

# Marijuana — Don't Bank On It

Presentation to Governor's Advisory  
Panel for Creation of a Cannabis  
Compliance Board  
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- This presentation does not constitute the rendering of legal advice.
- The materials and statements made in connection with this presentation are intended to raise issues and engender discussion in the abstract, but may not be relied upon as a complete discussion of all relevant law and issues.
- Advice regarding the application of legal principles to specific facts requires engagement and investigation by counsel.
- The subject matter discussed includes areas of evolving and unsettled law.

# Federal Efforts to Permit Marijuana Banking

# 10/19/09 Ogden Memo

- It is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers.

# 8/29/13 Cole Memo

- This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law
- Recognition of increasing number of states legalizing possession of small amounts of marijuana
- Sets forth federal "enforcement priorities" given limited federal resources

# Cole Memo-Enforcement Priorities

- Preventing distribution of marijuana to minors
- Preventing sale proceeds from benefiting criminal enterprises, gangs and cartels
- Preventing diversion to states where criminal
- Preventing pretext for other illegal drugs/activity
- Violence and use of firearms
- Drugged driving
- Possession on public lands
- Growing and use on public property

# Cole Memo

- Outside of these activities, enforcement generally left to state and local police, so long as they have enacted comprehensive and effective regulatory system to safeguard against use by minors and support of other criminal enterprises
- But memo is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal

# 2/14/14 FinCEN Guidance

- Providing clarity in this context should enhance the availability of financial services for marijuana businesses. This would promote greater financial transparency in the marijuana industry and mitigate the dangers associated with conducting an all-cash business.

# 2/14/14 FinCENGuidance

- This FinCEN guidance clarifies how financial institutions **can provide services to marijuana-related businesses** consistent with their Bank Secrecy Act (“BSA”) obligations.
- In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

# Risk Assessment Due Diligence

- In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes:
  - (i) verifying with the appropriate state authorities whether the business is duly licensed and registered;
  - (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business;
  - (iii) requesting from state licensing and enforcement authorities available information about the business and related parties;

# Risk Assessment Due Diligence

- (iv) developing an understanding of the normal and expected activity for the business, including the types of products to be sold and the type of customers to be served (e.g., medical versus recreational customers);
- (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties;
- (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and
- (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.

# 2/14/14 FinCENGuidance

- As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law.
- A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports (“SARs”) as described below.

# 4/1/14 Grassley/Feinstein Letter

- The mission of the Financial Crimes Enforcement Network (FinCEN) is to safeguard the nation's financial system from illicit use and to combat money laundering. However, the guidance that FinCEN recently issued regarding the proceeds of illegal marijuana trafficking severely undermines that mission.

# 4/1/14 Grassley/Feinstein Letter

- Last August, the Department of Justice (DOJ) announced that it would not challenge these state laws, despite their obvious conflict with federal law. However, **even after the DOJ issued this guidance, financial institutions refused to provide banking services to marijuana businesses. This is not surprising, given the participation of these businesses in illegal activity.** In response, on February 14, 2014, FinCEN and the DOJ each issued guidance regarding the proceeds of illegal marijuana trafficking.

# 4/1/14 Grassley/Feinstein Letter

- FinCEN’s guidance purportedly “clarifies how financial institutions can provide services to marijuana-related businesses.” However, the guidance is dangerously misleading. Indeed, **following the guidance may expose financial institutions to civil or criminal liability**. Congress and the President may reconsider marijuana’s legality, but until federal law is changed, **selling marijuana, laundering marijuana proceeds, and aiding and abetting those activities all remain illegal**. Far from clarifying the obligations of financial institutions, FinCEN’s guidance appears to create uncertainty where none had existed beforehand.
- Letter posed 8 questions regarding potential prosecution of financial institutions

# 5/8/2014 FinCEN Response

1. Given FinCEN's mission to safeguard the nation's banking system from illicit use and to combat money laundering, on what legal authority does it purport to "enhance the availability of financial services" for illegal drug traffickers?
  - **We don't.**
2. Does FinCEN's guidance alter the federal criminal laws that prohibit the distribution and sale of marijuana, the laundering of marijuana proceeds, and any services that aid and abet these activities?
  - **No impact. We defer to DOJ.**

