

SPRING 2018

HC

HEMP CONNOISSEUR

100 PEOPLE YOU SHOULD KNOW

SPR 18

\$6.99 CDN \$6.99 U.S.



81

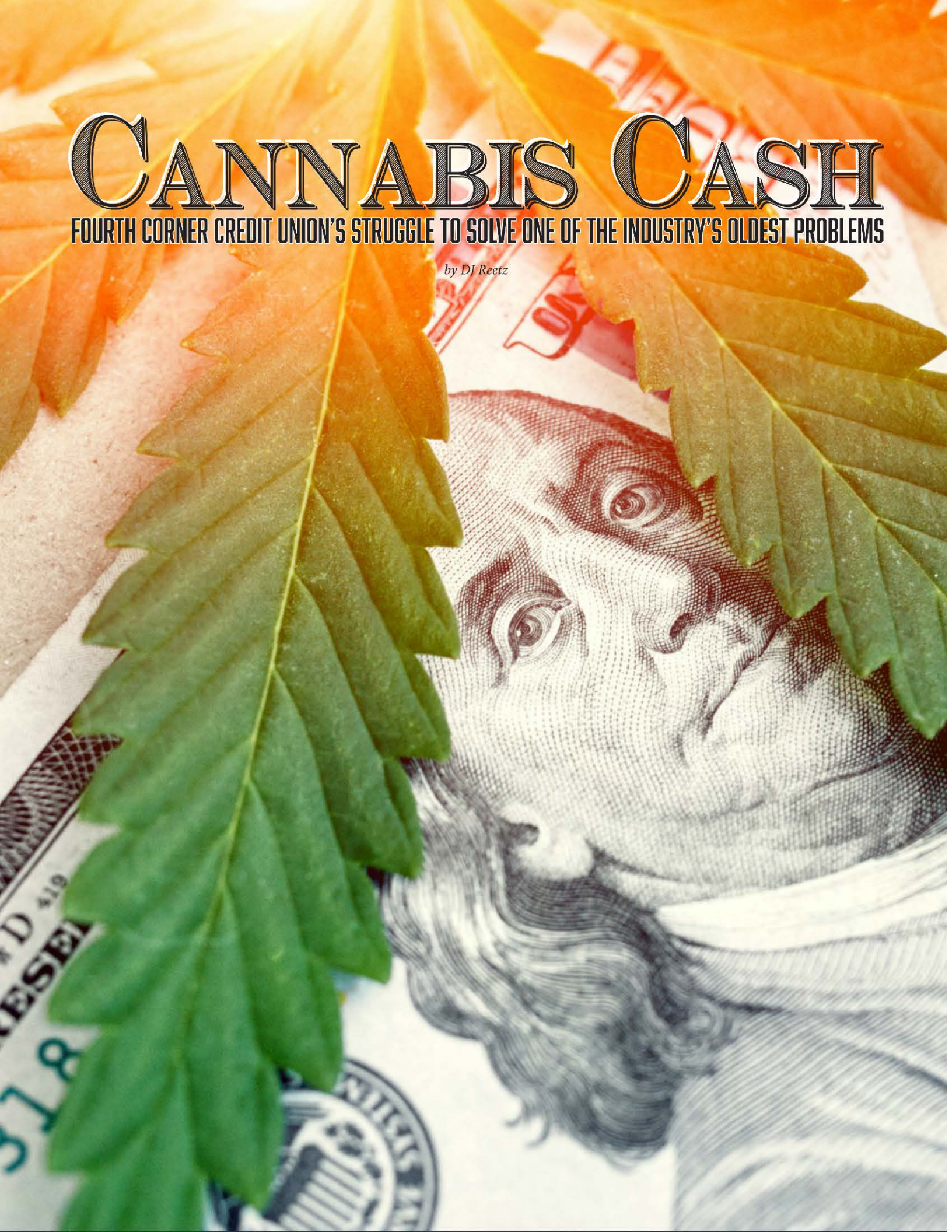
0 62825 58058 7

Plus: JESSE VENTURA | FLOGGING MOLLY | OPIOID ORIGINS | JD MAPLEDEN

CANNABIS CASH

FOURTH CORNER CREDIT UNION'S STRUGGLE TO SOLVE ONE OF THE INDUSTRY'S OLDEST PROBLEMS

by DJ Reetz



Legal cannabis is big money. According to BDS Analytics, a company tracking the industry through point-of-sale analysis, Americans spent \$9 billion on legal cannabis last year. With newly minted adult-use markets like the one in California — the world's sixth largest economy — that number is expected to rise to \$11 billion this year.

It's not hard to see that the engines of legal cannabis are churning feverishly, but behind these figures lies the reality that most of these billions exist as cash; paper currency that won't benefit from the security of bank deposit.

