



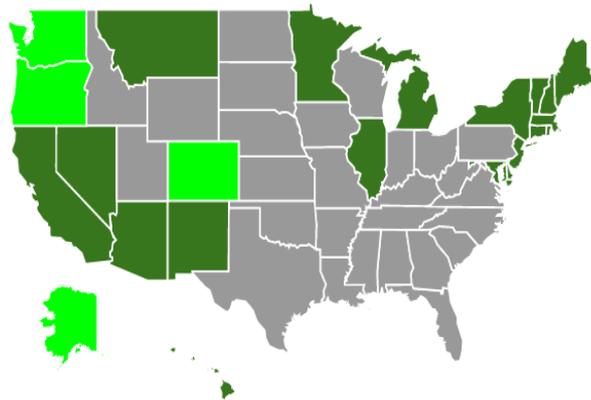
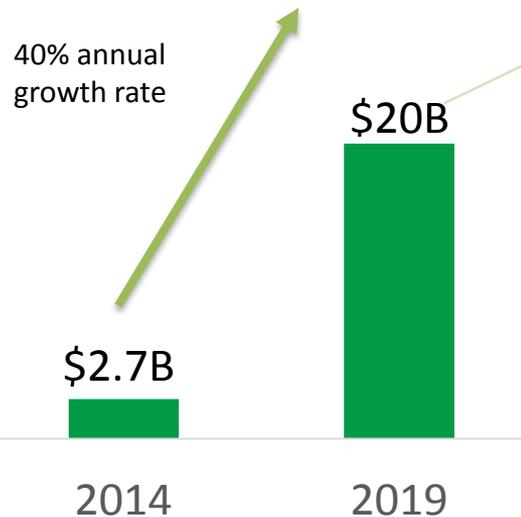
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The Status of the Marijuana Industry and What Attorneys Need to Know When Representing Cannabis Clients

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Total Addressable Market (TAM)

Legal Marijuana Commerce¹, \$B



Marijuana Legalization Status

- Medical marijuana legalized
- Marijuana legalized for recreational use
- No laws legalizing marijuana

