

The following is a transcript of remarks offered by Steve Lenn at the Akron Roundtable on November 16, 2023. The presentation began with a movie trailer for the 1936 cult film, Reefer Madness. Please follow the link below to view the trailer.

https://www.youtube.com/watch?v=R_vo0UEteKU.

Against the backdrop of the trailer, I'd like to set the tone and give you a heads up about the voyage we're going to take today.

First, I want to offer a factoid from an April 24, 2023, Fox Business News report that you can use to amaze and impress your friends and colleague:

"U.S. residents are spending more money to purchase legal cannabis than they are on chocolate, craft beer and topical pain relief.

A report from MJBizDaily showed Americans spent roughly \$30 billion on legal marijuana in 2022 while only spending around \$20 billion on chocolate. The cannabis purchases eclipsed sales of "feel-good" products, including beer, opioid medications, and topical pain relief."

Second, several years ago I did a lunch and learn at Arizona State Law School titled: "From the board room to the bag room and back to the board room; a Wall Street lawyer's odyssey into the weeds." While some of the information presented should be enough to grab your attention--dollars now and in the future likely to be at stake, and the business and financial opportunities that will almost certainly emerge--I hope your intellectual curiosity will also be piqued by the rhetorical question I asked and answered then because it's still true today:

"Other than the fact that this is about weed and it's a free lunch (and I know and appreciate yours isn't), why should you be interested? Because this is a once in a lifetime opportunity for an entrepreneur or professional to be in on and help shape the birth of an entirely new industry, one where we will be paving the yellow brick road brick by brick."

I hope you'll find our time together interesting, informative and, most importantly, thought provoking and fun. We are, after all, talking about weed. What I always try to do in my presentations, articles, and blogs, and hope to accomplish today, is to leave you with what I call "AIQ: Answers, insights and, perhaps more importantly, questions." If you don't have questions after the program, it hasn't been as successful as I'd like.

ACKNOWLEDGEMENTS AND WELCOMING REMARKS

I'd like to thank the Akron Roundtable for inviting me and all of you for attending. It's particularly nice to be here because, while I've been in Arizona for about 15 years, in addition to the fact that

my firm, Brennan Manna, is headquartered here in Akron, I have deep roots in northeastern Ohio, having spent more than 30 years in Cleveland.

I would also like to thank our sponsors, The Billow Funeral Homes & Crematory, and the Better Business Bureau of Akron. I'd like to assure our friends at Billow that I regard this event as a serious undertaking, and our attendees that there is no necessary correlation between its business and our topic.

Finally, a shout out to my colleagues and friends at Brennan Manna & Diamond for their friendship and support. Special recognition for their help in preparing this presentation to Laura Oster, one of BMD's marketing aces, who's here working the Power Points, and my assistant, Mary Chapa, who drew the short straw and must deal with my idiosyncrasies on a daily basis.

As the Roundtable's materials reflect, today is the first of two programs on this subject. My remarks are intended to reflect a 50,000-foot perspective, while the program on Thursday November 30th will take a more granular, practical *"look at how it plays out in the local landscape."* Think, for example, of privacy policies and employment law issues. I know it's going to be a great program, not least of which is because my partner, Vicky Ferrise, is one of the panelists. She's been a great source of information for me on what's been going in Ohio.

It's particularly good timing for these complementary programs, since Ohio voters have just approved an adult use initiative over the past several months, there were some important hopeful signs at the federal level:

- the recommendation to the US Drug Enforcement Agency (DEA) by the US Department of Health and Human Services (HHS) that marijuana be rescheduled from a Schedule I to a Schedule III drug which, while leaving it federally illegal, would immediately and automatically relieve the industry of an onerous tax burden tied specifically to its current status as a Schedule I drug, dropping hundreds of millions of dollars to its bottom lines, and
- apparent progress on legislation that would normalize banking services for the industry.

I will provide more color on the federal level developments during my remarks addressing the elephant in the room: the continuing conflict between federal and state law.

CAVEATS

Before getting into the meat of the program, a couple of caveats-I'm a lawyer; I can't help myself.

First, I don't identify as a cannabis lawyer, but rather as a corporate merger and acquisition, corporate finance and banking lawyer who happens to have been involved in more than \$2 billion in cannabis merger and acquisition and debt and equity finance transactions.

