Cannabis is an illegal drug under federal law. Notwithstanding the federal government’s position, thirty three states and the District of Columbia have approved cannabis for medical purposes and ten of those states also have legalized cannabis for recreational use. This dichotomy of federal law and state law creates a unique legal situation in which many activities and services involving cannabis are legal under the majority of states’ laws, but remain illegal under federal law. Thus, anyone involved in the cannabis industry is violating federal law.

The legal uncertainty caused by the conflicting legal landscape is not limited to those businesses operating directly in the cannabis industry. Rather, anyone engaged in business with cannabis companies also can be impacted by the fact that such businesses remain illegal pursuant to federal law. As such, doing business with a cannabis company, including providing services to and receiving funds from such companies, could expose such third parties to liability under federal aiding and abetting, money laundering, or civil forfeiture statutes.

* Jay Dubow is a partner in the Philadelphia office of Pepper Hamilton LLP and is Co-chair of the Cannabis Industry Group. Alva Mather is a partner in the Philadelphia office of DLA Piper. Together, they Co-Chair the Cannabis and Alcoholic Beverages Litigation Subcommittee of the ABA’s Business Law Section’s Business and Corporate Litigation Committee.
Additionally, growers and dispensaries operate their businesses on land either owned or leased. If the cannabis business owns the property, then it needs to make sure the property is not restricted in usage. Some deeds restrict use to legal or lawful uses. A party in interest may be able to restrict usage of a property that is looking to use it for cannabis. A landlord that is renting the property could be faced with a similar issue. Likewise, it may be difficult to properly insure a property that is being used for cannabis as may insurance policies exclude illegal activities.

However, the most significant limitation relating to the cannabis industry is the lack of access to banking and financial services. The vast majority of banks will not do business with cannabis companies due to its illegality under federal law. As a result, many cannabis companies are cash businesses. This creates a number of issues for them, including excess security costs. In doing business with a cannabis company, third parties may also have to accept payment in cash and their own banking relationships could suffer as a result of the connection to a cannabis business.

Congress has been working on resolutions to this issue. The two bills with the highest probability of passing are the STATES ACT and the SAFE ACT. If either of these were to be enacted, it would solve most of the issues affecting banking and cannabis.

Separately, and related to cannabis is hemp, including its derivatives such as cannabidoil or CBD. In the 2018 Farm Bill, hemp and hemp-based CBD was removed from the DEA’s list of Schedule I drugs which eased certain restrictions on hemp based CBD products as far as its status as a controlled substance. However, because the FDA approved CBD for a drug, the FDA’s position is that it must approve any ingestible form of CBD before it can be sold in food or beverages (including pet food) as well as a dietary supplement or drug. The FDA has
raised concerns with and issued Warning Letters to companies selling CBD products and making claims about its effects.

The above are but a few of the issues that should be considered before doing business with a cannabis company.
Navigating the Conflicting Federal and State Laws for Doing Business With Cannabis Companies

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6. Speaker Bios:
   - Jay Dubow, Esquire
   - Alva Mather, Esquire
   - Daniel Stipano, Esquire
   - Barry Bohrer, Esquire
Cracking the SAFE: Opening the Banking Industry to Cannabis

Alert | March 25, 2019
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On March 26, the U.S. House Committee on Financial Services is scheduled to mark up the Secure and Fair Enforcement (SAFE) Banking Act of 2019. This Act aims to allow banks and financial institutions to engage in business relationships with state-licensed, marijuana-related businesses, without fear of incurring penalties.

Currently, more than 30 states have legalized some form of marijuana use (e.g., medical or recreational). As a result, the cannabis industry has about $40 billion in annual sales, a number that is expected to reach $80 billion by 2030. Despite this growth, marijuana-related companies generally lack access to the banking industry, which places them at a financial disadvantage. Because marijuana is still illegal at the federal level — despite
being legalized by many states — banks that conduct business with marijuana-related enterprises risk violating federal drug and money-laundering laws, such as the Bank Secrecy Act. These violations could lead to significant penalties, such as fines and forfeitures.

Accordingly, most banks typically refuse to do business with marijuana-related companies, and these companies, in turn, are deprived of the benefits offered by financial institutions. For example, marijuana-related companies are prevented from depositing their sales receipts into simple checking accounts, forcing them to find an alternative solution, which often amounts to keeping large sums of cash on hand at their physical business locations. According to the SAFE Banking Act, this practice poses a considerable safety concern.

Under the SAFE Banking Act, banks would not face an “adverse action . . . solely because the depository institution provides or has provided financial services to a cannabis related legitimate business or service provider.” The Act would allow marijuana-related businesses to, among other things, apply for loans, open checking accounts, and accept credit cards as payment. This relationship would benefit banks and marijuana-related businesses.

With bipartisan support — as illustrated by the bill’s 138 co-sponsors — the SAFE Banking Act, which would completely change the cannabis financial landscape, appears to be gaining traction. For those companies in the cannabis industry, this legislation could be a game changer for financial transactions and safety. We will continue to monitor this bill as it works its way through Congress.
Is CBD Legal? It’s Complicated

Perform an online search for “is CBD legal?” and you will get a variety of different results. It is a challenging question because CBD can refer to cannabinoids from different sources, and it is often interchanged with other terminology, such as “hemp oil.” In addition, regulation and enforcement of cannabis is constantly changing, both at the federal and state level.

The Cannabis Sativa Species
“Cannabis plant” is the terminology used to reference plants in the cannabis sativa species. The cannabis sativa species contains both hemp plants and marijuana plants, which comprise a multitude of cannabinoids. Hemp plants are those that contain a maximum of 0.3 percent tetrahydrocannabinol (THC), which is the psychoactive component of the cannabis plant that creates the “high” typically associated with cannabis use. Marijuana plants are those plants that contain greater than 0.3 percent THC.
What Is CBD?
CBĐ refers to cannabidiol, which is one of many cannabinoid components of cannabis plants. CBĐ does not contain the psychoactive properties of THC, so CBĐ users do not experience a “high.” CBĐ is extracted from the buds, flowers, leaves and stalks of cannabis sativa plants (i.e., marijuana or hemp plants).

While there is only one FDA-approved CBĐ drug — Epidiolex®, a drug indicated for the treatment of seizures associated with Lennox-Gastaut syndrome or Dravet syndrome in patients two years of age or older — users of CBĐ oil are often seeking relief from anxiety, insomnia, chronic pain and other ailments.

Federal Legislation
In December 2018, Congress passed a new bipartisan-supported Farm Bill, which the president signed into law and which loosens the restrictions on hemp cultivation in the United States. Under the new Farm Bill, farmers will be able to cultivate hemp and transfer hemp-derived products for commercial purposes, as long as the hemp cultivation meets the requirements set forth under the new legislation. For example, farmers will be required to meet the definition of hemp as stated in the bill — hemp must not contain more than 0.3 percent THC — and acquire the appropriate licenses/permits to cultivate the product. Hemp cultivated appropriately under the conditions of the new Farm Bill will be excluded from the Controlled Substances Act (CSA), such that extraction of CBĐ and sales of products containing CBĐ from such hemp will be legal. Also pending before Congress is the bipartisan-sponsored STATES Act, which was introduced in June 2018. This act would give autonomy to the states by legalizing marijuana/CBD use in each state, to the extent that any state legislation has legalized such use. This act appears to have strong bipartisan support.