# FinCEN Response to Grassley

3. Does FinCEN's guidance alter the federal criminal laws that subject any proceeds obtained, directly or indirectly, from illegal activity, including the distribution of marijuana, to forfeiture?
  - **No impact. We defer to DOJ.**
4. Does FinCEN's guidance alter the Bank Secrecy Act's criminal penalties for failing to establish an anti-money laundering program designed "to guard against money laundering through financial institutions"?
  - **No. Including criminal penalties.**
5. Does FinCEN have any authority to exercise enforcement discretion relating to the federal criminal laws referenced above, or to decline to enforce these laws?
  - **No. That would be DOJ.**

# FinCEN Response to Grassley

6. Does FinCEN anticipate taking any steps to protect financial institutions from criminal prosecution by the DOJ if a financial institution follows its guidance and provides financial services to illegal drug traffickers? If so, what are those steps?
  - **No.**
7. Does FinCEN know of any reason why Suspicious Activity Reports filed by a financial institution relating to an illegal marijuana business, perhaps with the name of the marijuana business redacted, may not be used as evidence against that financial institution, including as a party admission under Federal Rule of Evidence 801(d)(2)?
  - **Well, we would discourage it.**

# Grassley/Feinstein Sum it Up:

- “Unless federal law is changed, selling marijuana, laundering marijuana proceeds, and aiding and abetting those activities all remain illegal. FinCEN’s guidance to financial institutions is absolutely contrary to the mission of the agency – it purports to ‘enhance the availability of financial services for ... marijuana-related businesses’ – so it’s only logical that FinCEN would now deny the stated purpose of that guidance. The agency also concedes the obvious – that its guidance does not change federal criminal law, affect its enforcement in any way, and that there are risks in doing business with the marijuana industry which should give the financial services industry little confidence that it will be protected should an institution be federally prosecuted for getting involved in illegal activities.”

# Jeff Sessions 1/4/18

- In the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution and possession of marijuana. 31 USC §841 et. seq. These activities also may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. 18 U.S.C. §1956-57, 1960; 31 U.S.C. §5318. These statutes reflect Congress's determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.

# Sessions Marijuana Enforcement Memo

- Given the Department's well-established principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately. [This includes the 10/19/09 Ogden Memo and the 8/29/13 Cole Memo.] This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion in accordance with all applicable laws, regulations, and appropriations. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

# Filing Suspicious Activity Reports on Marijuana-Related Businesses

- A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose.

# What does this mean?

The FinCEN Guidance remains in effect, and some financial institutions (primarily state chartered, and not in Nevada) have accepted deposits from marijuana related businesses. BUT, in addition to the risk of federal prosecution and civil forfeiture, there are serious due diligence and reporting burdens.

# “Marijuana Limited” SAR Filings

- A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a “Marijuana Limited” SAR. The content of this SAR should be limited to the following information: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified. Financial institutions should use the term “MARIJUANA LIMITED” in the narrative section.

# “Marijuana Priority” SAR Filings

- A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a “Marijuana Priority” SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Financial institutions should use the term “MARIJUANA PRIORITY” in the narrative section to help law enforcement distinguish these SARs.

# “Marijuana Termination” SAR Filings

- If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term “MARIJUANA TERMINATION” in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity.

# Currency Transaction Reports and Form 8300's

- Financial institutions and other persons subject to FinCEN's regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than \$10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than \$10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business).

# Currency Transaction Reports and Form 8300's

- **A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations under 31 C.F.R. § 1020.315(b)(6).**

# Marijuana Business Access to Banking Act & Related Bills

- HR 2652 (2013) – died in committee
- H.Amdt. 1086 (Heck) to H.R. 5016 (2014)(to prohibit use of federal funds to penalize banking passed House, never brought to vote in Senate
- HR 2076/S2076 (2015) – died in committee
- S.B. 3032 States Act (2018) attempt to attach as amendment to criminal justice bill failed
- US Farm Bill signed 12/18 legalizes cultivation and distribution of hemp-the 2018 Farm Bill defines hemp as the plant *Cannabis sativa* L. and any part of the plant with a delta-9 THC concentration of not more than 0.3 percent by dry weight.

