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BENEFICIAL OWNERSHIP: THE FINAL RULE, ONE YEAR LATER

Breakout Session 4A



BENEFICIAL OWNERSHIP: THE FINAL RULE, ONE YEAR LATER



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Financial Crimes Risks Management



1. Treasury's perspective of CDD "year in review"
2. General experience of industry to date in implementing the CDD rule
3. Practices and challenges associated with the new beneficial ownership requirements of the CDD rule
4. Impact of the CDD rule's clarification and consolidation of pre-existing CDD requirements on other elements of CDD
5. Impact of the CDD rule on other elements of a financial institution's broader AML and FCC programs
6. Management and accountability practices and challenges with CDD implementation
7. Technology solutions to assist with CDD implementation
8. Q & A
9. Key takeaways



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MARIJUANA, INDUSTRIAL HEMP AND CANNABIDIOL (CBD) - THE STATE OF THE LAW

Breakout Session 5A

MARIJUANA, INDUSTRIAL HEMP AND CANNABIDIOL (CBD) - THE STATE OF THE LAW



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JOHN W. VARDAMAN, III

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SPEAKER

State-legalized marijuana landscape

- At the State Level:
 - 33 states and Washington, D.C. have authorized usage of marijuana for medical purposes.
 - Colorado, Washington, Oregon, Alaska, California, Massachusetts, Nevada, Vermont, Maine, Michigan and Washington, D.C. have also authorized recreational use.
- At the Federal Level: Marijuana remains illegal as a Schedule 1 drug .

2013 DOJ COLE MEMO

- 2013: DOJ issues Cole Memorandum
 - Enforcement of Controlled Substances Act
- Eight priority factors
 - Distribution to minors
 - Proceeds going to criminal gangs, cartels
 - Diversion across state lines
 - Pretext for criminal activity
 - Violence or use of firearms
 - Drugged driving/public health
 - Use of public lands
 - Use on federal property

EFFECT OF 2013 COLE MEMO

- Green light for MRB industry with nationwide standards
- Problem: Did not address money and banking
 - Considered “criminal proceeds” under money laundering/BSA laws
- Colorado MRBs – No access to banking
 - No place for marijuana-generated cash

2014 COLE MEMORANDUM

- Addressed DOJ enforcement of money laundering and BSA laws with respect to banks servicing MRBs
- Same eight enforcement priorities as 2013 Memo – banks must ensure that their MRB customers are in compliance
- Message: Federal law should not be a barrier to banking MRBs

FINCEN GUIDANCE: BSA expectations for banking mrbs

- How banks “can” service MRBs consistent with BSA
- Coordination with Cole Memo – same priority factors
- SAR reporting for MRBs
 - Marijuana Limited: No violation of Cole memo/state law
 - Marijuana Priority: Reasonable belief of violation
 - Marijuana Termination: Account terminated
- Timing: At account opening and every 90 days thereafter

ACAMS: THREE TIERED APPROACH

- Tier One: Direct/Plant touching
 - Producers, processors, sellers
- Tier Two: Directly support/Non-plant touching
 - Packaging, advertising, consulting, training, technology
- Tier Three: Incidental/Not “in” marijuana business
 - Attorneys, accountants
- Could affect risk-mitigation and pricing

WHAT ABOUT THE REGULATORS?