Federal Perspective
Outside of the conditions set forth under the new 2018 Farm Bill, CBĐ is still a Schedule I Drug under the CSA. And the government has taken steps to cement the status of CBĐ on the federal level.

In the Federal Register of December 14, 2016, concerning the establishment of a New Drug Code for Marijuana Extracts, the Drug Enforcement Administration (DEA) announced that it had created a new Administration Controlled Substances Code Number for “marihuana extracts.” In a comment in the Federal Register, the DEA specifically addressed CBĐ, noting that, “[i]f it were possible to produce from the cannabis plant an
extract that contained only CBD and no other cannabinoids, such an extract would fall within the new drug code 7350.” In its *Clarification of the New Drug Code (7350) for Marijuana Extract*, the DEA explained, “The new drug code is a subset of what has always been included in the CSA definition of marijuana.” Therefore, because CBD would fall under the new subset, it would still fall under the CSA definition.

Moreover, on January 4, 2018, then-Attorney General Jeff Sessions rescinded the Cole Memo, which stated that the federal government would not enforce marijuana prohibition in states that have legalized marijuana. This does not necessarily mean that there is a strong appetite for marijuana/hemp enforcement; however, it does indicate that the threat is more viable than before. It is important to note that the 2018 Farm Bill does not legalize state-approved cannabis laws. State-legalized marijuana and non-Farm Bill conformed hemp is still illegal under federal law.

**What About Hemp Oil?**

Hemp oil is another cannabis sativa extract. As with CBD, it does not contain the psychoactive properties of THC. However, unlike CBD — which is extracted from the buds, flowers, leaves and stalks of cannabis sativa plants — hemp oil is only extracted from the seeds of the hemp plant, which is excluded from the marijuana definition under the CSA.

The CSA definition does specify which parts of the cannabis plant are regulated by the rule and which are not. For example, the definition of marijuana excludes “oil or cake made from the seed of such plant.” The DEA reiterates this position in its *Clarification of the New Drug Code (7350) for Marijuana Extract*, stating, “Thus, based on the scientific literature, it is not practical to produce extracts that contain more than trace amounts of cannabinoids using only the parts of the cannabis plant that are excluded from the CSA definition of marijuana, such as oil from the seeds.

Therefore, oil from cannabis sativa seeds, which includes hemp, would not fall under the definition of marijuana in the CSA. The DEA has also stated that even oil from cannabis seeds that “contain trace amounts of cannabinoids” would not fall under either the drug code for marijuana or for marijuana extract.

**Present Picture**

Regardless of the enforcement status of cannabis, the FDA has issued warning letters to companies selling CBD products that are making claims regarding the healing properties
of CBD (e.g., claiming that it has anti-cancer properties). Therefore, companies need to avoid any unsupported medical claims, such as stating that a facial cream that contains CBD treats or cures eczema.

When considering marketing and/or selling a product containing CBD, certain verifications should be made with the product manufacturer:

1. **Confirm the product’s ingredients**: Because the ingredient terminology is inconsistently used between manufacturers, confirm what is contained in the product. Understanding whether the product contains any CBD, or merely contains hemp seed oil, will assist in risk assessments.

2. **Confirm the origin of the CBD**: Once you have determined whether the product contains CBD, query the source, *i.e.*, whether it was derived from hemp grown in accordance with state-legal hemp cultivation and/or the 2018 Farm Bill. If the CBD is sourced from a plant that was grown appropriately, the risk of the product being tainted is reduced. Remember, not all CBD is legal under the new Farm Bill.

3. **Confirm that no inappropriate claims are made**: As discussed above, the FDA has taken an interest in companies that are selling products containing CBD that make unsupported claims of medical benefits.
‘PharmaCann’ Tests Delicate Balance Between Federal, State Marijuana Laws

MORE THAN 30,000 PATIENTS HAVE SIGNED UP FOR THE PROGRAM AND ARE NOW RECEIVING MEDICAL MARIJUANA FROM 12 GROWER/PROCESSORS AT THE 14 DISPENSARIES THAT HAVE BEEN APPROVED AND HAVE OPENED ACROSS THE COMMONWEALTH.

On April 17, 2016, Gov. Tom Wolf signed into law Pennsylvania’s Medical Marijuana Program, which is administered by the Department of Health. In the two years following that legislation, the program has become fully operational. More than 30,000 patients have signed up for the program and are now receiving medical marijuana from 12 grower/processors at the 14 dispensaries that have been approved and have opened across...
the commonwealth. As of April 16, there are nearly 100 providers in Philadelphia County alone that have been approved by the Pennsylvania Department of Health to issue a patient certification for medical marijuana.

The process has not been smooth sailing for all involved, however. The commonwealth approved 27 dispensary permit applications in June 2017. PharmaCann Penn, LLC received one of those dispensary permits. PharmaCann also received a zoning permit from the city of Philadelphia for its proposed activity. But when PharmaCann sought to open its dispensary in Northeast Philadelphia, Simon Property Group, Inc., the owner of an adjacent shopping center, objected to the proposed dispensary, citing a deed restriction that prohibited the PharmaCann property from being used for any “unlawful purpose” or as a “drug store.” Simon Property Group argued that operating a medical marijuana dispensary violated both those restrictions, given that marijuana is still a Schedule I drug under the Controlled Substances Act.

PharmaCann filed suit against Simon Property Group and related entities, as well as the prior property owner, BV Development Superstition RR, LLC, in the Philadelphia Court of Common Pleas, seeking a declaratory judgment that the unlawful purpose language in the deed was inapplicable to using the property as medical marijuana dispensary in compliance with Pennsylvania’s medical marijuana regulations. PharmaCann also sought judgment that the “drug store” restriction did not apply, given that it planned to sell only cannabis oils, tinctures and lotions.

The defendants removed the case to the U.S. District Court for the Eastern District of Pennsylvania on the basis of diversity jurisdiction and federal question jurisdiction. PharmaCann filed a motion to remand the case back to state court, arguing that diversity jurisdiction did not exist, given that several defendants in the suit were citizens of Pennsylvania and the amount in controversy was zero, two of the defendants did not consent to removal, and federal question jurisdiction does not exist because the principle of abstention should guide the Eastern District to decline to hear the case.

The Eastern District was not persuaded by PharmaCann’s arguments. Instead, on March 14, the court denied the motion to remand, finding that the term unlawful in the deed restrictions “opens the door for federal question jurisdiction by teeing up a fundamental clash between state and federal law in this case,” see PharmaCann Penn v. BV Development Superstition RR, 2018 U.S. Dist. LEXIS 41671 (E.D. Pa. Mar. 14, 2018).