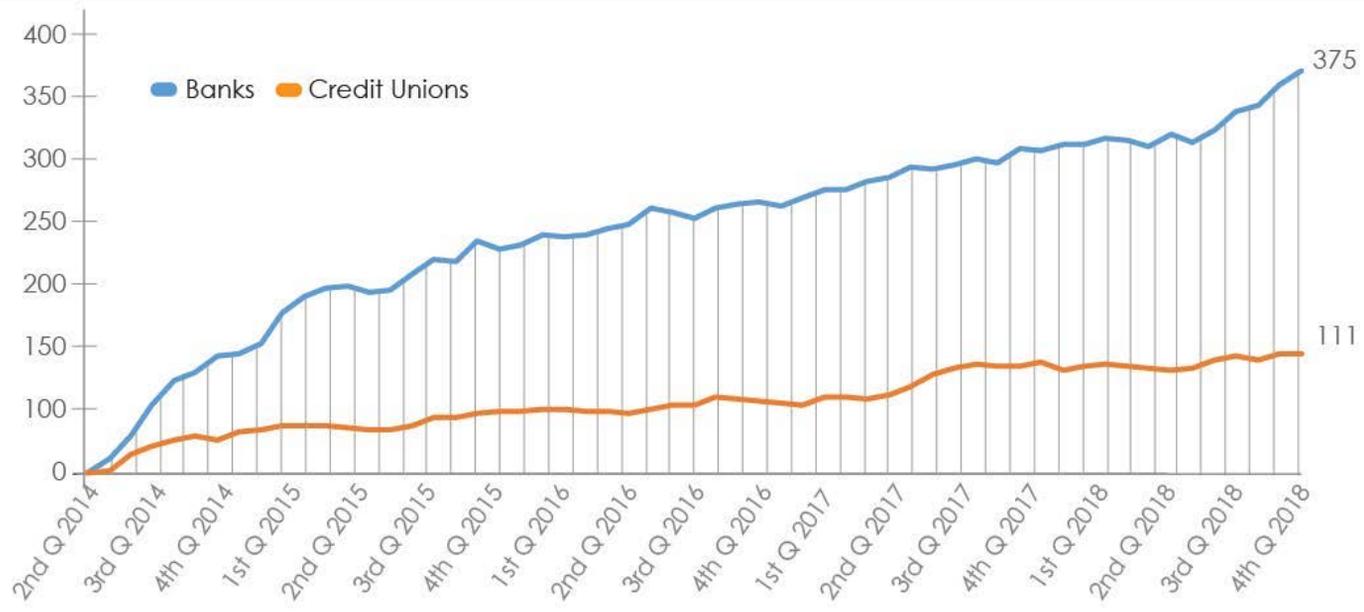
# “SAFE” – Would Allow Legal Marijuana Businesses Access to Bank Services

- Bank officials and others urged Congress on Wednesday to fully open the doors of the U.S. banking system to the state-legal marijuana industry, a change supporters say would reduce the risk of crime and resolve a litany of challenges for cannabis companies, from paying taxes to getting a loan.
- California Treasurer Fiona Ma, whose state is home to the nation’s largest legal marijuana market, called the proposed so-called SAFE (Secure and Fair Enforcement) Banking Act a critical step for the rapidly expanding industry. Gregory Deckard, who spoke on behalf of the Independent Community Bankers of America, said the cloud of legal uncertainty was inhibiting access to banks while creating safety hazards for businesses. The proposal, he said, “would offer the needed clarity” for more financial institutions to welcome the marijuana industry as customers. North Bay Business J. 2-14-19

# “SAFE” – Would Allow Legal Marijuana Businesses Access to Bank Services

- But others had concerns. Republican Rep. Blaine Luetkemeyer of Missouri said the proposal would create confusion while marijuana remains illegal at the federal level. With the banking legislation, “we are putting the cart before the horse,” he said.
- Legalization advocates have reason to celebrate that the hearing simply took place at all before the Consumer Protection and Financial Institutions Subcommittee. The proposal, or similar versions, have languished for years. –*Associated Press* 2/14/19

# Depository Institutions Providing Services to Marijuana Related Business 9/18



# Marijuana Related SAR filings



# State Banking Efforts

# Some Financial Institutions are Banking Marijuana – Washington

- “Spokane's Numerica Credit Union has more than 200 cannabis business accounts, according to spokesperson Kelli Hawkins.”
- “Carmella Houston, a spokesperson for Salal Credit Union, said their Seattle offices were inundated with more than 2,000 calls when people first learned that they were accepting cannabis businesses. Houston said they have opened 300 cannabis business accounts since June of 2014 and cannabis checking accounts could form up to 80 percent of the credit union's net worth.”