Second, my remarks here today, like all my other presentations, articles, and blogs, are subject to the qualification that there be no significant adverse medical, scientific, or social developments. On this subject, in jurisdictions in which adult-use has been implemented, these kinds of adverse developments have not thus far materialized. In sort of a “canary in the coal mine” litmus test, I am not aware of a single significant repeal movement in any state that has legalized either medical or adult-use; and

Third, during my remarks, I will be sharing with you a great deal of historical data and projections. With respect to that data and those projections, or any you might find regarding the cannabis industry in other sources, please keep in mind that accurate marijuana industry data has been a daunting challenge, in some instances has proven notoriously imprecise, so caution needs to be exercised. However, while specific numbers may be off, the trend lines are more than just persuasive; they’re compelling.

This shouldn’t be surprising. As we will discuss, legal cannabis is essentially a new industry, with legal adult-use just about to hit its 10th birthday. As a result, it lacks the kind of historical data and established processes and metrics for measurement that can be relied upon in more mature industries in the data base creation that provides the road map for business and financial decision making. Accelerating improvement in this regard is being driven by the mega bucks already at stake and the even larger bucks likely to be at stake in the future, and the consequential increase in the sophistication and professionalization of the players.

Long before I began to work with the cannabis industry, I happened to be standing at a corner in midtown Manhattan with the COO of Starbucks. I commented to him that I could see 5 Starbucks from where we were and asked him “How does that work?” His response was that I wouldn’t believe the amount and depth of the data they used in selecting locations. Not only did they have data regarding the “addressable market” for each location, a commonly and often the only metric used in projecting cannabis sales, but also for each location detail down to the length of time a customer would wait in line and the number of customers they would wait behind. That kind of deep dive metrics are simply not yet available in the cannabis industry.

INEXORABLY INTERTWINED THEMES: FOLLOW THE MONEY; OUT OF THE SHADOWS/INTO THE MAINSTREAM

For those of you who may have read some of my articles and blogs--and if you haven’t, of course, you should, starting with the initial article published in 2016--they seek to provide a uniquely situated observer’s 50,000-foot perspective, reporting on, anticipating, and providing actionable intelligence regarding cannabis industry developments. Links to the articles blogs and some of the presentations are available on Brennan Manna & Diamonds web site.

They, and all my presentations, reflect these themes and their interplay. **Simply put, as the money gets bigger, it’s like catnip luring into the industry progressively more, larger, and more credible players, businesses, and funders, each one doing so paving the way for others.** It’s already happened in law and is happening as we speak in banking and in the increasing number

and array of other businesses that support the cannabis industry.

In that regard, as noted by the Cleveland Plain Dealer in its October 15th editorial supporting Issue 2:

“This is not terra incognita. Twenty-three other states...have already legalized recreational marijuana without material overall impacts on their businesses and justice systems. One possible reason: Legalization brings weeds and into the sunlight...”

In September 2021 I organized and moderated a webinar on bank lending to the cannabis industry. The webinar was cosponsored by the AZ, CO, OH and Utah bankers’ associations, and registration had to be closed at 500 (more than 300 bankers from across the country). In my opening remarks, to illustrate the power of financial opportunity in moving the cannabis industry into the mainstream, I posed the following rhetorical question (a presenter’s prerogative to set the table):

“If I had tried to do this even a year or 2 ago, does anyone think it would have been possible to get 4 state bankers’ associations as cosponsors?”

Now, here I am just 2 short years later in Ohio, which has joined those 23 other states in legalizing adult-use, and I’m speaking about cannabis to the Akron Roundtable, **ARE YOU FREAKING KIDDING ME?**

INTRODUCTION

Even though I always caution clients that lawyers don’t do arithmetic, although clients would probably say we do excel at addition, my remarks will be full of numbers. No need for you to get in the weeds; for purposes of this program the specific numbers are far less important than what they cumulatively portray and portend.

In about a week, I expect a transcript of these remarks will be available on BMD’s web site.

While we’re not going to have a lot of PowerPoint visuals, in each case, since NPR will be recording the program for broadcast on WKSU on November 23rd at 8:00pm EST. I’ve been asked to be sure to describe the visuals in enough detail to paint a picture for listeners who can’t see them of the gist of what they are intended to illustrate.

For those in attendance, please take a look at numbers in the Power Point that’s on view now. As we move through the program, their significance will become manifest. My mother used to tell me that to normal people the kind of \$ numbers reflected are not real, but rather “telephone numbers.”

For those listening in, those numbers are 24/39, \$39 billion, \$100 billion, \$70-\$100 billion, \$415 billion and \$450 billion, 70, \$1.5-\$3 billion, \$3.7 and \$15 billion, \$180-\$220 hundred million \$336-

\$410 hundred million, 500,000 and 1.75 million, and 20,000-30,000.