While noting that federal question jurisdiction exists when the cause of action arises under federal law, the court also explained that “in some cases, however, a court has
federal question jurisdiction even when the cause of action comes from state law. As the U.S. Supreme Court has recognized, a federal court should hear state-law claims ‘that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude and hope of uniformity that a federal forum offers on federal issues,’ as in Grable & Sons Metal Products v. Darue Engineering & Manufacturing, 545 U.S. 308, 312, 125 S. Ct. 2363, 162 L. Ed. 2d 257 (2005). In those instances, ‘federal jurisdiction over a state law claim will lie if a federal issue is: necessarily raised, actually disputed, substantial, and capable of resolution in federal court without disrupting the federal-state balance approved by Congress,’ Gunn v. Minton, 568 U.S. 251, 258, 133 S. Ct. 1059 (2013).’

In the PharmaCann case, the Eastern District found that all four of those requirements were met because whether the operation of a medical marijuana dispensary was an “unlawful use” hinged on an interpretation of the federal Controlled Substances Act, the parties actually disputed whether such use was unlawful, and the rarity of the case meant that this decision would not upset the federal-state balance.

As to the potential impact of a substantive ruling in this area, the court itself acknowledged that, “on both points, the federal question in this case is substantial. First, the need to pursue certainty on the legal status of marijuana dispensaries looms large. By the court’s count, 29 states have authorized some form of medical marijuana and nine have authorized ‘recreational’ marijuana. The federal status of these state schemes could be clarified or brought into sharper focus by a ruling on whether PharmaCann’s proposed dispensary violates federal law.”

The court declined to address the drug store deed restriction, as it went to the merits of the case and was, therefore, not appropriate to resolve on a motion to remand.

The court’s ruling strongly signaled that it was going to apply federal law and find that using the property as a medical marijuana dispensary was an unlawful purpose due to marijuana’s status as a federal Schedule I drug under the Controlled Substances Act. PharmaCann voluntarily dismissed the case on March 27. PharmaCann is selling its Northeastern Philadelphia property and beginning the process of opening a dispensary in Bucks County, free from the challenge of deed restrictions.

Certainly, Pennsylvania and other states’ grower/processors and dispensaries are breathing a sigh of relief at PharmaCann’s decision to discontinue the lawsuit. While deed restrictions may not apply to each of their operations, all involved in the medical marijuana industry are well aware of the legal status of marijuana on the federal level.
A federal court ruling that operation of a dispensary in compliance with a state medical marijuana program—and by extension, grower/processors and prescribers—is an unlawful purpose could have practical implications, as well as a major chilling effect.

The viability of state programs rests on a détente of sorts between the states and federal government. Since 2016, the Rohrabacher-Blumenauer Amendment to federal spending bills has prevented the Department of Justice from spending money to prevent states from implementing laws “authorizing the use, distribution, possession or cultivation of medical marijuana,” Vehicle for Consolidated Appropriations Act 2018, Pub. L. No. 115-141, Section 538 (2018).

Disruption of the delicate balancing act—lack of federal enforcement funds and a dearth of direct challenges to state medical marijuana programs—may force state and federal governments to directly deal with the status of the programs. Absent a clear resolution in favor of legalizing medical marijuana programs, the financial industry and banks, already hesitant to operate in the medical marijuana space, may back away even further. Local governments and property owners could run medical marijuana businesses out of town through local regulations and stringent enforcement of deed restrictions against “unlawful uses.”

Conversely, with medical marijuana programs enacted in 29 states and substantial public support for legalization of medical marijuana, a ruling that medical marijuana dispensaries violate federal law might also spur Congress to act to exempt such programs from the Controlled Substances Act.

With PharmaCann backing away from this fight, it will take another lawsuit to test judicial interpretation and congressional will with respect to the legality of state-endorsed medical marijuana programs.
Union Calendar No. 78

116th Congress
1st Session

H. R. 1595

[Report No. 116–104, Part I]

To create protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 7, 2019

Mr. PERLMUTTER (for himself, Mr. HECK, Mr. STIVERS, Mr. DAVIDSON of Ohio, Mr. AGUILAR, Ms. BARRAQUÁN, Mr. BEYER, Mr. BLUMENAUER, Ms. BONAMICI, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN of Maryland, Ms. BROWNLEY of California, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARTWRIGHT, Ms. CASTOR of Florida, Mr. CICILLINE, Mr. CIRQUELOS, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. COHEN, Mr. COOPER, Mr. CORREA, Mr. COURTNEY, Mr. COX of California, Mr. CRIST, Mr. CROW, Mrs. DAVIS of California, Mr. DEFAZIO, Ms. DÉGETTE, Ms. DELAUREO, Ms. DELBENE, Mr. DESAULNIER, Ms. ESHOO, Mr. ESPAILLAT, Mr. FOSTER, Ms. FUDGE, Ms. GARRARD, Mr. GALLEGO, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mr. GONZALEZ of Texas, Mr. HASTINGS, Ms. HILL of California, Mr. HORSFORD, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Mr. KHANNA, Mr. KILMER, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTHI, Mr. LAWSON of Florida, Ms. LEE of California, Mrs. LEE of Nevada, Mr. LEVIN of Michigan, Mr. LEVIN of California, Mr. TED LIEU of California, Mr. LUCÁN, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCGOVERN, Mr. MEEKS, Mr. NÉGUISE, Ms. NORTON, Mr. PANETTA, Mr. PAPPAS, Ms. PINGREE, Ms. PORTER, Mr. QUIGLEY, Mr. RASKIN, Mr. RUSH, Mr. RYAN, Mr. RoudA, Ms. SCHRACKS, Mr. SCHRADE, Mr. SHERMAN, Mr. SHERS, Mr. SMITH of Washington, Mr. SOTO, Ms. SPEIER, Mr. SWALWELL of California, Ms. TITUS, Mrs. TORRES of California, Mr. VARGAS, Ms. VELÁZQUEZ, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WILD, Mr. YARMUTH, Mr. RODNEY DAvis of Illinois, Mr. HUNTER, Mr. JOYCE of Ohio, Mr. NEWHOUSE, Mr. YOUNG, Mr. HIMES, Mr. LoeBSack, Ms. LOPFREEN, Mr. LOWENTHAL, Mrs. CAROLYN B. MALoney of New York, Mr. SEAN PATRICK MALoney of New York, Mr.
TAKANO, Mr. THOMPSON of California, Mr. GAETZ, Mr. RIGGLEMAN, Mr. DAVID SCOTT of Georgia, Ms. WATERS, and Ms. SCHRIER) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