# Oregon

- “Shane Saunders with MAPS Credit Union says they have more than 100 marijuana accounts out of a total of more than 50,000 accounts....The federal ban on marijuana means banking is a big problem for marijuana businesses. Some owners are driving around with hundreds of thousands of dollars in cash. But now, one small Willamette Valley credit union is opening accounts for them.
- “Shane Saunders with MAPS Credit Union said they’ve opened more than 100 accounts. ‘Really for us it’s about community safety and about serving our community,’ he said. He said account holders are extensively vetted, including a visit to their business, to make sure they’re not doing anything illegal. Because of that extra work, fees for the accounts are relatively high.”

# Colorado-State Chartered Credit Union – No Go

- Colorado chartered Denver-based Fourth Corner as a credit union in November, allowing it to acquire a bank routing number and to apply directly to the Federal Reserve Bank of Kansas City, the regional bank for the board of governors of the Federal Reserve System, for a master account. The account allows banks to transact business. The Federal Reserve turned down the application.

# Fourth Corner – No Routing Number

- Federal court denied the credit union's suit attempting to compel the federal reserve to issue a routing number, saying that allowing it “would facilitate criminal activity.”
- The court considered US DOJ guidelines on how banks can work with legal marijuana businesses, which indicate that prosecutors would not pursue investigations unless certain conditions were not met. But Judge Jackson said he could not take that tack.
- “These guidance documents simply suggest that prosecutors and bank regulators might ‘look the other way’ if financial institutions don’t mind violating the law,” Jackson wrote. “A federal court cannot look the other way.”

# Settlement-May Bank Related Companies

- “After a 40-month battle, a Colorado credit union that’s determined to serve marijuana-related companies has finally won conditional approval from the Federal Reserve to launch its business.
- But the Fourth Corner Credit Union will not be serving plant-touching businesses – as it originally had planned to do – but will instead cater to advocacy groups, charities and ancillary companies such as accountants.
- ... ‘No federal reserve bank has ever gone on record to say that a marijuana-related business can be banked, even if it’s an ancillary business,’ said John Vardaman, an executive at an ancillary cannabis company who co-wrote a 2014 DOJ memo that gave banks and credit unions tacit approval to serve marijuana businesses.”

– *Marijuana Business Daily*, February 6, 2018

# Reportedly One Credit Union in Colorado Banking Marijuana Companies

- *Safe Harbor Private Banking is a Division of Partner Colorado Credit Union.*

# California Discussing State-Backed Financial Institution Serving the Cannabis Industry

- The banking industry is faced with at least four challenges when servicing the industry:
  1. The bank may be at risk of criminal or civil liability under federal drug and banking laws.
  2. The industry is new, rapidly evolving, and large. This creates business risks even without federal enforcement of the federal drug laws. The \$3 billion in forecast annual cannabis tax revenue far exceeds the \$84.7 million and \$366 million collected in excise taxes on cigarettes and alcohol respectively.

# California Discussing State-Backed Financial Institution Serving the Cannabis Industry

3. There is a significant administrative burden to properly file the required federal reports governing cannabis banking transactions, and the penalties for incorrect filings may be severe.
4. The “Know Your Customer” requirements are more significant than normal because similar transactions may be allowed (e.g., proceeds from sale of cannabis within the state) or not allowed (e.g., illegal proceeds from sale of cannabis to another state).

# CA Cannabis Banking Working Group 2018 Feasibility Study Report

- There are three primary reasons that it is in the public interest to move the cannabis industry out of cash and into electronic banking:
  1. Large amounts of cash make cannabis businesses, their employees, and their customers targets of violent crime.
  2. State and local government agencies that collect tax and fee payments in cash from the cannabis industry incur added expenses, demands on staff time, and risks to employee safety.
  3. Normal access to banking services is an essential part of taking the cannabis industry out of the shadows and establishing it as a transparent, regulated, tax-paying part of the California economy. Banking relationships can help law enforcement officials and regulators distinguish legal cannabis businesses from illegal market operators.