Our hosts at the Roundtable asked that my remarks today address both what has been going on nationally and, specifically, what it might mean for Ohio.

Since we set up the program, I decided that touching on what's going on globally will also be instructive, providing important context for the future of the US cannabis industry, writ large, and here in Ohio There are now about 70 countries, spread across every populated continent, that have, at least in some respect, decriminalized marijuana. Some of the larger players in the US have already moved into foreign markets, and international operations will almost certainly enhance their attractiveness as acquisition targets when, and in my opinion not if, major international non-cannabis businesses get into the mix.

By way of introductory comment, you should also keep in mind that legal marijuana is still a nascent industry. In 1996 California became the first state to legalize medical marijuana. In 2012 Colorado and Washington became the first states to legalize adult- use, with the first adult-use sales in 2014.

To provide perspective, I like to describe the legal cannabis industry in terms of human development: the industry is just entering adolescence; largely past the terrible twos and just moving out of the elementary school phase. Think of 10- or 11-year-olds that you know. We can begin to envision the shape that the emerging adult will take as it matures, but there's still a whole bunch of evolution and surprises yet to come.

There will be market-wide and regionally concentrated dislocations, zig zags and fits and starts, some of which will impact Ohio, and no one should be surprised by the periodic wild fluctuations in wholesale prices as supply and demand are rebalanced, and a winnowing of the herd here and elsewhere. We've already seen this in a number of states. This is not unique to the cannabis industry, but its rate of growth and lack of any well-established glidepath have probably exacerbated things as compared to other emerging industries.

Even without the possible legislative mischief that some Ohio legislators began to openly talk about almost immediately after the results of Issue 2 were announced, and news reports suggest opponents may attempt, getting adult-use programs up and running has proven to be a daunting task.

Think of a commentary by former CBS news reporter Charles Osgood he called Osgood's Law:

"For everything someone in the world wants, there's someone else who equally badly wants exactly the opposite."

With the amounts of money in play, coupled with continuing resistance of a powerful and vocal minority who have suggested they're not going quietly into the night, it's likely that ride could be bumpy for a while, so you need to keep your seat belts securely fastened as things shake out.

SYLLABUS

For today's program, we will start with what I call a gaze into the very hazy crystal ball; trying to anticipate and provide actionable intelligence on how issues key to the industry might shake out as the future unfolds, and what that could suggest or dictate for those involved or interested in the industry. Examples include the nature and timing of action at the federal level and what to do about the continuing dominance of the illegal market which syphons off billions from both the industry and state and local treasuries.

Then, we'll try to unravel some of the mysteries and uncertainties surrounding the elephant. In our safari into elephant country, I'll offer my thoughts on why these concerns have in most important regards, but not all, all but disappeared in the rear-view mirror.

Finally, I'm going to open wide a firehose of numbers and other information that demonstrate, indeed underscore, the efficacy and power of the "*follow the money and out of the shadows and into the mainstream*" lodestars that have guided my approach, and which I think will provide you context and perspective that will be helpful in formulating yours. As related to the US, we will briefly recap some the chronology, which also might provide enlightening context.

GAZING INTO THE CRYSTAL BALL

As subsequent portions of the program will demonstrate, the industry's dramatic growth in the less than 10 years since the first legal US adult-use sales began has been astounding. Subject to the caveats about adverse medical, scientific and/or social developments, dramatic additional growth seems almost bet the ranch likely. This is the case nationally, here in Ohio, and globally. With that in mind, the following are some thoughts about key issues and potential developments we're going to touch upon and how the different ways they may play out could be important.

1. *Will there be action at the federal level to enable access to normalized banking and payment system/credit card services and ultimately full legalization?*

Subject to the caveats of no significant adverse medical, scientific, or social developments, yes.

2. *When?*

As many might say about me more generally, I really don't have a clue. I've given up trying to predict, although some banking legislation and rescheduling seems like they could finally happen in 2024.

