BANKING AND MARIJUANA
Colorado’s perspective

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Colorado: blazing trails on getting blazed

• Colorado was the first state in the country to legalize recreational use of Marijuana with the passage of Amendment 64 in 2012

• The amendment allows for:
  • Adults 21 and older to purchase up to one ounce of marijuana from specialty marijuana dispensaries
  • Adults may grow up to six marijuana plants in their homes
  • Possession is limited to up to an ounce for personal use

• What remains illegal:
  • Public consumption of marijuana
  • Selling marijuana without a license
  • Purchasing marijuana from a party who is not licensed
  • Providing financial services to the marijuana industry (Federal law)
Riding high on the Rocky Mountain High?

- There are more than 2,500 marijuana business licenses in Colorado and more than 900 of them are for dispensaries. (The actual number of physical locations is more around 600, as a store that sells both medical and recreational marijuana counts as 2 dispensaries from a licensing standpoint).

- $996,184,788 worth of cannabis was sold in 2015
  - Colorado collected more than $135 million in marijuana taxes and fees

- Colorado pot businesses are under scrutiny from the Internal Revenue Service due to the industry's focus on cash
  - At least 30 businesses have been recently audited

- Pot wholesale prices plunging:
  - Average monthly asking price per pound for wholesale buds has declined by a full third so far this year. In January, the average price was $2,106 per pound; by June, it was $1,402 (a 33 percent decline)
  - The wholesale marijuana market, the lowest monthly asking price fell even more dramatically to $750 in June (a 64 percent decline from January)
CBA’s take on the situation: it’s half-baked

- State law conflicts with Federal law
- Colorado can’t regulate or tax an industry for which it cannot track money
- Public safety risks associated with cash-heavy businesses cause great concern
- Banking services would greatly resolve state regulation and taxation issues, serve customers and businesses in legal transactions and help public safety
- CBA supports federal legislation to create an exemption for banking state-legal marijuana
- We’re not paranoid: consequences are real and severe
  - Criminal prosecution, millions in fines, bank closures, loss of career
  - We fear bank regulators, not prosecutors
- The only real solution is an act of Congress
Reefer madness: do we serve the industry or don’t we?

• Rule of thirds: A third of Colorado’s banks would serve if they could, another third wouldn’t and the remainder of banks don’t know/care

• The Department of the Treasury issued guidance in February 2014, aimed at easing the situation for banks. It didn’t. FinCEN’s “green light” was red – yellow to the brave
  • “Guidance” doesn’t carry the weight of laws – and it’s fickle
  • Accounts still being closed – despite best efforts “Suzie’s Cookies” and Febreeze
  • Removing threat of prosecution is nice, but what about the regulators?
  • Not just the Controlled Substances Act but AML, BSA
  • Increased reporting standards and oversight burdens – all but impossible to comply
    • Comply with 8 factors of the Cole Memo including: Know Your Customer’s customer – know where they use it, who they share with, where they take their purchases
    • SARs and CTRs

• 12 banks serving Colorado’s marijuana businesses on very limited basis
  • Anonymously
  • With express knowledge and consent of boards of directors and regulators
  • Not increasing business lines or volume
What about the Fourth Corner Credit Union?

- The first marijuana credit union was approved and issued a charter by the State of Colorado in late November 2014.
- It’s still not open – Federal Reserve Bank has denied access to payments system – it’s Federally illegal.
- In January, a U.S. District judge dismissed the credit union’s lawsuit seeking federal approval – “would facilitate criminal activity”.
- THE issue: CSA says it’s illegal to possess controlled substances or the proceeds therefrom.
- A separate, similar lawsuit is pending in federal court in Denver against the National Credit Union Administration (NCUA).

How about a state-owned bank to serve the industry?

- Nope. The same problems remain: no access to the payments system that the Federal government controls: checks, ATMs, credit and debit cards, wire transfers…
Where we are today—a holding pattern

• Banks need the permanence of law versus changeable guidance and it hasn’t happened yet
• Only an act of Congress will do
• In June, members of Congress blocked an amendment that would have allowed legitimate marijuana-related businesses operating according to state laws to access the banking system
  • Didn’t go as far as the Marijuana Businesses Access to Banking Act of 2015, introduced by Perlmutter and Heck in April of 2015
• Marijuana business owners and their customers continue to face safety risks
Tipping the scales?

• Since Colorado’s vote, Washington state, Oregon and Alaska have since legalized recreational use of Marijuana for adults
• 21 states have legalized it in some form
• More coming every election cycle
• Congress won’t act until 30+ states have done so