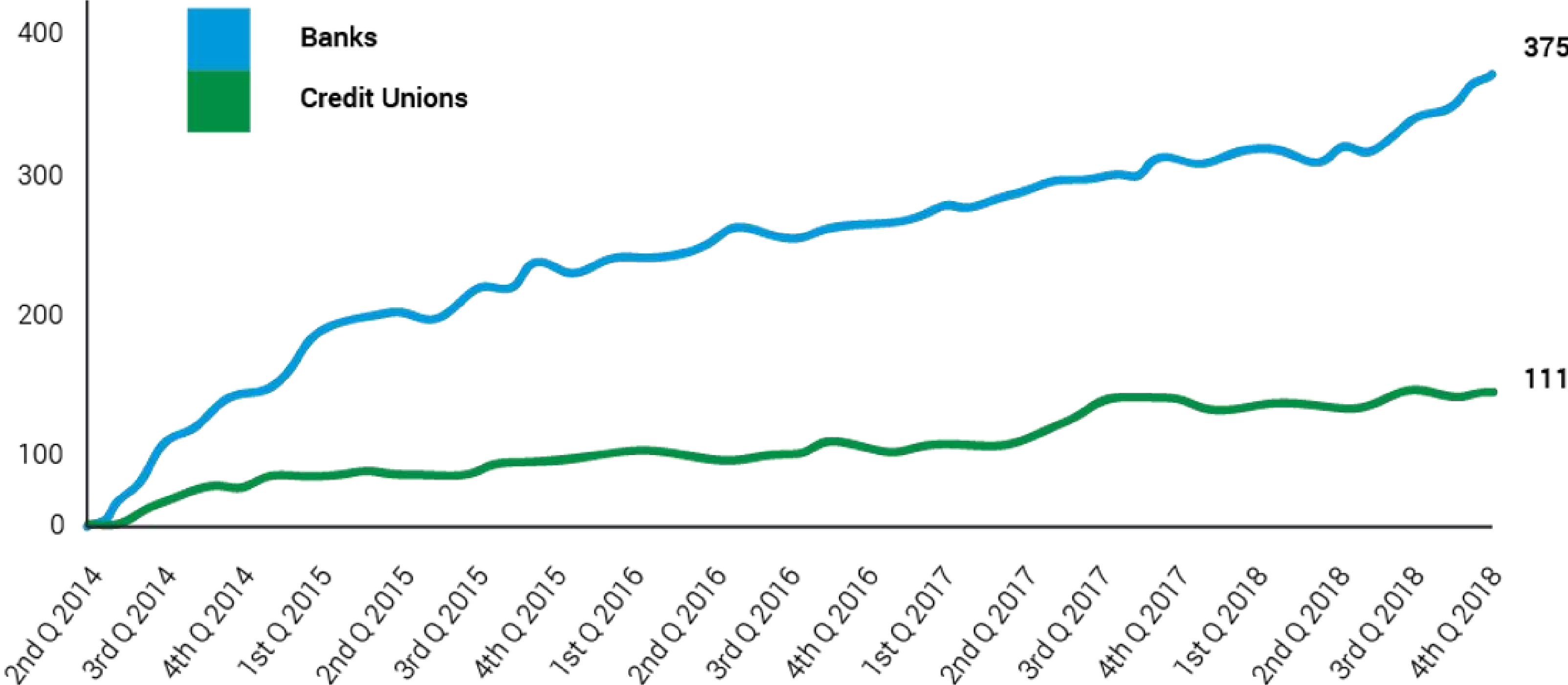
- Problem with 2014 Cole: Failure to get regulators on board
 - Not bound by Cole/FinCEN memos
- Regulators: X Factor of Marijuana Banking
 - Views vary among/within agency
- NCUA only regulatory body to publicly address marijuana banking
 - Provided FinCEN guidance to agency examiners
- Emerging consensus: Deference to federal guidance

RESCISSION OF THE COLE MEMO

January 4, 2018 – DOJ Issues New Guidance

- Sessions rescinds all previous DOJ Marijuana Guidance
- Now completely up to “prosecutorial discretion” of U.S. Attorneys
- DOJ has “finite resources”
- No coordination with other Federal agencies

Depository Institutions (by type) Providing Banking Services to Marijuana Related Businesses (Data ending 30 September 2018)



WHERE THINGS STAND

- Cole memo - gone but not forgotten
 - U.S. Attorneys still following
 - Regulators: Applying FinCEN guidance
- New Attorney General – will not go after MRBs
- Prospects for legislative solution improving
- If marijuana industry here to stay, must have banking access

INDUSTRIAL HEMP AND CBD

- 2018 Farm Bill: removed “hemp” from the definition of “marijuana”
- Hemp not considered marijuana if it contains no more than 0.3% THC
- Legalizes hemp-derived CBD with no psychoactive properties
- Hemp still subject to regulation by the Department of Agriculture and FDA
 - States must submit plans for approval
- Banks taking a wait and see approach as details are finalized



PATRICK LEARY

Senior Vice President - Financial
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SPEAKER

U.S. Federal Law

Controlled Substances Act of 1970 (“CSA”)

- Under the CSA, marijuana is a Schedule I controlled substance, and it is a crime to manufacture, distribute, dispense or possess marijuana;
- Under the CSA, it is a crime to:
 - - Manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, marijuana;
 - - Knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using marijuana; and
 - Manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using marijuana.

Money Laundering Control Act (“MLCA”) (18 U.S.C. §§ 1956 and 1957)

- The MLCA prohibits any person from knowingly conducting certain financial and monetary transactions involving the proceeds of “specified unlawful activities,” including the proceeds from marijuana-related violations of the CSA.

The Bank Secrecy Act (“BSA”) – 31 U.S.C. § 5311 et seq.

- Requires financial institutions to file suspicious activity reports on financial transactions believed to be derived from money laundering or other specified illegal activities.

U.S. State Law

Trend of Legalization

- In 1996, California became the first state to allow the medical use of marijuana.
- Since then, 32 more states, the District of Columbia, Guam and Puerto Rico have enacted similar laws.
- In addition to the 33 states allowing for the medical use of marijuana, 10 states allow for recreational or “adult use” marijuana and 14 states have passed measures to decriminalize marijuana.