Because cannabis remains a Schedule I controlled substance under the Controlled Substances Act any business selling the plant or its byproducts is in violation of federal law, a fact not lost on banks requiring approval from the Federal Reserve and deposit insurance from the FDIC to operate. Despite stateside legalization, these banks have largely avoided handling cannabis dollars, leaving retailers, wholesalers, and, in many cases, cannabis-adjacent businesses with the unpleasant task of conducting business totally in cash.

ing executive. Rather, Goldfogel has the causal yet earnest demeanor of a cannabis activist, something that is only furthered as he leisurely lights a bowl.

It's an impression that's true enough. For Goldfogel, the calling came in the late aughts through his own experiences with medical cannabis. "A decade ago my large intestine sprung a leak and I got very, very sick; I was septic. In the course of my recovery, after days of throwing up nonstop, I learned what marijuana can do for nausea," he explains. "In that breath I committed that I would do anything in my power to help mankind understand this plant's potential, and that nobody should ever have to make a decision between being a criminal and throwing up again."

Goldfogel, a skilled computer programmer since childhood, had left the corporate world behind years prior to this ordeal in favor of the freedom that came with operating his own company. Seeing the cannabis industry begin to take shape from the perspective of a patient, his first instinct was to use his skills building computer systems to further the commercial mar-

the decision by the Federal Reserve put a hard stop to the hoped-for progress, and Fourth Corner followed shortly with a lawsuit.

"I can't tell you how many people looked me in the eye and said, 'You're suing the federal reserve? This will never end well,'" says Goldfogel.

Several months prior to Fourth Corner's application, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) had issued a guidance to financial institutions looking to service cannabis businesses. Building off of the points in the Cole Memo — which outlined Justice Department priorities when dealing with state-legal cannabis operations — the guidance seemed to be a green light for banks and credit unions to handle cannabis cash, provided they carried out the due diligence of confirming that this cash was in fact coming from state-legal operations and filed suspicious activity reports.

While the FinCEN guidance was seemingly a win for the industry, it did little to settle the issue Fourth Corner — an institution conceived specifically to serve the cannabis industry — was having with the Federal Reserve. In 2016,

Because cannabis remains a Schedule I controlled substance under the Controlled Substances Act any business selling the plant or its byproducts is in violation of federal law, a fact not lost on banks requiring approval from the Federal Reserve and deposit insurance from the FDIC to operate.

With billions of dollars on the line, the problem is already massive, and will only grow as more states move toward a legal and regulated market.

In 2014, at the dawn of Colorado's adult-use market, Fourth Corner Credit Union launched to tackle the issue of cannabis banking, something that had already been apparent in the existing medical marijuana market. Receiving a charter from the state, the credit union quickly ran into a brick wall: they would not be receiving a master account from the Federal Reserve. The decision, handed down by the Federal Reserve Bank of Kansas City, meant that despite the preliminary green light from Colorado regulators, a lack of federal approval would keep them from even the most basic access to the country's financial systems.

"When we were granted a charter from the state of Colorado it was to represent the movement," reflects Mark Goldfogel, executive vice president of industry relations at Fourth Corner. Sitting in the backyard of the modest Denver home he shares with several roommates, Goldfogel doesn't project the image of a bank-

ket. Out of this confluence of circumstance and ability Goldfogel launched MJ Freeway, a comprehensive inventory management system that popularized the idea of "seed to sale" tracking. This, Goldfogel points out, had the paradoxical effect of imbuing lawmakers with the confidence that cannabis business would be conducted legally while simultaneously creating a tangible record of federal crimes.

By 2013 Goldfogel had left MJ Freeway, and he and his partners at Fourth Corner focused in on the simple idea of providing banking services to cannabis businesses, something he says seemed like a necessary development for the industry to progress in the rapidly approaching adult-use market. Goldfogel says that he originally envisioned only about a quarter of Fourth Corner's deposits coming from companies directly working with the plant however, with the rest of the clientele being made up of adjacent businesses that were nonetheless down with the cause. "It's not any particular company that I'm focused on evolving, it's really the plant itself," remarks Goldfogel of his business outlook.

But after receiving the charter from the state,

a US District Court Judge tossed the case, ruling that he could not force the Federal Reserve to violate federal law. That ruling was followed shortly by an appeal, but the saga wouldn't reach its conclusion until last February when, seemingly prompted by a change in the operational intent of Fourth Corner, the Federal Reserve decided to issue the master account.

The decision was again heralded as a win for the cannabis industry, but it came with a caveat: the change in intent Fourth Corner had proffered which had seemingly prompted the change of heart from the Federal Reserve was the promise not to work directly with plant-touching businesses. Instead, Fourth Corner would be limited to working with ancillary businesses that served the cannabis industry.

