

## Practice Update

# Rescheduled but Not Listed: The Outlook for U.S. Cannabis Companies on Major Exchanges

May 14, 2026

By [Arielle Flamenbaum](#) and [Jonathan S. Robbins](#)

## Introduction<sup>[1]</sup>

On April 23, 2026, the Department of Justice and the Drug Enforcement Administration issued an order placing FDA-approved marijuana products and marijuana products subject to a qualifying state-issued medical license in Schedule III of the Controlled Substances Act, a major shift in federal marijuana policy. A separate expedited administrative hearing, set to begin June 29, 2026, will consider whether marijuana more broadly should be transferred from Schedule I to Schedule III. For cannabis companies, investors, and their capital markets advisors, the order raises a familiar question: will the NYSE and Nasdaq finally permit the listing of U.S. plant-touching operators?

State-legal programs now cover 40 medical-cannabis states and 24 adult-use states, but the largest U.S. plant-touching companies remain outside the nation's premier capital markets. That is unlikely to change in the near term, but the regulatory landscape underpinning the listing ban is shifting.

## The Roots of the Listing Ban<sup>[2]</sup>

Nasdaq and the NYSE have long refused to list companies that cultivate, process, or sell marijuana, commonly known as “plant-touching” operators. Nasdaq's position has been unequivocal: it “cannot initially list or continue the listing of a company whose current or planned activities are in violation of U.S. federal law or the law in a jurisdiction where the company operates.” That position is reinforced by the federal anti-money laundering framework applicable to financial transactions involving marijuana-related businesses.

The practical consequence is that major U.S. multistate operators, including Trulieve, Green Thumb Industries, Curaleaf, and Cresco Labs, trade on Canadian exchanges and/or OTC markets, rather than on NYSE or Nasdaq, limiting access to the deeper liquidity, broader institutional participation, and analyst coverage that a major U.S. listing would provide. The exchanges have, however, permitted listings for Canadian cannabis issuers such as Canopy Growth, Cronos, and Tilray, as well as U.S. ancillary businesses such as Innovative Industrial Properties, a distinction that reflects

---

### Related People

[Arielle Flamenbaum](#)  
[Jonathan S. Robbins](#)

---

### Related Work

[Cannabis  
Corporate](#)

---

### Related Offices

[Fort Lauderdale](#)  
[Miami](#)

the continuing federal-law barrier for U.S. plant-touching operators.

### What Rescheduling Does and Does Not Accomplish<sup>[3]</sup>

The April 2026 order is narrower than many industry participants appreciate. It creates a two-tier federal framework: state-licensed medical marijuana is now Schedule III, while adult-use marijuana, unlicensed marijuana, and synthetic THC remain Schedule I.

For qualifying medical operators, the most consequential benefit is relief from the Section 280E tax burden, which prevents businesses trafficking in Schedule I or II controlled substances from deducting ordinary and necessary business expenses for federal income tax purposes. The order also creates an expedited DEA registration pathway and broadens opportunities for marijuana research.

Several public companies already trade on NYSE or Nasdaq while marketing FDA-approved Schedule III products. Johnson & Johnson markets Spravato (esketamine), a Schedule III nasal spray, and AbbVie has marketed Marinol (dronabinol), a Schedule III synthetic cannabinoid product. Those examples underscore that Schedule III status, standing alone, is not ordinarily incompatible with exchange listing. The cannabis-specific issue is whether the issuer's marijuana activities comply with federal law and the exchange's listing standards.

Rescheduling, however, leaves unresolved the core issues driving the exchange listing ban. Marijuana remains a controlled substance. Manufacturing, distributing, or dispensing Schedule III marijuana still requires DEA registration, and marijuana outside the order remains Schedule I. Criminal penalties under 21 U.S.C. § 841 remain available for conduct that is still unlawful. Federal anti-money laundering obligations also remain in place for marijuana-related financial transactions.