JUNE 5, 2019

Additional sponsors: Mr. AMODEI, Mr. BALDERSON, Mr. POCAN, Mr. CONNOLLY, Mr. McCINTOCK, Mr. BERA, Mr. PASCARELL, Mr. LARSON of Connecticut, Mr. PETERS, Mr. STANTON, Mr. LARSEN of Washington, Ms. SÁNCHEZ, Mr. GRIJALVA, Mr. HARDER of California, Mr. SAN NICOLAS, Mr. HIGGINS of New York, Mr. GOLDEN, Mr. CASE, Ms. MENG, Mr. CASTRO of Texas, Mr. MOULTON, Ms. DEAN, Ms. HAALAND, Mr. EVANS, Ms. KUSTER of New Hampshire, Mr. KILDEE, Mr. NADLER, Mr. RUIZ, Mr. NEAL, Ms. PRESSLEY, Mr. LAMB, Ms. SLOTKIN, Mr. DEUTCH, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. CLAY, Ms. STEVENS, Ms. WEXTON, Ms. SCANLON, Ms. BASS, Mrs. MURPHY, Mrs. LAWRENCE, Ms. SHERRILL, Mrs. BUSTOS, Mr. MCNERNEY, Mrs. LURIA, Mr. BRINDISI, Mr. STEUCE, Mr. TRONE, Mr. MASSIE, Mr. RESCHENTHALER, Mr. NORCROSS, Mr. UPTON, Mr. SARBANES, Mr. BANKS, Ms. PINKENAUER, Mrs. DINGELL, Ms. TLAIB, Ms. DAVIDS of Kansas, Mr. MEUSER, Mr. MALINOWSKI, Mr. ARMSTRONG, Mr. VELA, Mr. BISHOP of Georgia, Mr. GIBBS, Ms. MOORE, Mrs. AXNE, Mr. DELGADO, Ms. TORRES SMALL of New Mexico, Ms. KENDRA S. HORN of Oklahoma, Mr. VAN DREW, Ms. BLUNT ROCHESTER, Ms. SPANBERGER, Ms. HOULAHAN, Mr. KENNEDY, Ms. UNDERWOOD, Mr. JEFFRIES, Mr. COMER, Mr. GARAMENDI, Miss GONZÁLEZ-COLON of Puerto Rico, Mr. TONKO, Mr. BACON, Mr. PAYNE, Mr. THOMPSON of Mississippi, Ms. MUCARSEL-POWELL, Mr. SCHIFF, Ms. SHALALA, Ms. JUDY CHU of California, Ms. ROYBAL-ALLARD, Ms. ESCOBAR, Ms. ADAMS, Ms. FRANKEL, Mr. CASTEN of Illinois, Mr. GRAVES of Georgia, Mr. COLLINS of New York, Mr. GONZALEZ of Ohio, Mr. MORELLE, Mr. CLEAVER, and Mr. COSTA.
JUNE 5, 2019

Reported from the Committee on Financial Services with an amendment
[Strike out all after the enacting clause and insert the part printed in italic]

JUNE 5, 2019

Committee on the Judiciary discharged; committed to the Committee of the
Whole House on the State of the Union and ordered to be printed
[For text of introduced bill, see copy of bill as introduced on March 7, 2019]
A BILL

To create protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the “Sec-

ure And Fair Enforcement Banking Act of 2019” or the

“SAFE Banking Act of 2019”.

(b) PURPOSE.—The purpose of this Act is to increase

public safety by ensuring access to financial services to can-
nabis-related legitimate businesses and service providers

and reducing the amount of cash at such businesses.

SEC. 2. SAFE HARBOR FOR DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—A Federal banking regulator may

not—

(1) terminate or limit the deposit insurance

or share insurance of a depository institution

under the Federal Deposit Insurance Act (12

U.S.C. 1811 et seq.), the Federal Credit Union

Act (12 U.S.C. 1751 et seq.), or take any other

adverse action against a depository institution

under section 8 of the Federal Deposit Insurance

Act (12 U.S.C. 1818) solely because the deposi-
tory institution provides or has provided finan-
cial services to a cannabis-related legitimate

business or service provider;
(2) prohibit, penalize, or otherwise discour- 
age a depository institution from providing fi-
nancial services to a cannabis-related legitimate 
business or service provider or to a State, polit-
ical subdivision of a State, or Indian Tribe that 
exercises jurisdiction over cannabis-related legiti-
mate businesses;

(3) recommend, incentivize, or encourage a 
depository institution not to offer financial serv-
ices to an account holder, or to downgrade or 
cancel the financial services offered to an account 
holder solely because—

(A) the account holder is a cannabis-
related legitimate business or service pro-
vider, or is an employee, owner, or operator 
of a cannabis-related legitimate business or 
service provider;

(B) the account holder later becomes an 
employee, owner, or operator of a cannabis-
related legitimate business or service pro-
vider; or

(C) the depository institution was not 
aware that the account holder is an em-
ployee, owner, or operator of a cannabis-re-
lated legitimate business or service provider;
(4) take any adverse or corrective supervisory action on a loan made to—

(A) a cannabis-related legitimate business or service provider, solely because the business is a cannabis-related legitimate business or service provider;

(B) an employee, owner, or operator of a cannabis-related legitimate business or service provider, solely because the employee, owner, or operator is employed by, owns, or operates a cannabis-related legitimate business or service provider, as applicable; or

(C) an owner or operator of real estate or equipment that is leased to a cannabis-related legitimate business or service provider, solely because the owner or operator of the real estate or equipment leased the equipment or real estate to a cannabis-related legitimate business or service provider, as applicable; or

(5) prohibit or penalize a depository institution (or entity performing a financial service for or in association with a depository institution) for, or otherwise discourage a depository
institution (or entity performing a financial
service for or in association with a depository
institution) from, engaging in a financial service
for a cannabis-related legitimate business or
service provider.

(b) Safe Harbor Applicable to De Novo Institutions.—Subsection (a) shall apply to an institution applying for a depository institution charter to the same extent as such subsection applies to a depository institution.

Sec. 3. Protections for Ancillary Businesses.

For purposes of sections 1956 and 1957 of title 18, United States Code, and all other provisions of Federal law, the proceeds from a transaction conducted by a cannabis-related legitimate business or service provider shall not be considered as proceeds from an unlawful activity solely because the transaction was conducted by a cannabis-related legitimate business or service provider, as applicable.

Sec. 4. Protections Under Federal Law.

(a) In General.—With respect to providing a financial service to a cannabis-related legitimate business or service provider within a State, political subdivision of a State, or Indian country that allows the cultivation, production, manufacture, sale, transportation, display, dispensing, distribution, or purchase of cannabis pursuant to a law or regulation of such State, political subdivision, or
Indian Tribe that has jurisdiction over the Indian country, as applicable, a depository institution, entity performing a financial service for or in association with a depository institution, or insurer that provides a financial service to a cannabis-related legitimate business or service provider, and the officers, directors, and employees of that depository institution, entity, or insurer may not be held liable pursuant to any Federal law or regulation—

(1) solely for providing such a financial service;

or

(2) for further investing any income derived from such a financial service.

(b) Protections for Federal Reserve Banks.—With respect to providing a service to a depository institution that provides a financial service to a cannabis-related legitimate business or service provider (where such financial service is provided within a State, political subdivision of a State, or Indian country that allows the cultivation, production, manufacture, sale, transportation, display, dispensing, distribution, or purchase of cannabis pursuant to a law or regulation of such State, political subdivision, or Indian Tribe that has jurisdiction over the Indian country, as applicable), a Federal reserve bank, and the officers, directors, and employees of the Federal reserve bank, may not be held liable pursuant to any Federal law or regulation—
(1) solely for providing such a service; or

(2) for further investing any income derived from such a service.