# Possible Solutions

- As part of this feasibility study we conducted a comprehensive review of approaches to a public (state-backed) bank to support the cannabis industry.

# Why They Won't Work

- For each of the three options the state can expect to spend \$35 million on start-up costs incurred over a six year start-up period. There is a high probability that federal regulators will not issue a master account to the bank, which is necessary for the bank to open and conduct basic banking functions such as wiring funds. In that eventuality any start-up funds expended to that point and during the subsequent wind-down would be wasted.

# More Reasons They Won't Work

- If approved to open, the bank will then require just under \$1 billion in capital, will lose money for 12 years before the bank is able to pay dividends sufficient to fully produce a return on the invested capital and begin repaying. A state-backed cannabis bank involves unacceptable degrees of legal, schedule, mission, and financial risks. Risk is internal and external, knowable and unknowable.
- If federal regulators begin to aggressively enforce federal laws the bank would be closed and deposits subject to confiscation.

# Most Marijuana Businesses Have No Access to Banking

# Most Marijuana Businesses Have No Access to Banking

- A recent survey by the growers association found 75 percent of its members don't have a bank account, and the ones who do have had three or more accounts closed in the course of doing business.
- A 2015 survey by Marijuana Business Daily of more than 400 cannabis professionals nationwide also found 70 percent of businesses that deal directly in marijuana operate without traditional banking services. As for firms that support the business but don't handle the plant, 49 percent don't have bank accounts.

*San Diego Union Tribune, February 18, 2017*

# Reports of “Underground” Banking

- Conducted by MRB Monitor, a firm that helps financial institutions identify the risks associated with the marijuana industry, the study examined public records in the state of Massachusetts and found that 34 percent of businesses that filed to operate medical marijuana dispensaries in Massachusetts between June 2015 and September 2016 had one or more accounts at Bank of America, Citigroup, Wells Fargo, or JPMorgan Chase.

# Underground Banking

- Bank of America seems to have been the most accommodating. Over half of the marijuana businesses included in the survey had accounts at the bank, though its announced policy is to the contrary. "As a federally regulated financial institution, we abide by federal law and do not bank marijuana-related businesses."

# Alternatives?



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# Alternatives?

- Hezekiah Allen, who grew up off-the-grid in rural Humboldt County and tended a small medical marijuana farm in Northern California, hid his cash the same way many cannabis business owners in his situation do.
- “I buried everything. I had three different safes buried on a 200-acre parcel,” Allen said. “Fifteen steps from the oak tree, a lot like a pirate. I had a little map. Pretty inconvenient and not the best cash management system.”

# **“PayPal for Pot,” *Orange County Register*, March 23, 2016**

- PayQwick has been dubbed the PayPal for pot.
- Dispensary owners can use the online payment platform to pay vendors, landlords and workers. Customers can use a preloaded PayQwick card to make purchases and collect rewards, with an app version for smartphones expected soon. The Los Angeles-based company collects an average 2.75 percent transaction fee from vendors.

# *Orange County Register, March 23, 2016*

- Some dispensaries have resorted to installing ATMs without telling banks that process those funds how they'll be used, which triggered hundreds of machines being shut down in 2014, according to media reports. ...[O]ther retailers misreport pot purchases paid with credit cards as something else. Doing so can result in Visa or MasterCard blacklisting them for life.

# Bitcoin

- The pot vending machine ZaZZZ, made by American Green in Arizona to go inside dispensaries, accepts cash along with bitcoin – the most well-known digital currency.
- Such encrypted, digital currencies can be converted into dollars, but are chiefly circulated outside traditional financial systems.
- Trees, a high-end cannabis delivery service in the Bay Area, accepts bitcoin. And company CEO Marshall Hayner, who has a background at cryptocurrency startups, said the firm is getting ready to add a credit card payment option linked to ledger-keeping technology that manages and secures bitcoin transactions.