There is also a dual-license problem. Many multistate operators conduct both medical and adult-use operations. Under the new two-tier framework, state-licensed medical activities may fall under Schedule III, while adult-use and unlicensed marijuana activities remain Schedule I. That makes physical, financial, and recordkeeping separation critical for operators seeking to show that their Schedule III activities are limited to qualifying medical operations. An operator with material adult-use revenue would still be engaged in federally prohibited conduct, and Nasdaq's published position leaves little room for that company to obtain or maintain a listing while those activities remain unlawful under federal law.

### Three Developments That Could Change the Equation<sup>[4]</sup>

Three parallel developments could reshape the listing landscape. Even if the substantive legal barriers fall, however, any exchange-wide listing-standard amendment or formal policy change would need to be evaluated under the Securities Exchange Act framework

for self-regulatory organization rule changes, including the SEC process under Section 19(b) where applicable.

**The broader rescheduling proceeding.** The DEA's expedited hearing beginning June 29, 2026, will consider whether to transfer marijuana more broadly from Schedule I to Schedule III. The hearing notice sets a July 15, 2026, deadline for the hearing to conclude. If the DEA ultimately extends Schedule III status to all marijuana, the dual-license problem would narrow substantially. Marijuana would still remain a controlled substance subject to DEA oversight, and banking and investment risks would not necessarily disappear absent additional federal guidance or legislation.

**The CLIMB Act.** The Capital Lending and Investment for Marijuana Businesses Act, reintroduced in March 2026, would amend federal law to protect business assistance to cannabis-related legitimate businesses and would amend the Securities Exchange Act of 1934 to create a safe harbor for national securities exchanges to list securities of cannabis-related legitimate businesses. Earlier CLIMB Act text also contemplated protections for underwriting, dealing, placement, and public distribution of cannabis-related securities. The bill has been introduced but would still require enactment before it could alter exchange access.

**The SAFER Banking Act.** The Secure and Fair Enforcement Regulation Banking Act would create a safe harbor for financial institutions serving state-legal cannabis businesses, directly addressing the anti-money laundering concerns that hang over the industry. Earlier versions of cannabis banking legislation passed the House multiple times, and the SAFER Banking Act cleared the Senate Banking Committee 14-9 in 2023. It was not enacted in the 118th Congress. While it would not directly address exchange listing, passage would reduce some of the AML concerns at the heart of the exchanges' reluctance.

## Where Things Stand Today<sup>[5]</sup>

Exchange listing for plant-touching operators remains unlikely in the near term, for three reasons.

First, the rescheduling covers only qualifying medical marijuana, leaving adult-use and unlicensed marijuana outside its protection.

Second, FinCEN's marijuana-related business guidance dates to 2014, and the number of depository institutions filing marijuana-related SARs remains a small fraction of the U.S. banking sector; CRS reported about 680 depository institutions filing marijuana-related SARs as of March 31, 2024. Rescheduling does not automatically update that guidance or create a statutory banking safe harbor.

Third, the order faces real litigation risk. The DEA relied on its treaty-obligation authority under Section 811(d)(1) to bypass notice-and-comment rulemaking. That provision allows the Attorney General to schedule a substance by order when control is required

by the Single Convention on Narcotic Drugs of 1961, to which the United States is a party. Cannabis remains listed in Schedule I of the Single Convention, and the D.C. Circuit held in *NORML v. DEA*, 559 F.2d 735 (D.C. Cir. 1977), that “several requirements imposed by the Single Convention would not be met if cannabis and cannabis resin were placed in CSA schedule III, IV, or V,” including import/export permit and quota obligations. The DEA addressed this in its April 2026 order by simultaneously amending its regulations to preserve those controls, but opponents may argue the agency exceeded its statutory authority. Twenty-two Republican senators formally urged the Administration to abandon rescheduling before the December 2025 Executive Order issued. A successful injunction, even a temporary one, would re-expose operators to Schedule I obligations and reset the clock entirely.

There is a further practical consideration. Even if listing becomes available, some institutional investors use responsible-investment screens that exclude recreational cannabis or other addictive industries. Capital inflows following an uplisting may therefore develop more slowly than the industry anticipates.

The barriers are narrowing. Medical rescheduling is final. Broader rescheduling is under active review on an expedited hearing schedule. Bipartisan listing legislation has been introduced. Depending on how these proceedings resolve, the regulatory picture could look materially different, even if full exchange access remains contingent on exchange policy, SEC processes, and federal banking/AML developments.