3. *What could that mean in general and for Ohio?*

It depends. All else aside, full legalization will, of course, represent the ultimate move and

of the shadows:

- a. Automatically and immediately following DEA rescheduling, importantly without requiring any other legislative or regulatory action, federal taxes on the legal cannabis industry will be dramatically reduced, significantly increasing net income for cannabis businesses. As I will elaborate in a few minutes, nationally and in Ohio it will drop billions to the industry's bottom line, enhancing both returns and valuations for current owners and presenting a more attractive investment opportunity for new money. At a recent investor conference, the CEO of Curaleaf indicated it would increase its net income by between \$180-\$200 million.
- b. Normalizing access to banking and related services, providing increased availability of traditional financial services and lower credit costs, should also significantly enhance the operations and bottom lines of the industry, likewise increasing returns for current investors. It is also expected to enhance industry's appeal to potential new, and badly needed, funding sources. For the past several years, equity has been very hard to come by, with the result that the industry has had to rely on generally very expensive debt, much of it with fully loaded costs in the mid 20%+ range.
- c. Full legalization; be careful what you wish for and mindful of the rule of unintended consequences:
 - i. It will allow cannabis companies to be listed on major stock exchanges increasing liquidity and facilitating custodial services required by institutional investors. It is almost certain to broaden the universe of potential funding sources, increasing the availability of equity investments on a less dilutive basis. In these regards, it is worthy of note that one company, TerrAscend, has already up listed to the Toronto Securities Exchange (TSX), and another, Curaleaf appears poised to also do so in a move its CEO believes will substantially increase its access to institutional investors.
 - ii. It is also likely to produce a tidal wave of consolidation, an acquisition feeding frenzy, increasing valuations of both public and private cannabis businesses. Major public tobacco, pharma, alcoholic beverage, and consumer products companies, many of which are known or believed to be lusting to get into the industry, are expected to rush to snap up the best opportunities. Many, in addition to being cash rich, also can use equity as an attractive acquisition currency.
 - iii. Legalization could also present a multi-edged sword, implicating such questions as:
 - A. How will the current ban on interstate transport be handled? How will that impact the huge investments that have been and will be made in cultivation facilities in Ohio and other states? How will that impact state and local cannabis tax collections?

- B. Will California's climate and existing national produce distribution infrastructure allow it to dominate at least the commodity cultivation market?
 - C. Those of us with roots in the Midwest know all too well the rough side of the consolidation coin.
- d. Illegal Cannabis.
- i. As the numbers reflect, illegal US sales are as much as 2 times 3 times legal sales, and worldwide illegal sales are approaching a half trillion dollars. Figuring out how to address the huge impact of illegal cannabis will be one of the most significant challenges and will require a cooperative effort between the industry and governmental authorities, focused on consumer safety and a follow the money approach.
 - ii. For most of its existence, the legal industry has wanted law enforcement to leave it alone, an almost atavistic holdover from before it was legal, which persisted, and still does to some extent, due to continuing uncertainties and insecurities about the firmness of its legal footing.
 - iii. Thus, this will require something of a "pro enforcement" pivot for the cannabis industry, with increased law enforcement being driven by pursuit of billions in taxes that are being, and will continue to be, lost to the illegal markets.
 - iv. This impacts the industry's bottom lines in 2 keyways: the loss of sales and profits otherwise realizable by the legal industry and the competitive pricing and operational disadvantages which result from competition that doesn't have to pay taxes or deal with financial and other burdens of licensing, regulation, compliance, and testing.
- e. And wait, there's more, perhaps much, much more. As astounding as the current numbers and projects are, they may actually vastly understate how large the cannabis market could be. Let your minds wander and your creative juices flow. There's gold in them thar hills.

For example, we don't really have any clue how big the pharma/cannabis market could be. Right now, there are only a couple of FDA approved cannabinoid-based medications. This is at least partly attributable to historic DEA restrictions on testing. Until 2016, the only DEA approved source of marijuana for testing was the University of Mississippi. Researchers complained that the materials were hard to get and, when obtained, were often of such poor quality that meaningful testing was problematic. Arizona's own Dr. Sue Sisley, a psychiatrist and former professor (who's 2014 termination by the University of Arizona Medical School was attributed to her very

public and outspoken efforts to bring cannabis medical testing and applications out of the shadows), contested the DEA's position. Largely in response to her petition, in a 2016 release in which the DEA, while declining to reschedule marijuana at that time, also expanded the number of DEA registered marijuana manufactures, with a stated objective of providing "researchers with a more varied and robust supply...."

Likewise, try to imagine what consumer products companies, that are used to product creation and marketing, might be able to come up with. And, how about a cannabis martini, with precision measured THC, that tastes just like it contained your favorite vodka or gin but had no calories, doesn't leave you with a hangover, and doesn't implicate the risk of aggressive behavior often associated with alcohol?

In the aftermath of the two blockbuster, multibillion-dollar investments in the cannabis industry by Constellation Brands and Altria in 2018 and 2019, which are described in the chronology which follows, rumors were rife that Coca Cola was considering an investment. While Coke ultimately denied the rumors, in addition to speaking to the potential consumer products company investments, and corroborating the "out of the shadow's thesis, the most significant takeaway for me was that nobody laughed, as they almost certainly would have only a year or so before.