(c) FORFEITURE.—

(1) DEPOSITORY INSTITUTIONS.—A depository institution that has a legal interest in the collateral for a loan or another financial service provided to an owner, employee, or operator of a cannabis-related legitimate business or service provider, or to an owner or operator of real estate or equipment that is leased or sold to a cannabis-related legitimate business or service provider, shall not be subject to criminal, civil, or administrative forfeiture of that legal interest pursuant to any Federal law for providing such loan or other financial service.

(2) FEDERAL RESERVE BANKS.—A Federal reserve bank that has a legal interest in the collateral for a loan or another financial service provided to an owner, employee, or operator of a depository institution that provides a financial services to a cannabis-related legitimate business or service provider, or to an owner or operator of real estate or equipment that is leased or sold to such a depository institution, shall not be subject to criminal, civil, or administrative forfeiture of that legal interest pursuant to any Fed-
eral law for providing such loan or other financial
service.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act shall require a depository institu-
tion, entity performing a financial service for or in associa-
tion with a depository institution, or insurer to provide fi-
nancial services to a cannabis-related legitimate business
or service provider.

SEC. 6. REQUIREMENTS FOR FILING SUSPICIOUS ACTIVITY
REPORTS.

Section 5318(g) of title 31, United States Code, is
amended by adding at the end the following:

“(5) REQUIREMENTS FOR CANNABIS-RELATED
LEGITIMATE BUSINESSES.—

“(A) IN GENERAL.—With respect to a fi-
nancial institution or any director, officer, em-
pLOYEE, or agent of a financial institution that
reports a suspicious transaction pursuant to this
subsection, if the reason for the report relates to
a cannabis-related legitimate business or service
provider, the report shall comply with appro-
priate guidance issued by the Financial Crimes
Enforcement Network. The Secretary shall ensure
that the guidance is consistent with the purpose
and intent of the SAFE Banking Act of 2019
and does not significantly inhibit the provision
of financial services to a cannabis-related legiti-
mate business or service provider in a State, po-
litical subdivision of a State, or Indian country
that has allowed the cultivation, production,
manufacture, transportation, display, dis-
pensing, distribution, sale, or purchase of can-
nabis pursuant to law or regulation of such
State, political subdivision, or Indian Tribe that
has jurisdiction over the Indian country.

“(B) DEFINITIONS.—For purposes of this
paragraph:

“(i) CANNABIS.—The term ‘cannabis’
has the meaning given the term ‘mari-
huana’ in section 102 of the Controlled Sub-

“(ii) CANNABIS-RELATED LEGITIMATE
BUSINESS.—The term ‘cannabis-related le-
gitimate business’ has the meaning given
that term in section 11 of the SAFE Banking

“(iii) INDIAN COUNTRY.—The term
‘Indian country’ has the meaning given
that term in section 1151 of title 18.
“(iv) **INDIAN TRIBE.**—The term ‘Indian Tribe’ has the meaning given that term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

“(v) **FINANCIAL SERVICE.**—The term ‘financial service’ has the meaning given that term in section 11 of the SAFE Banking Act of 2019.

“(vi) **SERVICE PROVIDER.**—The term ‘service provider’ has the meaning given that term in section 11 of the SAFE Banking Act of 2019.

“(vii) **STATE.**—The term ‘State’ means each of the several States, the District of Columbia, Puerto Rico, and any territory or possession of the United States.”.

**SEC. 7. GUIDANCE AND EXAMINATION PROCEDURES.**

Not later than 180 days after the date of enactment of this Act, the Financial Institutions Examination Council shall develop uniform guidance and examination procedures for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers.
1 **SEC. 8. ANNUAL DIVERSITY AND INCLUSION REPORT.**

2 The Federal banking regulators shall issue an annual

3 report to Congress containing—

4 (1) information and data on the availability of

5 access to financial services for minority-owned and

6 women-owned cannabis-related legitimate businesses; and

7 (2) any regulatory or legislative recommendations for expanding access to financial services for

8 minority-owned and women-owned cannabis-related legitimate businesses.

9 **SEC. 9. GAO STUDY ON DIVERSITY AND INCLUSION.**

10 (a) **STUDY.**—The Comptroller General of the United States shall carry out a study on the barriers to market-

11 place entry, including in the licensing process, and the access to financial services for potential and existing minority-owned and women-owned cannabis-related legitimate businesses.

12 (b) **REPORT.**—The Comptroller General shall issue a report to the Congress—

13 (1) containing all findings and determinations made in carrying out the study required under sub-

14 section (a); and

15 (2) containing any regulatory or legislative recommendations for removing barriers to marketplace entry, including in the licensing process, and expand-
ing access to financial services for potential and exist-
ing minority-owned and women-owned cannabis-re-
lated legitimate businesses.

**SEC. 10. GAO STUDY ON EFFECTIVENESS OF CERTAIN RE-
PORTS ON FINDING CERTAIN PERSONS.**

Not later than 2 years after the date of the enactment
of this Act, the Comptroller General of the United States
shall carry out a study on the effectiveness of reports on
suspicious transactions filed pursuant to section 5318(g) of
title 31, United States Code, at finding individuals or orga-
nizations suspected or known to be engaged with
transnational criminal organizations and whether any such
engagement exists in a State, political subdivision, or In-
dian Tribe that has jurisdiction over Indian country that
allows the cultivation, production, manufacture, sale, trans-
portation, display, dispensing, distribution, or purchase of
cannabis. The study shall examine reports on suspicious
transactions as follows:

(1) During the period of 2014 until the date of
the enactment of this Act, reports relating to mari-
juana-related businesses.

(2) During the 1-year period after date of the en-
actment of this Act, reports relating to cannabis-re-
lated legitimate businesses.
SEC. 11. DEFINITIONS.

In this Act:

(1) BUSINESS OF INSURANCE.—The term “business of insurance” has the meaning given such term in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481).

(2) CANNABIS.—The term “cannabis” has the meaning given the term “marihuana” in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(3) CANNABIS PRODUCT.—The term “cannabis product” means any article which contains cannabis, including an article which is a concentrate, an edible, a tincture, a cannabis-infused product, or a topical.

(4) CANNABIS-RELATED LEGITIMATE BUSINESS.—The term “cannabis-related legitimate business” means a manufacturer, producer, or any person or company that—

(A) engages in any activity described in subparagraph (B) pursuant to a law established by a State or a political subdivision of a State, as determined by such State or political subdivision; and

(B) participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting,
displaying, dispensing, distributing, or pur-
chasing cannabis or cannabis products.