U.S. Supremacy Clause & Key Risks

Trend of Legalization

- **Supremacy Clause:** Under the Supremacy Clause of the U.S. Constitution, state laws cannot permit what federal laws prohibit. Thus, while the CSA remains in effect, the states' legalization of recreational marijuana does not legalize the manufacture, distribution, possession, or use of marijuana under federal law.
- **Key Risks:** The legal environment remains uncertain. Until there is a federal legislative change, knowingly providing banking services to marijuana-related businesses exposes Wells Fargo and individual team members to federal criminal sanctions.

U.S. Federal Guidance

Department of Justice (DOJ) Memos (the “Cole Memos”)

- In a series of four non-binding memos issued from 2009 to February 2014, the DOJ provided guidance to U.S. Attorneys setting priorities in deploying resources in prosecuting marijuana-related businesses operating under state-sanctioned marijuana regimes (the “Cole Memos.”)

The FinCEN Guidance

- In February 2014, the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN), who is responsible for administering the BSA, also issued guidance.

Attorney General (AG) Sessions Rescission of the Cole Memos

- On January 4, 2018, AG Sessions issued a one-page memo revoking the Cole memos, instead going back to general principles of prosecutorial discretion. The memo reiterated the CSA, stating “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.” The FinCEN Guidance remains in place.
- November 2018, Jeff Sessions resigns as Attorney General

William Barr Confirmation Hearing

- In January 2019, William Barr testified that his “approach to this would be to not upset settled expectations on the reliance interests that have arise as a result of the Cole memoranda. Investments have been made and there has been reliance on it, so I don’t think it’s appropriate to upset those interests.”

Canada

Bill C-45, of the Cannabis Act, passed in June 2018, and became effective on October 17, 2018

- Legalizes marijuana possession, home growing and recreational sales to adults
- Second country to legalize recreational marijuana (after Uruguay)

Health Canada:

- Health Canada is an agency of the federal government that licenses and monitors marijuana production, packaging and marketing, and sets standards for potency and penalties for abuse.

Canadian Provinces

- Canadian provinces and territories are responsible for developing, implementing, maintaining and enforcing distribution and retail sale of cannabis.

Latin America & the Rest of the World

Reviewing the laws of each country – stay tuned!

Questions?

Wells Fargo & Company provides financial services in Asia, Canada, and Latin America through its duly authorized and regulated subsidiaries. In Europe, banking services are provided through Wells Fargo Bank International (WFBI), directly regulated by the Central Bank of Ireland, and Wells Fargo Bank, N.A. London Branch, authorized by the Prudential Regulation Authority (PRA) and regulated by the Financial Conduct Authority (FCA) and the PRA. All products and services may not be available in all countries. Each situation needs to be evaluated individually and is subject to local regulatory requirements.

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ANDRE G. HERRERA

Executive Vice President, Hypur Inc.



SPEAKER



Broad Reach of Cannabis Monies

Virtually All Institutions Have Marijuana Proceeds

- Investors
- Employee Accounts
- Landlords
- Mutual Funds
- Government Entities

Identifying MRB's:

- Tier I are generally easy to identify
- Tier II and III are more difficult

De-risk or Bank MRB's?

Develop an MRB Policy

- Important even if you choose not to bank MRB's

Permissible vs Appropriate

- CAMELS Composite Rating
- Staffing Expertise / Training Considerations
- Sufficient Resources Allocated – Human and Financial
- Technological Capabilities
- Board of Director / Management Support

Regulatory Sentiment

Where to Start

- Review all federal guidance regarding the vertical
- Become very knowledgeable regarding State Laws
- Learn in detail how these business work
- Establish a comprehensive business plan for the project
- Communicate with your regulators
- Train and educate regarding all applicable regulations
- Incorporate technology to eliminate manual processes
- Start Looking at 3rd Party Auditors
- Examine your correspondent banking relationships



MRB Policy Sections

Robust to address known and unknown events + Exit Plan

Initial Due Diligence

- Entity Documentation

- MRB Specific Documents

- Beneficial Ownership Information

- Financial statements, tax returns, leases

Governing Laws and Definitions

Specific BSA MRB requirements (FinCEN)

On-going Monitoring

- Baseline Activity, Alerts, Triggers, Reports

Risk Analysis and Ratings



How Many Accounts is Too Many?

- Concentration of Accounts
- Liquidity / Capital / Reserves
- Stress Test Your Portfolio

Lending Issues

- Perfection of collateral
- Loan Loss Reserves

Other Considerations

- Covenants
- Credit / Debit Cards
- Site Visits
- Tracking cash



Non-Interest Revenue

- Monthly Account Fees
- Deposit Fees / Analysis
- Transaction Revenue
- Audit Fees
- Cash Transport
- Application Fees



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