THE ELEPHANT IN THE ROOM

Any understanding of today's cannabis industry must start with at least a basic understanding of the conflict between federal and state law and its multiple impacts.

Notwithstanding marijuana's legality for either medical or adult use in 39 states, the District of Columbia and 4 US Territories, marijuana remains illegal under federal law.

It is currently categorized by the DEA as a Schedule I substance, one which has no currently accepted medical use and involves a high potential for abuse, the same as heroin and higher than DEA scheduling for cocaine or oxycodone. Among other things, in addition to impeding normalized banking and unrestricted credit card and payment processing, it precludes access to the US Bankruptcy Courts. This creates anxiety among important institutional and other constituencies that like the certainty they perceive the federal bankruptcy process provides, and forces parties to resolve solvency and often control issues subject to the vagaries of the varying state receivership processes.

Spoiler alert on that subject: When I started in this industry in 2015, and with only the slightest hyperbole, the substance of a question frequently asked by investors or lenders was: "*Are the feds going to come and arrest me and take my house?*" Early securities offerings included bold face risk factors running many paragraphs underscoring that conflict, marijuana's illegality under federal law and that, if the federal enforcement approach were to change, the assets underlying the invest could be seized, resulting in a total investment loss, and investors could be subject to aider and abettor prosecution.

While I still don't give legal opinions on that subject, the fact is that I don't get asked that question anymore. However, the risk factor sections of securities law filings still describe in some detail the conflict between federal and state law and, even as recently as 2022, the risk factors in a prospectus for Pura Verde Cannabis included the following:

“Cannabis is illegal under federal law, and any change in the enforcement priorities of the federal government could render our current and planned future operations unprofitable or even prohibit such operations. Moreover, criminal liability under federal law may also apply to cannabis company owners and investors.”

Although the possibility of criminal sanctions doesn't loom nearly as large as it once did, the conflict of laws will continue to be an impediment and a constraint on both growth and exit strategies. Aside from the banking, cheaper credit, and payment processing issues, it also has a lingering overhang and inhibitory impact on funding and exits, at least in part due to:

- a. Concerns over stock exchange listings and banking relationships which have almost entirely kept on the sidelines a plethora of exceedingly well capitalized and clearly interested public companies in other industries that have long been looked to by cannabis investors as a logical exit (e.g., tobacco, pharma, and alcoholic beverages).
- b. The deterrent effect on large institutional investment of the unavailability of satisfactory securities custodial arrangements and the lack of liquidity (perceived or real) due to the inability to get public cannabis stocks listed on major stock exchanges.

Let's begin addressing the elephant by taking a practical, real world look at the current environment. Absent other factors, there appears to be limited appetite for enforcement against state legal cannabis businesses of marijuana laws at the federal, state, or local levels. To a certain extent this reflects increasing public acceptance of legalization, recently placed by The PEW Research Center at 88%, and the realization at state and local levels of billions in new tax revenues and the collateral benefits of substantial new employment.

It also reflects several specific actions at the federal level taken between 2013 and 2014, contemporaneously with the emergence of the state legal adult-use market, that laid the groundwork and enabled the cannabis industry to flourish at the state level despite its continuing federal illegality.

THE COLE MEMORANDUM

Chronologically first, and perhaps most groundbreaking and significant, was the issuance in August 2013 of what has become known as the Cole Memorandum. It was a guidance issued by Deputy Attorney General James Cole to all US Attorneys Attorney which deprioritized the enforcement of federal marijuana laws against state legal marijuana businesses so long as they were not committing any of what I call Jim's deadly sins. These include what you would expect in

an enabling guidance: e.g., the prevention of sales to children, sales across state lines, sales in support of gangs or illegal weapons, and other similar egregiously problematic activities.

While Attorney General Sessions issued a rescission of the Cole Memo, there is no evidence that federal law enforcement authorities have since then departed from its priorities, principles, and intent.

THE FINCEN GUIDANCE

A second major action was the issuance in 2014 of what is referred to as the “FinCEN Guidance.” (the “Guidance”). FinCEN is the acronym for the Financial Crime Enforcement Network, the arm of the US Treasury Department charged with enforcing the US Bank Secrecy and anti-money laundering laws.