# Hypur

- Scottsdale, Arizona based startup Hypur is making waves in the cannabis world. Hypur is an ancillary company in the technology sector who is making it possible for banks to conform to the compliance regulations set by the Treasury Department. In their own words, “Hypur makes it possible to protect against financial crime in highly regulated markets, thereby diminishing the need for categorical de-risking of entire industries and opening the doors to new revenue opportunities.”

# Hypur

- Hypur provides a software platform that audits a company in its entirety: licenses, tax returns, financial statements, and state records just to name a few. This removes one of the barriers for banks to even consider a cannabis account: time. According to an Inc.com article it can take up to 20 hours to set up a cannabis related account, compared to just 1 hour for a standard business account.
- Hypur collects all relevant business data and confirms legal operations. Once verified, the bank is provided all data from the company's point-of-sale (POS) system. This provides transparency and helps the bank ensure that funds aren't being diverted into illicit areas.

# Wurk

- The startup, a recent alum of Colorado-based business accelerator CanopyBoulder, has already been helping legal cannabis businesses in 12 states to manage their various requirements for operation per local and U.S. laws, as well as more routine HR functions. Wurk CEO Keegan Peterson commented in a release, “With eight new markets emerging in November, including the passing of Prop 64 in California and the new administration’s focus on compliance, we knew we would need to scale the business quicker to meet this demand.”

# Management Companies

- One way marijuana businesses do manage to secure bank accounts is by setting up limited liability corporations that are management companies providing a list of services, from payroll to accounting to bookkeeping to property management. The money from the marijuana business flows to the company — usually with a nondescript name that doesn't disclose its ties to marijuana — and is deposited in the company's bank account.
- It's technically money laundering, and it's illegal. But some companies have found success with the tactic, while others are being busted by banks and their accounts are promptly closed.

# Federal Law Also Limits Tax Deductions

- Section 280E was added to the Code. It denies drug dealers deduction for their ordinary and necessary business expenses. That rule applies to marijuana even in the states that have the type of robust regulation that will keep the Justice Department off people's back, at least for now.

*Forbes*, June 3, 2017

# Generally No Tax Deductions – Exceptions

- Marijuana businesses can deduct costs of goods sold.
- *Californians Helping to Alleviate Medical Problems, Inc. v. Commissioner (CHAMP)* – Section 280E did not apply to expenses related to the nondrug trafficking-related business of the taxpayer.

# California State Treasurer Report

- On November 7, 2017, a report was issued titled “Banking Access Strategies for Cannabis-Related Businesses.”
- “The clash between state and federal law threatens to cripple legal California cannabis businesses before they even get up and running. One of the main threats to legalization is that banks generally will not open accounts for cannabis businesses out of fear they will be penalized under federal laws.”

# California Treasurer Report

- “Lack of access to banking services that are taken for granted by other legal businesses—opening accounts, writing checks, accepting credit cards, transferring money—forces cannabis businesses to deal in large amounts of cash, which makes them targets for assaults and puts the general public in danger. Security and procedural concerns about handling massive amounts of cash also create a nightmare for state and local government revenue-collecting agencies. In addition, the inability of cannabis operations to get banking services means that many of them may remain in the underground economy and not become transparent, regulated, tax-paying businesses, as California voters intended.”

# Four Potential Strategies

1. Minimize cash handling for the collection of taxes and fees
  - Smart safes & kiosks. Smart safes are electronic cash collection machines resembling ATMs that take and count currency, make sure bills are genuine, and credit cash received to specified accounts. The safes are bolted to the floor, connected to the internet and monitored by security cameras. Cash must be picked up periodically and deposited in a financial institution.

# Smart Safes

- If located at state and local agencies which take fee and tax payments, would make crediting payments more efficient, but staff time would still be needed to receive cash.
- An alternative would be to encourage installation of smart safes in dispensaries, which can be programmed to earmark cash deposited for payment of business tax and fee obligations with multiple government agencies. An armored courier service would pick up the cash and deliver to the revenue-receiving agencies or to “banks that accept cannabis deposits.”

- “As noted, most financial institutions do not accept cash tax and fee payments delivered directly from cannabis businesses, but do accept state and local deposits of taxes and fees. At these institutions, cannabis payments must be mixed with other tax and fee deposits. These logistical complications might require extra armored courier trips and staff time, increasing costs and reducing efficiency.”