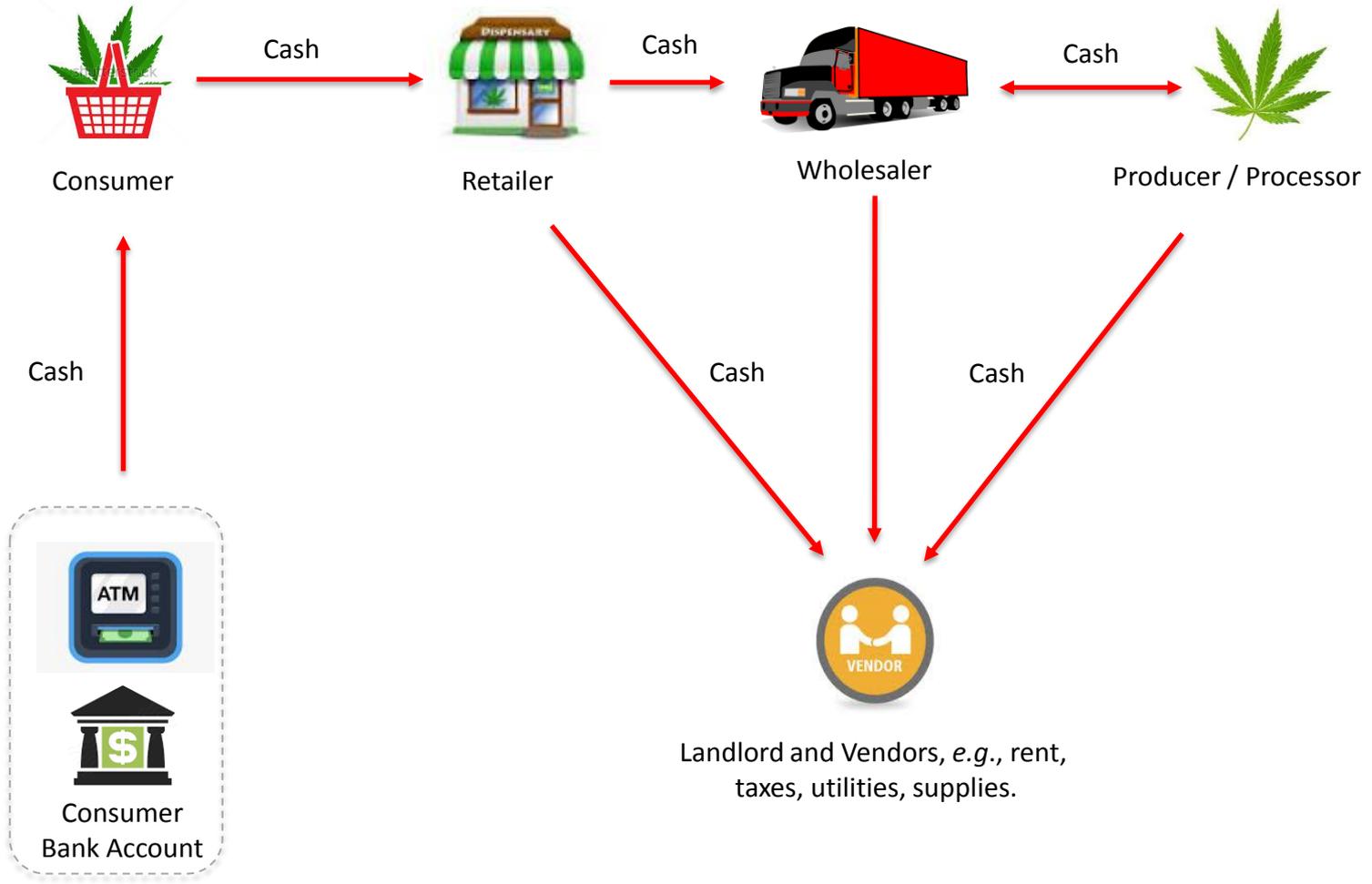
Key Growth Drivers

- Consumer demand (converting black-market sales to legal sales)
- Drive to legalize in order to tap new sources of taxes
- States adopting seed-to-sale traceability systems

¹ defined as medical + recreational, retail + wholesale marijuana sales

Source: ArcView Market Research, Greenwave Advisors, MJ Marijuana Business Factbook, news clips, PayQuwick estimates

Most Transactions are in Cash



The Problems



Piles and Piles of Cash



Cannot Get Bank Accounts

...Causing Numerous Concerns



Government Concerns

- Regulatory Compliance
- Tax Revenue Collection
- Reporting
- Auditing
- Industry Normalization

Public Safety Concerns

- Sales to Minors
- Money Laundering
- Violent Crime
- Drug Cartel/Gang Involvement
- Diversion to Other States

MJ Business Concerns

- Access to Banking
- Inefficient Participation in the Financial System
- Lack of Security
- Lack of Accountability
- Normal Business Practices

Seed-Sale Traceability

(Track and Trace)

- **Bar code the clone.**
- **Track everything that happens to the plant.**
- **Scan code every time product is transported.**
- **Scan code at every sale:**
 - ✓ **Cultivator to Distributor/Wholesaler**
 - ✓ **Cultivator to Processor**
 - ✓ **Cultivator/Processor to Retailer/Dispensary**
 - ✓ **Retailer/Dispensary to Consumer**

The Cole Memos

- 1. Preventing the distribution of marijuana to minors;**
- 2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;**
- 3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;**
- 4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;**

The Cole Memos (cont.)

- 5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;**
- 6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;**
- 7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and**
- 8. Preventing marijuana possession or use on federal property.**

FinCEN Guidance

- ✓ **Comply with State Law.**
- ✓ **Know Your Customer due diligence under BSA/AML.**
- ✓ **Businesses cannot implicate any of the 8 Enforcement Priorities in the Cole Memos.**
- ✓ **Develop metrics for “normal” transaction volumes and activity so the bank can spot “Red Flags.”**
- ✓ **File CTRs and SARs:**
 - Marijuana “limited” SAR**
 - Marijuana “Priority” SAR**
 - Marijuana “Termination” SAR**

Banking Hesitation

- Reputation risk
- Costs of additional oversight and compliance
- Guidelines Only – Not Regulations
- Uncertainty in Gov't and FDIC
 - ✓ FinCEN guidance
- Money Laundering
- Lending Issues – can't sell collateral

Tax Issues

- Internal Revenue Code Section 280E
- Cash record keeping challenges for MJ dispensaries
- Excise and Sales Tax issues for MJ dispensaries

Landlord Issues

- Asset Forfeiture
- Compliance with Law – Special Lease Provisions Needed
- Cash and Banking Issues
 - ✓ File CTRs
- Lender Risk

Forming Legal Entities

- For Profit or Non-Profit
- Expanded Client Due Diligence – upon retention and on-going
- Retainers and Getting Paid
- State Regulations and Federal Guidelines

The Future

- Federally – little change for 5 years
- States – more and more states will adopt medical and adult-use laws legalizing marijuana
- \$100B market
- Major Banks not coming online for 5+ years

The Current Federal Landscape

❖ President Trump

- Supports research and access to medical marijuana
- Expressed support for state regulation of marijuana

❖ Attorney General Sessions

- The Cole Memo is “truly valuable” and “valid”
- “You haven’t seen us cracking down [on marijuana], have you?”
- Enforcement is “a problem of resources for the federal government”

❖ Rohrabacher-Blumenauer Amendment

- Forbids the DOJ from using funds to prosecute state legal medical marijuana businesses

❖ Cole Memo and FinCEN Guidance

- Since their release in 2014, no financial institution has been federally prosecuted for servicing marijuana licensees



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Thank you!

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