of Ontario announced that an additional 50 cannabis retail stores will be permitted across Ontario, consisting of 42 in municipalities that have not opted out of hosting cannabis retail stores and a separate allocation of 8 cannabis retail stores on First Nations reserves.

The Government of Ontario gave AGCO the mandate to hold a lottery to determine who may apply for the additional 42 Retail Operator Licences, and amended Ontario Regulation 468/18 to allow the Registrar to develop and implement a new method for selecting Applicants who are eligible to apply for a Retail Operator Licence.

To support its mandate and objectives for the Allocation Process, AGCO established Rules prior to the lottery with the specific intent to:

- support a process that provides a fair and transparent opportunity for pre-qualified prospective operators to apply for a Retail Operator Licence and Retail Store Authorization to operate a cannabis retail store; and,
- provide a safe, legal alternative to the illegal market by having additional licensed and authorized operators open cannabis retail stores beginning in October 2019.

A summary of the timeline of key elements of the Allocation Process relevant to KPMG's assessment of the fairness follows:

- On July 3, 2019, Minister of Finance Rod Phillips and Attorney General Doug Downey announced that AGCO had been given regulatory authority to conduct a second lottery for 42 private cannabis retail store authorizations.
- On July 3, 2019, AGCO published the Rules on its website.
- July 23, 2019, AGCO first published frequently asked questions and responses on its website. Additional questions were added to this list to share responses to additional areas of inquiry raised through the iAGCO online inquiries portal and the toll-free customer service line.
- On July 23, 2019, AGCO posted four explanatory videos to provide further clarification about the Allocation Process and Rules. All potential Applicants had the opportunity to view the videos.
- On August 7, 2019, Gaming Laboratories International LLC provided a report to AGCO certifying that Expressions of Interest Applications would be drawn randomly by AGCO's computerized lottery software program (that is, the random number generator).
- Between 12:01 AM on August 7, 2019 and 8:00 PM on August 9, 2019, precisely 5,094 Expression of Interest Applications were submitted to AGCO, including 124 of which were submitted and subsequently withdrawn by Applicants.
- After the application window closed on August 9, 2019, and before the Lottery draw was held on August 20, 2019, AGCO reviewed the Expression of Interest Applications and used various electronic checks to identify 106 violations of the Lottery Rules. These Expression of Interest Applications were reviewed by AGCO's Cannabis Executive Leads and once confirmed, these Expression of Interest Applicants were disqualified and were not included in the Lottery draw. KPMG monitored this process to confirm the Rules were followed. In accordance with AGCO's pre-established process, AGCO deferred assessment of

compliance until after the Lottery draw for any Expression of Interest Applications that did not include sufficient information for AGCO to verify compliance with the Rules.

- On August 20, 2019, AGCO held the Lottery, whereby 4,864 Expression of Interest Applications were randomly drawn using AGCO's certified computerized lottery software program. The 106 disqualified Expression of Interest Applications and the 124 Expression of Interest Applications withdrawn by Applicants were not included in the Lottery draw.
- After the Lottery draw, AGCO undertook an initial assessment of Expression of Interest Applications on the Selected List to verify whether there were any readily identifiable violations of the Rules. Expression of Interest Applications with potential violations were then reviewed by AGCO's Cannabis Executive Leads and once confirmed, five Applicants were disqualified. KPMG monitored this process to confirm the Rules were followed. As a result of the disqualifications, five Applicants moved from the Wait Lists to the Selected List to fill the remaining allocation for the 42 retail stores. AGCO undertook an initial assessment of the five newly selected Applicants' Expression of Interest Applications and verified that there were no readily identifiable violations of the Rules.
- On August 21, 2019, AGCO posted the Lottery results on its website, which identified the 42 selected Applicants and the top five Applicants on the Wait List for each Region or North Region city. AGCO also posted a link to an electronic file that contained the full list of Expression of Interest Applicants included in the Lottery draw, and a link to another file that contained the iAGCO file numbers for the Expression of Interest Applications that had been disqualified.

V. Analysis of Notable Issues

During the period of our review of the Allocation Process, KPMG observed two noteworthy variances with KPMG's fairness principle 5. Fairness principle 5 states that the Rules and the supporting procedures are established in advance of implementation. These issues are described below.

Issue 1

In advance of implementing various elements of the Allocation Process AGCO established many procedures and policy notes which were intended to cover all eventualities identified by the lottery working group. During the application open period, an issue arose which caused AGCO to modify its intended procedures to address the unanticipated circumstances.

As part of the application process, the iAGCO online portal conducted an automated check of the address of the Applicant's proposed store location against the physical location of known school properties. This check was to determine whether the proposed location was located within 150 metres of a school or private school, as defined in the Education Act. AGCO relied on this automated check to determine whether the proposed retail address submitted by the Applicant meets the school boundary requirements. If the proposed address did not pass this automatic check, the Applicant was unable to submit their Expression of Interest Application.

During the application open period, several situations were identified in the automatic check that could give rise to either a false positive or a false negative with regard to the proximity of the proposed retail location to a school. AGCO developed a workaround to address the issue and to enable potential Applicants to proceed with an Expression of Interest Application if there was any doubt about the eligibility of the proposed location.