# Cash Handling – CA Treasurer Memo

- Money Services Businesses
  - “Money services businesses are a type of regulated financial company that sells money orders and electronic money transmission services.... Many cannabis businesses use money transmission services located near them...such as drug stores and convenience stores to pay taxes and fees.”
  - Most money services businesses will not knowingly accept money from cannabis businesses.... However, if cash amounts are small, few questions may be asked....”

# Cash Handling – CA Treasurer Memo

- Third-Party Payment Services
  - These services are electronic payment networks similar to PayPal. To make payments, a cannabis business must open an account with the service. The services use armored couriers to pick up cash from cannabis businesses, crediting funds to the business's payment service accounts. The business can then make and receive payments from other organizations and individuals that also have accounts with the services.

# Third Party Payment Services

- Closed-loop payment services can only make payments to entities within their network-i.e. individuals and companies who have accounts with them.
- Some payment services are ‘open loop,’ meaning they can also generate payments outside the network.
- Payment services are licensed and regulated. To stay within the law and avoid violating federal anti-money laundering regulations, these services must disclose their cannabis business line to their financial institutions.

# CA Treasurer – Four Strategies

## 2. Expanding Access to Banking Services Under Current Law

- Some financial institutions in some states permit cannabis related accounts
- Memo discusses the possibility of the State gathering and providing the bank with comprehensive data, including business licensing and registration documents, information on key personnel, inventories, sources of supply, vendor relationships, and financial records

# CA Treasurer – Four Strategies

## 3. A State-Backed Financial Institution

- Ownership could be public, combination public and private, or privately owned with a special state charter-recommends feasibility study of:
  - Public institution to finance public infrastructure and expanded banking for underserved groups, including cannabis industry
  - Public institution to take deposits, make loans, and provide services primarily to cannabis and related businesses
  - Private banker's bank, supported by the state, which would provide financial services, compliance services, and technical assistance to financial institutions serving the cannabis industry

# CA Treasurer – Four Strategies

## 4. Full Access to Banking Services: The Federal Solution

- A multistate consortium should be created which includes representatives of cannabis-legal states, local governments, the cannabis and financial services industries, and law enforcement.
  - Education and outreach to increase understanding of problems of no bank access
  - Maintain central repository for information on state laws, including lessons learned
  - Congressional and executive-branch policy advocacy

# Where Are We?

# The majority of states have some form of legalized marijuana

- Ten states and Washington, DC, have now legalized marijuana for recreational use for adults over 21.
- 33 states have legalized medical marijuana.

# In a Dangerous Place

Without other options, many cannabis companies do business in cash. That means paying suppliers, employees and often taxes in thousands of bills. The industry is expected to reach \$25 billion by 2025, according to The New Frontier, a data and analytics company specializing in the cannabis industry. That puts these companies at a huge risk for robberies or employee fraud.

*Albany Business Review*, February 14, 2019

# Senator Jeff Merkely (OR) and Congressman Ed Perlmutter (CO)

- “Forcing businessmen and businesswomen who are operating legally under Oregon state law to shuttle around gym bags full of cash is an invitation to crime and malfeasance. That must end,” said Merkley. The people of Oregon have spoken, and the federal government should make sure that legal marijuana businesses can operate properly within our banking system. It’s time to let banks serve these legal businesses without fearing devastating reprisals from the federal government.”
- “First and foremost this is an issue of public safety. Not only are the proprietors at risk, but the employees and customers are also at risk of serious and violent crimes,” said Perlmutter. “It is estimated that 40 percent of the marijuana-related businesses in Colorado are unbanked. This means hundreds of millions of dollars in cash are moving around the streets of Colorado.”

# CA – CONCLUSIONS AND RECOMMENDATIONS

- No state-backed financial institution designed to support the cannabis industry is feasible. All alternatives fail on both risk and financial grounds.
- FinTech alternatives such as cryptocurrency and close-loop payment solutions do not solve the problem because of the requirement to move funds into and out of the network from traditional financial institutions.
- The only effective long-term solution involves legislative and regulatory changes at the federal level to allow the legal banking of cannabis-related funds.

# Thank you!

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