(5) DEPOSITORY INSTITUTION.—The term “de-
pository institution” means—

(A) a depository institution as defined in
section 3(c) of the Federal Deposit Insurance Act
(12 U.S.C. 1813(c));

(B) a Federal credit union as defined in
section 101 of the Federal Credit Union Act (12
U.S.C. 1752); or

(C) a State credit union as defined in sec-
tion 101 of the Federal Credit Union Act (12

(6) FEDERAL BANKING REGULATOR.—The term
“Federal banking regulator” means each of the Board
of Governors of the Federal Reserve System, the Bu-
reau of Consumer Financial Protection, the Federal
Deposit Insurance Corporation, the Financial Crimes
Enforcement Network, the Office of Foreign Asset
Control, the Office of the Comptroller of the Currency,
the National Credit Union Administration, the De-
partment of the Treasury, or any Federal agency or
department that regulates banking or financial serv-
ices, as determined by the Secretary of the Treasury.
(7) **FINANCIAL SERVICE.**—The term “financial service”—

(A) means a financial product or service, as defined in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481);

(B) includes the business of insurance;

(C) includes, whether performed directly or indirectly, the authorizing, processing, clearing, settling, billing, transferring for deposit, transmitting, delivering, instructing to be delivered, reconciling, collecting, or otherwise effectuating or facilitating of payments or funds, where such payments or funds are made or transferred by any means, including by the use of credit cards, debit cards, other payment cards, or other access devices, accounts, original or substitute checks, or electronic funds transfers;

(D) includes acting as a money transmitting business which directly or indirectly makes use of a depository institution in connection with effectuating or facilitating a payment for a cannabis-related legitimate business or service provider in compliance with section 5330 of title
31, United States Code, and any applicable State law; and

(E) includes acting as an armored car serv-

ice for processing and depositing with a deposi-
tory institution or the Board of Governors of the
Federal Reserve System with respect to any
monetary instruments (as defined under section
1956(c)(5) of title 18, United States Code.

(8) INDIAN COUNTRY.—The term “Indian coun-

try” has the meaning given that term in section 1151
of title 18.

(9) INDIAN TRIBE.—The term “Indian Tribe”
has the meaning given that term in section 102 of the
Federally Recognized Indian Tribe List Act of 1994

(10) INSURER.—The term “insurer” has the
meaning given that term under section 313(r) of title
31, United States Code.

(11) MANUFACTURER.—The term “manufac-
turer” means a person who manufactures, compounds,
converts, processes, prepares, or packages cannabis or
cannabis products.

(12) PRODUCER.—The term “producer” means a
person who plants, cultivates, harvests, or in any way
facilitates the natural growth of cannabis.
(13) **Service provider.**—The term “service provider”—

(A) means a business, organization, or other person that—

(i) sells goods or services to a cannabis-related legitimate business; or

(ii) provides any business services, including the sale or lease of real or any other property, legal or other licensed services, or any other ancillary service, relating to cannabis; and

(B) does not include a business, organization, or other person that participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products.

(14) **State.**—The term “State” means each of the several States, the District of Columbia, Puerto Rico, and any territory or possession of the United States.
int and ordered to be printed
Committee of the Whole House on the State of the
Committee on Foreign Affairs, of the Committee on the
June 6, 2019
in amendment
Reported from the Committee on Financial Services (Report No. 116-104, Part I]

To create protections for depositors institutions

A BILL

H.R. 1595
116th Congress
Union Calendar No. 78
115TH CONGRESS  
2d Session  

H. R. 6043  

To amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marihuana, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES  

JUNE 7, 2018  

Mr. JOYCE of Ohio (for himself, Mr. BLUMENAUER, Mr. CURBelo of Florida, Mr. POLIS, Mr. BUCK, Ms. LEE, Mr. JONES, Ms. DeGETTE, Mr. BLUM, Mr. COHEN, Mr. GAETZ, Ms. NORTON, Mr. McCLINTOCK, Mr. CORREA, Mr. LEWIS of Minnesota, and Mr. KHANNA) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL  

To amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marihuana, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.  

This Act may be cited as the “Strengthening the Tenth Amendment Through Entrusting States Act” or the “STATES Act”.

1
SEC. 2. RULE REGARDING APPLICATION TO MARIHUANA.

(a) In General.—Part G of the Controlled Substances Act (21 U.S.C. 801 et seq.) is amended by adding at the end the following:

“SEC. 710. RULE REGARDING APPLICATION TO MARIHUANA.

“(a) Notwithstanding any other provision of law, the provisions of this title as applied to marihuana, other than the provisions described in subsection (c) and other than as provided in subsection (d), shall not apply to any person acting in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana.

“(b) Notwithstanding any other provision of law, the provisions of this title related to marihuana, other than the provisions described in subsection (c) and other than as provided in subsection (d), shall not apply to any person acting in compliance with the law of a Federally recognized Indian tribe within its jurisdiction in Indian Country, as defined in section 1151 of title 18, United States Code, related to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana so long as such jurisdiction is located within a State that permits, respectively, manufacture, production, possession, distribution, dispensation, administration, or delivery of marihuana.
“(c) The provisions described in this subsection are—

“(1) section 401(a)(1), with respect to a violation of section 409 or 418;

“(2) section 409;

“(3) section 417; and

“(4) section 418.

“(d) Subsection (a) shall not apply to any person who—

“(1) violates the Controlled Substances Act with respect to any other controlled substance;

“(2) notwithstanding compliance with State or tribal law, knowingly or intentionally manufactures, produces, possesses, distributes, dispenses, administers, or delivers any other marihuana in violation of the laws of the State or tribe in which such manufacture, production, possession, distribution, dispensation, administration, or delivery occurs; or

“(3) employs or hires any person under 18 years of age to manufacture, produce, distribute, dispense, administer, or deliver marihuana.”.

(b) Definition of Marihuana.—Section 102(16) of the Controlled Substances Act (21 U.S.C. 802(16)) is amended—

(1) by striking “or the sterilized” and inserting “the sterilized”; and
(2) by striking the period at the end and inserting “, or industrial hemp (as defined in section 7606(b) of the Agricultural Act of 2014 (7 U.S.C. 5940(b))).”.

SEC. 3. TRANSPORTATION SAFETY OFFENSES.

Section 409 of the Controlled Substances Act (21 U.S.C. 849) is amended—

(1) in subsection (b), in the matter preceding paragraph (1)—

(A) by striking “A person” and inserting “Except as provided in subsection (d), a person”; and

(B) by striking “subsection (b)” and inserting “subsection (e)”;

(2) in subsection (e), in the matter preceding paragraph (1)—

(A) by striking “A person” and inserting “Except as provided in subsection (d), a person”; and

(B) by striking “subsection (a)” and inserting “subsection (b)”;

(3) by adding at the end the following:

“(d) EXCEPTION.—Subsections (b) and (e) shall not apply to any person who possesses, or possesses with in-
tent to distribute marihuana in compliance with section 710.”.