AGCO updated the frequently asked questions to advise potential Applicants to contact AGCO if they felt that an error had been made in the automatic check process.



As AGCO did not have pre-established procedures to address these circumstances, a variance to the fifth fairness principle is deemed to have occurred. Although the procedures followed for resolving the issue were not pre-established, the approach AGCO followed to address the issue allowed potential Applicants with a compliant address to be included in the Lottery draw. Further, any Applicants with non-compliant addresses that were allowed into the Lottery draw because of this work around will subsequently be disqualified if selected.

Issue 2

As mentioned previously, in advance of implementing various elements of the Allocation Process AGCO established many procedures and policy notes which were intended to cover all eventualities identified by the lottery working group. Following the Lottery draw, during the review of Applicants on the Selected List to confirm compliance with certain lottery Rules, the lottery working group determined that it had not pre-established sufficient guidance to address all aspects of whether Applicants were compliant with Rule 8 c (iii). Rule 8 c (iii) requires, among other things, that the Applicant submit a document that confirms the Applicant has secured retail space. The Rule stipulates that the supporting document provide the street address for the retail space, which must be the same street address identified in the Expression of Interest Application.

Once the issue was identified, the lottery working group put the Expression of Interest Applications to the side and supplemented its pre-established guidance with more detail on whether the street address in the Expression of Interest Application and the street address in the supporting document were, in fact, the same. Once the working group had established clear guidance as to what would, and would not, be considered a violation of Rule 8 c (iii), the working group assessed the Expression of Interest Applications using the guidance.

As AGCO did not have pre-established procedures to guide how it would assess compliance with all elements of Rule 8 c (iii), a variance to the fifth fairness principle is deemed to have occurred. Although the procedures followed for resolving the issue were not pre-established, when AGCO's lottery working group turned their minds to the issue the additional guidance was consistent with AGCO's overall approach to assessing compliance with the Rules, and this new guidance when applied met KPMG's fairness principles. Accordingly, while the issue resulted in a variance to KPMG's fairness principles, it did not result in a violation because the results were not affected (i.e., the results would have been the same even if AGCO had pre-established this additional guidance). Further, the variance did not lead to one or more Applicants enjoying a material advantage over any other, or — conversely — suffering a material disadvantage.

VI. Conclusions

Although KPMG identified two noteworthy variances to the fairness principles, KPMG is satisfied that the Allocation Process was undertaken in accordance with KPMG's pre-established Fairness Principles appended to this report and was therefore fair to all Applicants and potential Applicants throughout the Allocation Process up to posting of the lottery results on the AGCO website.

This conclusion is based only on information that was made available prior to the date of this report.

Yours very truly,

KPMG LLP



Appendix – KPMG’s Fairness Principles

The fairness principles for the Allocation Process are outlined below.

1. All potential Applicants have the same opportunity made available to them to access information.
 - All potential Applicants have the same opportunity to access information related to the Allocation Process.
 - All amendments to the Rules are distributed to all potential Applicants at the same time.
2. The information made available to Applicants is sufficient to fully understand the opportunity.
 - All information that is material to understanding the opportunity is made available to Applicants.
 - The information that is made available is appropriate to the particular stage in the Allocation Process.
 - Applicants have adequate access to information so that a reasonable Applicant would have sufficient time to respond.
 - Applicants are made aware of the limitations that apply to the reliability of the information.
3. All Applicants have reasonable access to the opportunity.
 - The opportunity is adequately reflected in information made available to potential Applicants related to the Allocation Process to permit a potential Applicant to make informed decisions with respect to its Application.
 - Timely notice is provided to all potential Applicants of all key events (e.g., application period, application deadlines, and next steps for the selected Applicants).
 - Applicants are treated consistently in soliciting information required to clarify their Applications and additional information requested of selected Applicants.
 - Reasonable timeframes are provided to all Applicants for all key deliverables (e.g., reasonable time to prepare Applications after the issuance of the Rules and frequently asked questions and responses, reasonable timeframes to submit additional information requested of the selected Applicants).
4. The Rules reflect the objectives of the Allocation Process.
 - The Rules reflect the true requirements and objectives of the Allocation Process.
 - The true requirements are fully disclosed to Applicants. (In other words, there are not any hidden criteria.)
5. The Rules and lottery procedures are established in advance of implementation.
 - The Rules and supporting procedures are established in advance of implementation.
 - The procedures to maintain the security of information related to Applications are established prior to the receipt of Applications.
 - The procedures for transferring data from iAGCO into the lottery software program is established prior to receipt of the Applications.
 - The lottery software program was finalized and certified prior to receipt of the Applications.



6. The Rules and lottery procedures are internally consistent.
 - The lottery procedures reflect the requirements necessary to appropriately apply the Rules.
7. The Rules and lottery procedures are followed and applied consistently to all Applications.
 - Pre-established Rules are applied in a consistent manner.
 - Pre-established lottery procedures are applied in a consistent manner.
 - Pre-established lottery procedures are applied to changes to the Rules.
 - The lottery procedures are carried out by individuals with appropriate technical competence, and appropriate oversight is applied.