In applying the Guidance, it is important to give due weight to its stated purpose of clarifying “*how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations...*,” and its expressed intent to “*enhance the availability of services for, and the financial transparency of, marijuana related businesses.*” Apropos of the effect of the purported Sessions rescission, the Guidance, which has neither been modified (except to address the hemp business following the legalization in the 2018 Farm Bill of sub .3% THC hemp) or withdrawn despite Session’s action, cites as underlying precepts the priorities established pursuant to Cole Memorandum, effectively enshrining its continuing relevance for cannabis businesses and the banks that serve the industry.

While securing services from financial institutions continues to be a challenge for businesses that may be characterized by the Guidance as *marijuana related businesses* (“MRB”), it is my view that there is nothing in federal banking law or regulation that directly or explicitly precludes them from doing so.

Apparently, the federal banking regulators agree since every bank or credit union that provides services to MRBs has at least one federal regulator. As I predicted several years ago, even without any action at the federal level, there has been a steady increase in the number and size of federally insured banks and credit unions that openly offer such services. As an aside, it appears that there is still a misapprehension that only state chartered institutions are serving the cannabis industry. Federally chartered banks as well as federally organized credit unions also now do so.

According to a FinCEN report, in the 2nd quarter of 2023, more than 800 banks and credit unions reported working with marijuana. This is based on SARs (suspicious activity reports) filings. While that may overstate the number that institutions that are actively providing services, the number that do has steadily increased and, with some fits and starts, the ranks of those doing so are continuing to increase at a steady, perhaps even accelerating, pace.

The Guidance did not offer a bright line definition of the term MRB. Out of an abundance of caution, most banks include any businesses deriving revenues from cannabis activities as MRBs,

with due diligence and compliance requirements ramping up as revenues become more significant to the customers business or the customer becomes closer to plant touching.

Further re out of the shadows, does anyone here know-and if you do, shout it out-what well-regarded, old-line Ohio based business is one of the largest, if not the largest, MRB in the US? Some of you may be surprised to know, it's Ohio's own Scotts Miracle Gro.

THE ROHRBACHER-FARR (AKA ROHRBACHER-BLUMENAUER) AMENDMENT

A third major action has been the inclusion in bi-partisan budget amendments since 2014 of a prohibition against the Department of Justice use of appropriated funds to prosecute in circumstances where there has been full compliance with state medical marijuana laws. In 2016, this limitation was applied in the U.S. 9th Circuit Court of Appeals case, United States v. McIntosh. The Court held that the DOJ could not spend appropriated funds for the prosecution of individuals who engaged in conduct permitted by state medical marijuana laws and who fully complied with such laws.

RESCHEULING

In late September the HHS recommended to the DEA that it reschedule marijuana from Schedule I, the same as heroin and higher than Schedule II drugs like cocaine and oxycodone, to Schedule III, which includes drugs such as Tylenol with codeine. While this wouldn't eliminate the conflict between federal and state law, and marijuana would remain federally illegal, it relieves the cannabis industry from the application of Section 280E of the Internal Revenue Code. I call this the "Al Capone" provision. It provides that even if your income is derived from an illicit business, you must still report and pay income taxes **and may not deduct the ordinary and necessary business deductions available to other businesses**. This effectively taxes the cannabis industry on revenues not earnings. This is not a done deal and, even if it does get done, it will be at least well into next year. At a September 2023 marijuana capital conference at which I moderated a panel on lending to the industry, one of the other speakers cautioned that the DEA has historically "disliked" being told what to do.

BANKING

On September 23, 2023, by a 14-9 bi-partisan vote, the Senate Banking Committee approved and reported out the Safer Banking Act, which would provide safe harbors for financial institutions that provide services to the cannabis industry in states that have legalized cannabis. Since earlier versions of this legislation have passed the House by substantial bi-partisan majorities, only to be stalled in the Senate, this has reignited often dashed hopes that the industry will have normalized access to the full range of banking services in the reasonably foreseeable future provided the majorities previously recorded in the House can be sustained under its new leadership.

WHERE WE ARE NOW; WHERE WE'RE GOING NATIONALLY, GLOBALLY AND IN OHIO

When we get to projections for Ohio, as the Cleveland Plain Dealer did in a series of articles in early October, I have used metrics from Michigan and Illinois, which should be good data reference points and provide at least some substantiation. Michigan's population is about a million less than Ohio and Illinois, about a million more, and each has demographics like Ohio's: with their populations spread across and divided between large, urban/manufacturing, and rural/agricultural geographies.

Rapid spread of legalization; growth in legal revenues and total economic impact, public opinion, state and local cannabis taxes and employment

Now let's get into the numbers.