**SEC. 4. DISTRIBUTION TO PERSONS UNDER AGE 21.**

Section 418 of the Controlled Substances Act (21 U.S.C. 859) is amended—

(1) in subsection (a), in the first sentence, by inserting “and subsection (c) of this section” after “section 419”; 

(2) in subsection (b), in the first sentence, by inserting “and subsection (c) of this section” after “section 419”; and

(3) by adding at the end the following:

“(c) Subsections (a) and (b) shall not apply to any person at least 18 years of age who distributes medicinal marihuana to a person under 21 years of age in compliance with section 710.”.

**SEC. 5. RULE OF CONSTRUCTION.**

(a) In General.—Conduct in compliance with this Act and the amendments made by this Act—

(1) shall not be unlawful;

(2) shall not constitute trafficking in a controlled substance under section 401 of the Controlled Substances Act (21 U.S.C. 841) or any other provision of law; and
(3) shall not constitute the basis for forfeiture of property under section 511 of the Controlled Substances Act (21 U.S.C. 881) or section 981 of title 18, United States Code.

(b) PROCEEDS.—The proceeds from any transaction in compliance with this Act and the amendments made by this Act shall not be deemed to be the proceeds of an unlawful transaction under section 1956 or 1957 of title 18, United States Code, or any other provision of law.
Alva C. Mather is a business lawyer and litigator with more than a decade of experience representing clients ranging from startups to Fortune 50 companies. Her areas of concentration include regulatory counseling, commercial contracting, as well as investigatory and litigation support for clients in the food and beverage, particularly alcoholic beverages, hemp-based products (CBD) and franchise and distribution industries.

Alva combines extensive knowledge of the regulatory and litigation landscape as well as her deep understanding of the food and beverage industry to help clients mitigate risk, respond to challenges and capture opportunities. She represents and provides business counsel, regulatory advice and litigation support to companies along the food and beverage spectrum, among them manufacturers, suppliers, grocery stores and restaurants.

Alva is nationally recognized for her support of clients in the alcoholic beverages and hemp industries and is frequently asked to write and speak on matters affecting these highly regulated industries.
JAY A. DUBOW
Partner

OVERVIEW

Jay A. Dubow is a partner with Pepper Hamilton LLP, resident in the Philadelphia office. He is a member of the firm’s White Collar Litigation and Investigations Practice Group and is co-chair of the Securities and Financial Services Enforcement Group. Mr. Dubow focuses his practice on complex business litigation, with a special emphasis on defending against shareholder derivative and securities class action litigation and representing clients involved in investigations by the U.S. Securities and Exchange Commission, the Pennsylvania Department of Banking and Securities and various self-regulatory organizations, including the Financial Industry Regulatory Authority, Inc. He also conducts internal investigations on behalf of clients. Such investigations have included allegations involving the Foreign Corrupt Practices Act (FCPA), whistle blower claims, financial fraud, and civil and criminal violations of various federal and state laws.

Mr. Dubow is also a co-leader of Pepper’s Cannabis Industry Group, which counsels cannabis industry clients on corporate and regulatory issues, as well as the potential risks both for cannabis-focused companies and non-industry participants doing business with cannabis companies.

Mr. Dubow first joined Pepper in 2007 from another Philadelphia law firm, where he was a partner in the litigation and corporate departments and a member of the executive committee. In 2008, he joined a client, Advanta Corp., as senior vice president, general counsel and chief administrative officer. He returned to Pepper in 2011. Mr. Dubow began his career as a branch chief in the Division of Enforcement of the U.S. Securities and Exchange Commission in Washington, D.C.

Active in local and national bar associations, Mr. Dubow is a leader in the American Bar Association’s Business Law Section and currently serves as vice chair of the Business and Corporate Litigation Committee, co-chair of the Cannabis and Alcoholic Beverages Subcommittee, and vice chair of the Criminal and Enforcement Litigation Subcommittee.

INSIGHTS

EVENTS & WEBINARS

02/08/2019
PBI FEDERAL SECURITIES LAW FORUM 2019
INVESTMENT MANAGEMENT AND PRIVATE FUNDS: WHAT'S HAPPENING NOW?

INVESTMENT MANAGEMENT ROUNDTABLE: NOVEMBER 2018

NOVEMBER 7-8, 2018
PBI BUSINESS LAW INSTITUTE 2018

PLI'S STORMING THE GATEKEEPERS PROGRAM, 'THE RESPONSIBILITIES OF IN-HOUSE COUNSEL AND COMPLIANCE PERSONNEL'

PUBLICATIONS

STATE, FEDERAL COURTS UNIFORMITY IN DISCOVERY STAYS REMAINS HAZY AFTER 'CYAN'

CRACKING THE SAFE: OPENING THE BANKING INDUSTRY TO CANNABIS

U.S. SUPREME COURT TO RULE ON SECURITIES EXCHANGE ACT SPLIT INVOLVING THIRD CIRCUIT

IS CBD LEGAL? IT'S COMPLICATED

SEC UPDATE: DIVISION OF ENFORCEMENT CONTINUES TO SCRUTINIZE DIGITAL TOKEN SALES

NEWS

JAY A. DUBOW QUOTED IN REUTERS ARTICLE, 'MUSK'S LEAKED EMAIL SHOWS TESLA TO MAKE RECORD DELIVERIES IN SECOND QUARTER'

JAY A. DUBOW QUOTED IN WIRED ARTICLE, 'TESLA CEO ELON MUSK WILL GET A STRICTER TWITTER BABYSITTER'

JAY A. DUBOW QUOTED IN ASSOCIATED PRESS ARTICLE, 'LEGAL EXPERTS: MUSK CONDUCT UNLIKELY TO BRING HARSH PENALTY'

JAY A. DUBOW QUOTED IN THE VERGE ARTICLE, 'TESLA ADDS ORACLE FOUNDER LARRY ELLISON TO BOARD OF DIRECTORS'
JAY A. DUBOW QUOTED IN LOS ANGELES TIMES ARTICLE, ‘NEW TESLA DIRECTOR LARRY ELLISON IS A FRIEND OF ELON MUSK. WILL HE STAND UP TO THE MERCURIAL CEO?’

PODCASTS

11/27/2018
INVESTMENT MANAGEMENT UPDATE - REGULATORY AND ENFORCEMENT UPDATE

01/12/2018
CANNABIS PODCAST - UPDATE ON SESSIONS MEMO

12/01/2017
CANNABIS INDUSTRY FAQ - DECEMBER 2017

01/27/2017
REGULATORY DISCUSSION

10/05/2016
INDIVIDUAL ACCOUNTABILITY IN CORPORATE WRONGDOING

EDUCATION

- J.D., University of Pennsylvania Law School, 1984
- B.S., Finance and Accounting, magna cum laude, University of Pennsylvania, The Wharton School, 1981

