

High Times Ahead for Cannabis-Related Business

► **Frank A. Segall and Scott H. Moskol of Burns & Levinson discuss the future of cannabis investing.**

CCBJ: Burns & Levinson has had a cannabis law practice since 2013 and has already handled hundreds of millions of dollars in corporate transactions in this emerging industry. How has your cannabis practice evolved and changed since you first started?

Frank A. Segall: Our goal in entering the cannabis space was to bring our sophisticated corporate expertise to this industry. While we certainly started and remain committed to representing operators looking for licensure, we are heavily focused on working with entities raising capital through the public and private markets, forming venture capital funds and acquiring and selling operations on a nationwide basis. We have also been retained to assist groups in cannabis-related workouts and restructures. In addition, we are highly focused on addressing the banking issues confronting this industry, and we are structuring solutions by working with banks and credit unions that are willing to enter this space.

Understanding the depth of the industry, we endeavored from day one to predict the legal needs of the many cannabis-related businesses that are essential to this industry. We are fortunate to now be recognized as the go-to business law firm in this space.

Scott H. Moskol: Our first client was a group in Rhode Island that was applying for a medical marijuana license. We helped them structure all of their corporate governance and documentation as part of a \$3.2 million capital raise. One of our most recent clients is a group

of capital providers looking to lead an investment of several million dollars in a Rhode Island license holder. So you could say our practice has come full circle, but the circle has gotten much bigger. From the beginning, clients have sought out not only our corporate expertise, but also our broad underlying knowledge of the industry.

One of the major issues confronting cannabis companies is the lack of dedicated sources of institutional capital. What are you doing to help your clients overcome these hurdles? Can you provide some specific examples?

Segall: We continue to assist our clients in raising capital from private sources. For us, raising capital isn't about drafting a private placement memorandum or subscription agreement. We have significant experience raising capital – not just in the cannabis industry – and we bring our business acumen along with our contacts to our clients. We introduce our clients' deals to our contacts and other clients who are interested in investing in these types of deals. We are also working with various groups to form dedicated cannabis capital funds that would provide private funding to the industry.

Moskol: One of our current clients is developing the first cannabis commercial lending program, including both regulated and nonregulated financial institutions. The lending programs may, at first, be limited to loans that are secured by collateral that has other optionality such as real estate or equipment. As the industry normalizes in the years ahead, we expect to see other forms of business lending emerge. Right now, our client

is on track to introduce this first lending program from a regulated financial institution in 2019.

The lack of banks providing bank accounts for cannabis businesses is a big problem in the industry, but you both are on the forefront of some game-changing solutions. Tell us about your exciting work in this area.

Segall: Massachusetts has always been lucky in this regard as Century Bank has been providing deposit accounts to local cannabis companies for years and we have a terrific relationship with them. But Massachusetts and other states need more financial institutions to enter the space, and Scott and I have established a suite of specific compliance services we offer clients, lenders and operators to assist them in qualifying for such bank accounts and to accept such deposits.

Moskol: Since the beginning of 2017, we have been representing Safe Harbor Private Banking, which is a subsidiary of Partner Colorado Credit Union. These groups are bringing their cannabis banking program to other financial institutions across the country. In September 2018, it was announced that our client GFA Federal Credit Union would partner with Safe Harbor to become the first bank in Massachusetts to accept recreational marijuana clients starting on October 1, 2018. Although our cannabis clients are spread across the country, it is especially exciting for us to be part of bringing Safe Harbor's program to New England where we are based. Safe Harbor has made it possible for us to help clients obtain bank accounts in California, Nevada, Southern Colorado, Michigan, Florida, Massachusetts, New Hampshire and Louisiana, with more states coming every month.

How is the legal and regulatory framework surrounding cannabis investing and financing changing and what do you see on the horizon?

Segall: We have a number of clients who want to be listed on the American public exchanges, not just OTC, and we are working on their behalf to try to facilitate such a listing. For the past year or more, there has been

a stampede to list on the Canadian Stock Exchange (CSE). We, along with many others in the industry, believe that valuations and market caps are overly inflated on the CSE and there will be a correction soon. The good news is we are seeing the American markets slowly opening up to cannabis operators and cannabis-related businesses, and we expect to assist our clients in accessing those markets.

Moskol: More financial institutions are taking the time to understand the legal framework by which they might be more active in the cannabis markets, whether by taking deposits, lending or selling other bank products and services. While this has been slow, we expect that over the next two years, these sources of financing will also open up.

You work with a number of ancillary businesses to the cannabis industry – companies that don't touch or sell the plant or flower. Are you seeing significant funding going to these companies and, if so, why?

Segall: Yes, many investors perceive these ancillary business deals as safer. They are able to invest in the industry and take advantage of the opportunities that cannabis offers without investing in a company that is actually selling the plant or flower to consumers. However, even accessing such capital remains difficult because if the business is



Scott H. Moskol is a partner at Burns & Levinson, where he co-chairs the cannabis business advisory group, the financial restructuring & distressed transactions group and the diversity and inclusion initiative. Reach him at smoskol@burnslev.com.



Frank A. Segall leads Burns & Levinson as part of its executive committee and as chair of the firm's business, finance, restructuring and venture capital & private equity groups. He also co-chairs the company's cannabis business advisory. Reach him at fsegall@burnslev.com.



heavily concentrated in cannabis, most lenders still view that as a credit risk.

Moskol: Also, some of these cannabis-related businesses are just as profitable or have a similar rate of return as cannabis operators, so they make for attractive investment.

While a number of states have legalized marijuana for recreational use, they still seem to be struggling with implementing these laws. How does this challenging environment impact money flow and the viability of cannabis businesses that are trying to get up and running?

Segall: Cannabis companies confront unique challenges and struggles that other industries don't face. It's one of the reasons that these enterprises must have more than just regulatory or licensing counsel. These companies need strong, experienced corporate and

finance counsel with deep industry experience who can help them navigate these potential pitfalls. The adult-use or recreational cannabis laws don't add that much more in the way of complexity, but actually more in the way of opportunities to the industry that operators and investors alike need to consider. That's where Burns & Levinson is able to provide forward-thinking strategies.

Moskol: There are still some investors and funds that, for whatever reason, only want to invest in or lend money to medicinal marijuana companies. However, we have seen the tide begin to change over the past 12 months or so. There are more groups willing to invest in the growing adult-use segment of the cannabis markets, making it easier for recreational only entities – and companies that participate both in the medicinal and recreational markets – to attract new sources of capital. For example, in Massachusetts the adult-use market is finally starting to roll out, and investors are encouraged by this and by the projected amount of sales to be derived from the recreational industry nationwide.

Are there still opportunities for institutional investors to get in on the “ground floor” of the cannabis industry and what advice would you give them on how to get started?

Moskol: Yes, definitely. This industry is just beginning. Even when the laws are changed on the federal level, there will be opportunities.

Segall: Absolutely, there are still many opportunities. In all sincerity, the best advice is to make sure you have sophisticated corporate counsel with years of extensive cannabis industry experience. There are land mines in any industry, but in an ever-evolving industry like cannabis you don't want to hire the Johnny-come-lately law firm. Burns & Levinson was one of the first law firms that, on a national basis, established a dedicated cannabis corporate practice over five years ago. We were prepared to take risks and put our reputations on the line for our clients then and will continue to do so as this industry continues to change and grow. Burns & Levinson, with Scott and I leading the charge, is one of the law firms trailblazing a path for our clients to follow. ■