GEOGRAPHIC EXPANSION

Over the past 9 years, states in which either medical or adult use has been legalized has increased from 24 to the current level of 39 as compared to only 4 that had legalized adult use at that time. Even more significant, when I wrote my first article in 2016, only 4 of the 24 states that had enacted some form of legalization had legalized adult-use.

This both reflects and is a result of the power of the lure of the exponentially increasing legal cannabis money in the industry's movement out of the shadows. Not coincidentally, this has coincided with a seismic shift in US public opinion on cannabis legalization over the past 2 decades, with US adults favoring some form of legalization increasing from about 30% in 2000 to the 88% reflected in a November 2022 Pew Research Center report.

REVENUES

According to information published by MJBiz in 2022, which included actual numbers through 2021 and projections through 2026, actual legal cannabis revenues increased from \$3.1 billion in 2015 to \$27 billion in 2021 and were projected to increase to almost \$39 billion in 2023 and \$53 billion in 2026. The industry's historic and projected revenues make it one of the fastest growing in the US based on its compound annual growth rates, or CAGRs.

In 2023, eight states are expected to exceed \$1 billion in legal cannabis sales, with California leading the pack at about \$5 billion. It is important to note that the next 2 or 3 years could produce particularly explosive near-term growth, as major markets such as Florida, NY, Ohio, Pennsylvania, and Virginia have either recently approved but not yet rolled out adult-use programs or are viewed as likely to do so soon.

Also relevant to future growth potential, estimates indicate that the legal sales probably still represent only about 25%-35% of the US market and less than 10% of the global market. A June 2023 report in the National Law Review indicated that officials in New York believed that there

were 1400 illegal store fronts, called “stick shops,” operating in the state. In California, where state and local taxes can be in the 30% range, some reports indicate that there may be as many as 2 or 3 as many illegal as legal retailers in the state.

ECONOMIC IMPACT

According to a report published by MJBizDaily, legal cannabis’ total US economic is projected to grow from an estimated \$90 billion in 2022, to \$101 billion projected for 2023 and more than \$170 billion by 2028.

Global

According to Fortune Business Insights, the global legal cannabis market was projected to grow from \$43.72 billion in 2022 to \$444.34 billion by 2030 and reflect a CAGR of 24.3% between 2022 and 2027. Globally, total 2020 cannabis legal and illegal sales were estimated at \$415 billion, more than 90% of which was illegal. Although US legal sales still currently represent a vast majority of global legal cannabis revenues and will likely remain the largest market in the world for some time, there are now 70 countries which have some form of decriminalized marijuana, with more steadily, if not rapidly, coming on stream. For example, in August of this year, Germany approved legalization of adult-use.

Ohio

Crain’s Cleveland Business reported that, according to the Ohio Department of Commerce, Ohio medical marijuana sales were approximately \$478 million in 2022. In a report updated on November 7, 2023, MJBiz Daily projected that Ohio adult-use in the first full year after launch could range between \$1.5-\$3 billion and reach \$3.5-\$4 billion by the fourth year. These projections are consistent with experience in Michigan, where sales hit \$1.5 billion in 2022 and are projected at \$3 billion for 2023, and Illinois, with \$1.5 billion reported for 2022 and \$1.9 billion projected for 2023.

It's interesting to note that despite a precipitous drop in Michigan’s wholesale marijuana prices, from a peak of almost \$3,900 per pound in February 2020 to a low of less than \$800 per pound in February 2023, Michigan revenues and tax collections are hitting record highs.

Ohioans would be wise to keep in mind that while many states have experienced similar large drops in wholesale markets in the aftermath of adult-use legalization, in almost all cases they increase again as supply/demand imbalances are corrected, in part due to attrition of the weaker players.

TAXES

US

In May 2023 the Marijuana Policy Project reported that since 2014, when adult-use sales began in Colorado and Washington, states report a combined total of more than \$15 billion in marijuana taxes collected through the end of 2022, with almost \$3.8 billion in 2022 alone.

Ohio

The Plain Dealer reported projections of up \$218 million in state taxes in the first full year and the Moritz College of Law at The Ohio State university, estimated that the potential annual marijuana tax revenue in Ohio would range between \$276 million and \$403 million in year five. Again, these projections are fully consistent with the experience in 2022 in Michigan, which the collected \$400 million, and in Illinois, which collected about \$450 million.

EMPLOYMENT

US

Despite some layoffs during 2022, according to Leafly it is estimated that the US cannabis industry currently supports between 400,000 and 500,000 jobs, a number which could go as high as 1.75 million if there is national legalization.

Ohio

Bringing that home to Ohio, it's estimated that its current cannabis supported employment is between 6,000 and 7,000. Based on employment in Michigan and Illinois, once Ohio's adult-use program is rolled out, that number should increase to between 25,000-30,000.