Goldfogel concedes that this is not ideal, but he says he still feels that the resolution is a step in the right direction. "[It's] not a home run," says Goldfogel. "But it keeps the progress in play."

Fourth Corner's charter demands that the industry continue to progress, he says, and

the businesses that the credit union is going to serve will still be part of that. “In order to be part of our membership you have to believe in the end of prohibition,” says Goldfogel.

Access to a master account represents a monumental step for Fourth Corner, but it’s not the only obstacle left to mantle. In order to hold funds, the credit union is required to hold deposit insurance, and this too has proven elusive. While banks insure their deposits through the Federal Deposit Insurance Corporation (FDIC), the equivalent for credit unions such as Fourth Corner, the National Credit Union Administration (NCUA), has thus far declined to meet Fourth Corner’s request for deposit insurance, which became the subject of another lawsuit filed by Fourth Corner.

While the NCUA is not allowed to discuss the particulars of the situation due to the pending litigation, John Fairbanks, a representative of the Office of Public and Congressional Relations at the NCUA, clarified in an email exchange with HC Magazine that “[a] master account somewhere is required if the credit union is going to engage in certain services, such as offering checking accounts.”

Fourth Corner’s lack of a master account may have been the sticking point for the NCUA, which, according to Fairbanks, holds all applicants to the same rigorous standards when considering whether to issue insurance, and adheres to the FinCEN guidance issued in 2014. As of this writing, the issue had not been resolved, though Fairbanks stated that Fourth Corner had not applied for share insurance since acquiring a master account from the Federal Reserve.

While the credit union still faces obstacles before it can open, Goldfogel is optimistic that this first step marks a critical moment for cannabis banking, though not one that is yet fully secure. “What it really does is put more pressure on the system to resolve itself,” says Goldfogel. “The ruling that we received requires that we follow the same guidance that every bank follows, which says that, at this point in time, there is no safe harbor for marijuana related businesses.”

The FinCEN guidance remains in place for the time being, though in the years since Fourth Corner began its fight to open, the Cole Memo that served as the jumping off point for that guidance has been rescinded by the Trump Justice Department. Some saw this decision as the precursor of an impending crackdown by avowed prohibitionist Attorney General Jeff Sessions on the legal cannabis markets that grew during the Obama years, but so far that hasn’t happened, and there has been no further guidance for financial institutions looking to serve that market.

As Goldfogel sees it, the decision to rescind the Cole Memo may actually have the effect of forcing action from legislators representing states that have benefited from legal cannabis,

and those looking to provide their constituency with those benefits in the future. A recent federal cannabis banking bill may represent such action, but for the time being that measure hasn’t made it to a vote.

Still, more banks seem willing to work with cannabis businesses than have in the past. A report in *Forbes* found that at the end of 2017 some 400 financial service providers were currently providing banking services to cannabis businesses, an 18 percent increase since the beginning of the year. The noted caveat of this data being that it draws from a time when the Cole Memo was still in place, and there may be a cooling effect on these institutions that has not yet been felt despite the widely held understanding of people such as Fairbanks that the FinCEN guidance remains unaffected.

While it’s certainly a development he supports, the growing number of banks and credit unions working with cannabis businesses may be slightly disheartening to Goldfogel, whose idea to specifically serve the businesses has now led to a situation in which Fourth Corner will specifically not be able to do so until federal law changes. As he sees it, the banks that have been quietly working with the industry are doing it because it makes pretty clear sense from a busi-

ness standpoint. “That is not a decision made from a position of legal superiority. It’s a decision made from a position of common sense and risk versus reward,” reasons Goldfogel.

When asked if maybe the prominence gained from the Federal Reserve’s decision would make Fourth Corner a target in the much-sSpeculated forthcoming crackdown on legal cannabis by the Justice Department, Goldfogel is unconcerned. He’s made his stand and it’s effectively boxed him out of most of the professional world, so continuing the fight for a more transparent legal industry — as he once did with MJ Freeway — is a given no matter what.

Any progress on the issue is still progress, and even a slight victory in the years-long battle fought by this not-for-profit credit union conceived to help advance the cannabis industry may still represent a major win, even if Fourth Corner won’t exactly be meeting the goals under which it was conceived. “When we first met with the judges, there wasn’t a lot of room for an argument that said that the movement of people interested in the end of prohibition deserve a bank account,” says Goldfogel. “As soon as you draw a line in the sand that both government and industry can agree on it’s monumental.”

As Goldfogel sees it, the decision to rescind the Cole Memo may actually have the effect of forcing action from legislators representing states that have benefited from legal cannabis, and those looking provide their constituency with those benefits in the future.