BAR ADMISSIONS

- District of Columbia
- Pennsylvania

COURT ADMISSIONS

- U.S. District Court, Eastern District of Pennsylvania
- U.S. District Court, Middle District of Pennsylvania
- U.S. District Court, District of North Dakota
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Ninth Circuit
- Chippewa Cree Tribal Court
Dan Stipano is a partner at Buckley LLP, where he advises on BSA/AML and other bank regulatory and compliance issues, represents clients in state, federal, and foreign banking enforcement actions, and provides assistance in establishing, maintaining, and monitoring AML compliance programs. Prior to that, he spent 31 years at the Office of the Comptroller of the Currency, serving as Deputy Chief Counsel, and Director of the Enforcement & Compliance Division. In these roles, he was extensively involved in major OCC enforcement actions and investigations and developing enforcement-related policies and procedures, and he played a key role in major BSA/AML post-USA PATRIOT Act rulemakings and policy issuances. He has testified six times before Congress on BSA/AML enforcement matters, and spoken at hundreds of industry events.
Barry A. Bohrer is co-chair of the firm’s White Collar Defense & Government Investigations Group. Barry has extensive litigation experience handling white collar criminal and complex civil matters in federal and state courts for individual and corporate clients. He also has an active trial and appellate practice. Barry has successfully defended clients, including major corporations, financial institutions, political figures, corporate executives and individuals, professionals and prominent law firms, in a wide variety of high-profile and complex cases, jury trials, regulatory actions and investigations. He represents clients in matters pertaining to securities and commodities litigation and regulatory enforcement; other forms of financial fraud; antitrust litigation; and allegations of environmental offenses. Barry frequently represents clients in parallel enforcement proceedings involving the U.S. Department of Justice, the Securities and Exchange Commission and the Commodity Futures Trading Commission. He also conducts corporate internal investigations and counsels the individuals involved in them. Barry has won appeals at all levels of the federal and state court systems nationwide, and is often brought in by other legal teams specifically for his expertise in high-stakes appellate cases.

Barry has been named a leading litigation, white collar criminal defense and investigations lawyer by Benchmark Litigation: The Definitive Guide to America’s Leading Litigation Firms and Attorneys, The Best Lawyers in America, Chambers USA, Expert Guide to the Best of the Best USA, Expert Guide to the World’s Leading White Collar Crime Lawyers, The Legal 500 US, New York’s Best Lawyers, New York Super Lawyers, Who’s Who Legal: Business Crime Defence and Who’s Who Legal: Investigations. In 2014, Barry received The Norman S. Ostrow Award from the New York Council of Defense Lawyers in recognition of his outstanding contributions as a defense lawyer. He authored the “White Collar Crime” column in the New York Law Journal from 2002-2013, is a co-author of White Collar Crime: Business and Regulatory Offenses (ALM Law Journal Press) and serves on the advisory boards of Bloomberg BNA’s The Criminal Law Reporter and White Collar Crime Report. He speaks frequently on various topics, including issues relating to trial and appellate practice, securities enforcement and arbitration, internal investigations and insider trading. Barry is a fellow of the American College of Trial Lawyers, former President of the New York Council of Defense Lawyers, and Chair of the Board of Directors of the Fund for Modern Courts and Committee for Modern Courts, non-profit organizations dedicated to judicial reform in New York State. He is a member of the Board of Directors of the Legal Aid Society (former chairman of the Audit Committee) and received awards in 2005 and 2006 for Outstanding Pro Bono Service for his advocacy. He is also a member of the New York City Bar Association (former member of the Criminal Law Committee) and the New York State and American Bar Associations (Criminal Justice and Litigation Sections).
Publications

- “BHP Billiton Settles with SEC for $25 Million for Providing Foreign Officials with Luxury Travel to Olympics,” *SRZ Alert*, May 21, 2015 (co-author)
- *SRZ Insider Trading Developments Newsletter*, Summer 2014 (contributor)
- “The Debate About Deferred And Non-Prosecution Agreements,” *New York Law Journal*, Nov. 6, 2012 (co-author)
• “Pretrial Publicity in Criminal Cases: Media Sound Bites, Justice?” New York Law Journal, Jan. 6, 2009 (co-author)
• “The Limits of Rule 17(c) Subpoenas,” New York Law Journal, March 8, 2005 (co-author)
Barry A. Bohrer


Speaking Engagements

- Office of the Appellate Defender 22nd Annual First Monday in October, New York, October 2015
Barry A. Bohrer

• “Regulatory Outlook: Exams, Enforcement and AIFMD,” SRZ 24th Annual Private Investment Funds Seminar, New York, January 2015
• “Representing Corporate Executives and Other Individuals,” NYCBA Ethical Considerations for Corporate Investigations: Views from All Sides, New York, September 2014
• Moderator, “SEC’s Whistleblower Program,” NYCBA 3rd Annual White Collar Crime Institute, New York, May 2014
• “Securities Enforcement and Related Civil Litigation,” SRZ 23rd Annual Private Investment Funds Seminar, New York, January 2014
• “Anti-Fraud, FCPA & Whistleblowing: Compliance, Controls & Enforcement,” Directors Roundtable Institute, Washington, DC, November 2011
• “Internal Investigations 2011: What Directors Need to Know,” Directors & Boards Webinar, September 2011
• “‘Fair Value’ Accounting: Strategies and Substantive Law in Government Investigations,” JPMorgan Chase CLE Program, April 2008

Memberships
• Fellow, American College of Trial Lawyers
• Member, Bloomberg BNA Criminal Law Reporter
  • Advisory Board
• Member, Bloomberg BNA White Collar Crime Report
  • Advisory Board
• Member, Legal Aid Society Board of Directors
  • Former Chairman, Audit Committee
  • Received awards in 2005 and 2006 for Outstanding Pro Bono Service
• Former Member, Legal Aid Society Board of Advisors
• Chair, Board of Directors, The Fund for Modern Courts and Committee for Modern Courts
• American Bar Association (Criminal Justice and Litigation Sections)
• New York City Bar Association (former member of the Criminal Law Committee)
• Former President, New York Council of Defense Lawyers
• New York State Bar Association (Criminal Justice and Litigation Sections)

Distinctions
• Listed as a leading white collar defense lawyer in many publications, including:
  • Benchmark Litigation: The Definitive Guide to America’s Leading Litigation Firms and Attorneys
  • The Best Lawyers in America
  • Chambers USA
  • Expert Guide to the Best of the Best USA (White Collar Crime)
  • Expert Guide to the World’s Leading White Collar Crime Lawyers
Barry A. Bohrer

• Who’s Who Legal: Business Crime Defence
• Who’s Who Legal: Investigations
• The Legal 500 United States
• New York’s Best Lawyers
• New York Super Lawyers
  • Top 100 New York Super Lawyers
• Received the 2014 Norman S. Ostrow Award from the New York Council of Defense Lawyers

Prior Experience
• Partner, Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C.
• Assistant U.S. Attorney, Southern District of New York
• Chief Appellate Attorney, Southern District of New York
• Chief of the Major Crimes Unit, Southern District of New York
• Adjunct Associate Professor of Law, Fordham University School of Law

Bar Admissions
• New York

Court Admissions
• U.S. Supreme Court
• U.S. Court of Appeals, Second Circuit
• U.S. Court of Appeals, Third Circuit
• U.S. District Court, Eastern District of New York
• U.S. District Court, Southern District of New York

Education
• New York University School of Law, J.D.
• Duke University, B.A.