### What Operators Should Be Doing Now<sup>[6]</sup>

Companies that want to be positioned for a listing when the regulatory environment permits should be taking steps now.

**Apply for DEA registration promptly.** The April 28, 2026, Federal Register publication triggers a 60-day expedited registration window for qualifying medical marijuana operators. DEA registration will likely be a baseline compliance expectation in any listing analysis involving Schedule III medical marijuana operations.

**Build a wall between medical and adult-use.** Dual-license operators need physical, financial, and recordkeeping separation between their license streams now, not later. This is necessary both for maintaining Schedule III compliance for qualifying medical operations and for demonstrating to exchanges that the company’s medical operations are distinct from activities that remain unlawful under federal law.

**Get exchange-ready on governance and financials.** NYSE and Nasdaq listing standards for board composition, committee structures, internal controls, and audited financial statements materially exceed OTC requirements. These upgrades can require significant lead time to implement properly.

**Retain capital markets counsel.** Securities counsel should be mapping the company against specific exchange listing requirements (financial thresholds, minimum share price, public float) and opening preliminary conversations with exchange listing teams.

**Participate in the June 29 hearing.** The broader rescheduling proceeding, the CLIMB Act, and any future SAFER Banking Act movement could each materially affect the legal and market-access analysis for exchange listing. Operators should engage directly or through industry associations.

**Explore interim structural options.** Some companies may explore reorganizations that separate qualifying medical-only operations from adult-use activities. Companies considering this approach would need to analyze whether the separated medical entity, standing alone, satisfies DEA registration requirements and exchange listing standards. These structures involve significant legal and tax complexity but may be relevant for companies willing to separate business lines.

**Assess share price and public float.** Exchange listing standards include minimum bid-price, market-value, and public-float requirements, so capital structure planning should be part of any uplisting workstream.

## Conclusion

Medical marijuana rescheduling is a necessary step toward exchange listing, but not a sufficient one. Full access will require some combination of broader rescheduling, targeted legislation such as the CLIMB Act or SAFER Banking Act, updated FinCEN guidance, SEC review of any exchange rule or policy changes where required, and a formal policy shift by the exchanges themselves. Companies and advisors that use this period to address compliance, governance, and capital structure gaps will be better positioned if listing becomes available.

### Disclaimer:

Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.

---

[1]U.S. Department of Justice, Office of Public Affairs, "Justice Department Places FDA-Approved Marijuana Products and Products Containing Marijuana Subject to a Qualifying State-issued License in Schedule III, Strengthening Medical Research While Maintaining Strict Federal Controls" (Apr. 23, 2026):

<https://www.justice.gov/opa/pr/justice-department-places-fda-approved-marijuana-products-and-products-containing-marijuana>; Drug Enforcement Administration, Department of Justice, “Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana From Schedule I to Schedule III; Corresponding Change to Permit Requirements,” 91 Fed. Reg. 22714 (Apr. 28, 2026): <https://www.federalregister.gov/documents/2026/04/28/2026-08176/schedules-of-controlled-substances-rescheduling-of-food-and-drug-administration-approved-products>; Congressional Research Service, “Department of Justice Eases Control of Medical Marijuana,” LSB11424 (Apr. 2026): <https://www.congress.gov/crs-product/LSB11424>; Congressional Research Service, “The Federal Status of Marijuana and the Policy Gap with States,” IF12270 (updated Mar. 19, 2026): <https://www.congress.gov/crs-product/IF12270>; National Conference of State Legislatures, “State Medical Cannabis Laws” (updated June 27, 2025): <https://www.ncsl.org/health/state-medical-cannabis-laws>.

