UPCOMING 'SESSIONS' IN THE STATE LEGALIZED MARIJUANA AND FINANCIAL SERVICES INDUSTRY

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By: Colin M. Roopnarine

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President-elect Donald Trump sent shock waves through the medicinal and recreational marijuana industry last week when he nominated Senator Jeff Sessions for United States Attorney General. But why should the mere nomination reverberate as it did? Senator Sessions is a former attorney general for the State of Alabama who as an advocate and ardent supporter of Nancy Reagan's "Just Say No" message, commented in April of 2016 that "good people don't smoke marijuana." Sen. Sessions has been outspoken in his stance on drugs and immigration, and has never wavered in his conviction on adhering strictly with the relevant laws.

This a very serious concern because the banking industry has long since been struggling with the very notion of banking "state legalized" medical and recreational marijuana businesses. The current administration has attempted to mitigate the effect the classification of marijuana as a Schedule 1 drug on the financial services industry, by issuing guidance memoranda in the form of the Cole memoranda and FinCEN's guidance memorandum. The financial services industry in response to these guidance memoranda adopted a "proceed-at-our-own-risk" approach by treating the "state legalized" marijuana industry as any other customer; being extremely cautious by going above and beyond the guidance memoranda; or not banking them at all. Note: the guidance memoranda do not carry the force and effect of law and can be easily thrown out by the incoming administration.

Financial Institutions while keenly aware of the promise of a high infusion of capital from the "state legalized" marijuana industry has had to balance that promise with the specter of marijuana being a Schedule 1 drug that has been deemed to have no "no currently accepted medical use…," much less for recreational usage. Currently, fewer than 3% of all banks and credit unions attest to serving the marijuana industry.

What happens next? For starters, President-elect Trump has stated, "In terms of marijuana legalization, I think that should be a state issue, state by and state," and has demonstrated some support for the use of medical marijuana in patients who are seriously ill. Does this presage conflict between the President and Attorney General? It is too soon to tell, but with the number of states that have legalized recreational and medicinal marijuana, it may be very complicated for the federal government to institute and/or increase scrutiny and action against the states and the "state legalized" marijuana industry. If fully committed, however, Sen. Sessions may very well immediately and systematically reach out to the states and in assessing their laws, formulate a process of addressing the situation. There is also the possibility that some state attorneys general may align with Sessions and in cooperation with the respective state banking regulator and federal regulator, exert even more pressure on the financial institutions, and by extension the entire "state legalized" marijuana industry Financial institutions, investors, the medical industry and other intrinsically entwined in this matter must simply prepare for what happens next, whatever that may be.

With 28 states now having some form of legalized marijuana, the nomination of Sen. Sessions is sure to have repercussions in the industry. There is still a long road to confirmation, but this is an issue on which he has expressed strong opinions in the past and to which financial institutions, the "state legalized" marijuana

industry, investors and many others must pay particular attention.

For more information on this topic, please contact the author, Colin Roopnarine, on the firm's Government and Regulatory team.

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