HOW DID WE GET HERE

Since the legal adult-use market only began in 2014, my industry experience, which began in 2015, and the 50,000-foot articles and blogs since then, provides a good analog.

This was a particularly opportune time frame for getting this practice. As mentioned, adult-use was first approved in 2012 and rolled out in 2014. Not coincidentally, this coincided with the issuance of the Cole Memorandum and the FinCEN Guidance, and the initial adoption of the Rohrabacher budget amendment. At around the same time, 2014, the Canadian Securities Exchange, a relatively small exchange focused on early-stage businesses, opened up to cannabis company listings.

Many US based cannabis businesses went public through reverse mergers with public shells with CSE listings, primarily defunct Canadian minerals companies that were listed on the CSE. This not only provided cannabis businesses access to public market equity raises, but also an important

new acquisition currency which spurred yet more transactions.

My first involvement was representing 2 midwestern promoters, preparing private placement memoranda for offerings to raise money to acquire 2 medical cannabis licenses in Arizona.

The nature of the investors was eye-opening. While early investors in the cannabis industry were often drawn from the rap music, adult entertainment, and night club businesses--investors used to cash businesses that operated on the edge and were largely unconcerned with reputational risk--the investors who ultimately invested in these deals included midwestern community bankers and founders of insurance brokerage firms and similar conservative profile businesses.

The due diligence on those deals led to the conclusion, subject to the no adverse medical, scientific, and social development caveats, that prospects and future financing requirements of the industry would quickly outpace friend and family money and would have shift to institutional alternatives, representing a huge opportunity for both those investors intrepid enough to take the early plunge and professionals that would serve the industry.

As it turned, about six months after the first license was acquired, it became clear that the promoters were stealing millions from the projects. After I blew the whistle to the lead investors, I had the good fortune of working with them to get the bad guys out and, at a ground floor level, to get the business back on track.

At that time, there were virtually no major law firms---the kind familiar with institutional investment and with which institutional investors would be used to dealing and comfortable--- that were willing to serve the industry. I knew that if I was right about the prospects, it would only be a matter of time until that competitive landscape would become much more crowded, but that I might be able to establish a competitive advantage using my Wall Street background and tenure as General Counsel for an NYSE listed, top 100 diversified banking organization.

That led me to publish my first article in 2016 to begin to establish that platform, which in turn led to my first Canadian public company representations in connection with 2 Arizona acquisitions. Each was \$25 million, large deals at that time, which were followed in short order by acquisitions in Nevada and Massachusetts for that company and engagements by other public companies and institutional lenders to represent them in transactions in multiple other states.

Within about a year, Ohio's own Jones Day announced it was entering the cannabis practice, and now most major firms are all in. I don't for a minute believe Jones Day's decision, or those of the other firms, reflected a moral epiphany, and this gave birth to the follow the money and out of the shadow's mantras. It became evident that big bucks were on the table, and Jones Day's and each subsequent major firm that entered the practice drew in and paved the way for others. Their involvement both followed and led to heightened acceptability of cannabis transactions among their institutional clients. The banking industry has been following in these same footsteps.

In 2018 and 2019, the potential for exits was validated by multi-billion investments by 2 major non-cannabis public companies, about which each of which I published articles, Constellation Brands (Corona, Robert Mondavi) which invested almost \$4 billion in Canopy Growth, and Altria Group (Philip Morris), which invested \$1.8 billion in the Cronos group. The involvement of those kinds of companies also represented a decisive tilt of the playing field, bringing into the lobbying fray levels of access and an intimate familiarity with the levers of power and how to pull them previously not at play. They were able to make those investments since neither Canopy nor Cronos had illegal US activities, thus the investments didn't implicate banking relationship or stock exchange listing issues. But they obviously were beachhead investments made in anticipation that the US markets would open to them. Without access to US markets, those investments simply didn't pencil out.

Concurrently, institutional loan funds began to emerge, which now have billions in outstanding cannabis loans, and banks and credit union lending began to grow, providing much of the funding that has enabled the industry to grow to its current levels.

CONCLUSION

Even if the tidal wave of statistics was ultimately overwhelming and mind numbing, I hope that the crystal balling at least piqued your curiosity and interest and came early enough in the program that the issues and questions framed in that segment survived.

At this point, I'd like to thank you for your attention and the opportunity to offer these thoughts. I will be pleased to answer questions if we have time before we adjourn the program and will be happy to remain and answer your questions if we don't.