[2] Nasdaq, “Reference Library – Advanced Search (Identification No. 1474)” (Dec. 8, 2017): [https://listingcenter.nasdaq.com/Material\\_Search.aspx?materials=1474&mcd=LQ&criteria=2&cid=34](https://listingcenter.nasdaq.com/Material_Search.aspx?materials=1474&mcd=LQ&criteria=2&cid=34); FinCEN, “BSA Expectations Regarding Marijuana-Related Businesses” (Feb. 14, 2014): <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>; Congressional Research Service, “Marijuana Banking: Legal Issues and the SAFE(R) Banking Acts,” LSB11076 (Nov. 15, 2023): <https://www.congress.gov/crs-product/LSB11076>; Trulieve, “Investor Relations – Overview”: <https://investors.trulieve.com/>; Trulieve, “FAQs”: <https://investors.trulieve.com/faqs>; Green Thumb Industries, “Stock Quote & Chart”: <https://investors.gtigrows.com/stock-information/stock-quote-chart>; Curaleaf Holdings, Inc., “Investor Relations”: <https://ir.curaleaf.com/>; Cresco Labs Inc., “Investor Relations”: <https://www.investors.crescolabs.com/overview/default.aspx>; Nasdaq, “Canopy Growth Corporation Common Shares (CGC) Stock Price, News, Quotes, and Research”: <https://www.nasdaq.com/market-activity/stocks/cgc>; Nasdaq, “Cronos Group Inc. Common Share (CRON) Stock Price, News, Quotes, and Research”: <https://www.nasdaq.com/market-activity/stocks/cron>; Nasdaq, “Tilray Brands, Inc. Common Stock (TLRY) Stock Price, News, Quotes, and Research”: <https://www.nasdaq.com/market-activity/stocks/tlry>; Innovative Industrial Properties, “Our Business”: <https://innovativeindustrialproperties.com/our-business/>.

[3] U.S. Department of Justice, Office of Public Affairs, “Justice Department Places FDA-Approved Marijuana Products and Products Containing Marijuana Subject to a Qualifying State-issued License in Schedule III, Strengthening Medical Research While Maintaining Strict Federal Controls” (Apr. 23, 2026): <https://www.justice.gov/opa/pr/justice-department-places-fda-approved-marijuana-products-and-products-containing->

marijuana; Drug Enforcement Administration, Department of Justice, “Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana From Schedule I to Schedule III; Corresponding Change to Permit Requirements,” 91 Fed. Reg. 22714 (Apr. 28, 2026): <https://www.federalregister.gov/documents/2026/04/28/2026-08176/schedules-of-controlled-substances-rescheduling-of-food-and-drug-administration-approved-products>; Congressional Research Service, “Department of Justice Eases Control of Medical Marijuana,” LSB11424 (Apr. 2026): <https://www.congress.gov/crs-product/LSB11424>; 26 U.S.C. § 280E; Congressional Research Service, “Legal Consequences of Rescheduling Marijuana,” LSB11105 (updated Dec. 22, 2025): <https://www.congress.gov/crs-product/LSB11105>; FDA, “Drugs@FDA”: <https://www.accessdata.fda.gov/scripts/cder/daf/>; FDA, “SPRAVATO (esketamine) nasal spray, prescribing information” (rev. 2025): [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2025/211243s0191bl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2025/211243s0191bl.pdf); FDA, “MARINOL (dronabinol) capsules, prescribing information” (rev. 2017): [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2017/018651s0291bl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2017/018651s0291bl.pdf).

[4] Drug Enforcement Administration, Department of Justice, “Notice of Hearing on Proposed Rulemaking,” 91 Fed. Reg. 22777 (Apr. 28, 2026): <https://www.govinfo.gov/content/pkg/FR-2026-04-28/pdf/2026-08177.pdf>; Congressional Research Service, “Department of Justice Eases Control of Medical Marijuana,” LSB11424 (Apr. 2026): <https://www.congress.gov/crs-product/LSB11424>; H.R. 7987, 119th Cong. (2026) (Capital Lending and Investment for Marijuana Businesses Act): <https://www.congress.gov/bill/119th-congress/house-bill/7987>; Rep. Troy Carter, “Congressman Carter Introduces Bipartisan Cannabis Bill to Provide Access to Lending Services, Investments, and Grants for State-Legal American Businesses” (Mar. 23, 2026): <https://troycarter.house.gov/media/press-releases/congressman-carter-introduces-bipartisan-cannabis-bill-provide-access-0>; H.R. 8200, 117th Cong. (2022) (CLIMB Act text): <https://www.congress.gov/bill/117th-congress/house-bill/8200/text>; U.S. Senate Committee on Banking, Housing, and Urban Affairs, “Brown Advances Bipartisan SAFER Banking Act” (Sept. 27, 2023): <https://www.banking.senate.gov/newsroom/majority/brown-advances-bipartisan-safer-banking-act>; 15 U.S.C. § 78s(b).

[5] FinCEN, “BSA Expectations Regarding Marijuana-Related Businesses” (Feb. 14, 2014): <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>; Congressional Research Service, “Marijuana Banking: Legal Issues and the SAFE(R) Banking Acts,” LSB11076 (Nov. 15, 2023): <https://www.congress.gov/crs-product/LSB11076>; FinCEN, “Marijuana Banking Update, 4th Quarter 2024”: [https://www.fincen.gov/system/files/shared/273281%20EA%204th%20Q%20MJ%20Stats\\_Public\\_Web.pdf](https://www.fincen.gov/system/files/shared/273281%20EA%204th%20Q%20MJ%20Stats_Public_Web.pdf); *NORML v. DEA*, 559 F.2d 735 (D.C. Cir. 1977): <https://casetext.com/case/norml-v-drug-enforcement-administration>; Drug Enforcement Administration, Department of Justice, “Schedules of Controlled Substances: Rescheduling of

Food and Drug Administration Approved Products Containing Marijuana From Schedule I to Schedule III; Corresponding Change to Permit Requirements,” 91 Fed. Reg. 22714 (Apr. 28, 2026): <https://www.federalregister.gov/documents/2026/04/28/2026-08176/schedules-of-controlled-substances-rescheduling-of-food-and-drug-administration-approved-products>; Sen. Ted Budd et al., letter to President Trump opposing marijuana rescheduling (Dec. 17, 2025): <https://www.budd.senate.gov/wp-content/uploads/2025/12/12.17.2025-Budd-Letter-on-Marijuana-Rescheduling-1.pdf>; Berret et al., “Institutional Investment in Addictive Industries: An Important Commercial Determinant of Health,” *Frontiers in Public Health* (2024): <https://pmc.ncbi.nlm.nih.gov/articles/PMC11513676/>.

[6]U.S. Department of Justice, Office of Public Affairs, “Justice Department Places FDA-Approved Marijuana Products and Products Containing Marijuana Subject to a Qualifying State-issued License in Schedule III, Strengthening Medical Research While Maintaining Strict Federal Controls” (Apr. 23, 2026): <https://www.justice.gov/opa/pr/justice-department-places-fda-approved-marijuana-products-and-products-containing-marijuana>; Drug Enforcement Administration, Department of Justice, “Schedules of Controlled Substances: Rescheduling of Food and Drug Administration Approved Products Containing Marijuana From Schedule I to Schedule III; Corresponding Change to Permit Requirements,” 91 Fed. Reg. 22714 (Apr. 28, 2026): <https://www.federalregister.gov/documents/2026/04/28/2026-08176/schedules-of-controlled-substances-rescheduling-of-food-and-drug-administration-approved-products>; Nasdaq, “Initial Listing Guide” (Jan. 2026): <https://listingcenter.nasdaq.com/assets/initialguide.pdf>; Nasdaq, “Continued Listing Guide” (Jan. 2026): <https://listingcenter.nasdaq.com/assets/continuedguide.pdf>; NYSE, “Overview of NYSE Initial Listing Standards” (Jan. 2026): [https://www.nyse.com/publicdocs/nyse/listing/NYSE\\_Initial\\_Listing\\_Standards\\_Summary.pdf](https://www.nyse.com/publicdocs/nyse/listing/NYSE_Initial_Listing_Standards_Summary.pdf); Nasdaq Listing Rules, Rule 5505, “Initial Listing of Primary Equity Securities”: <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-5500-series>; 15 U.S.C. § 78s(b); Congressional Research Service, “Legal Consequences of Rescheduling Marijuana,” LSB11105 (updated Dec. 22, 2025): <https://www.congress.gov/crs-product/LSB11105>.

---

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.