



PROGRAM MATERIALS
Program #30207
September 14, 2020

**More Money, More Problems:
Cannabis-Related Businesses Targeted
by Shareholders**

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More Money, More Problems

Cannabis-Related Businesses Targeted by Shareholders



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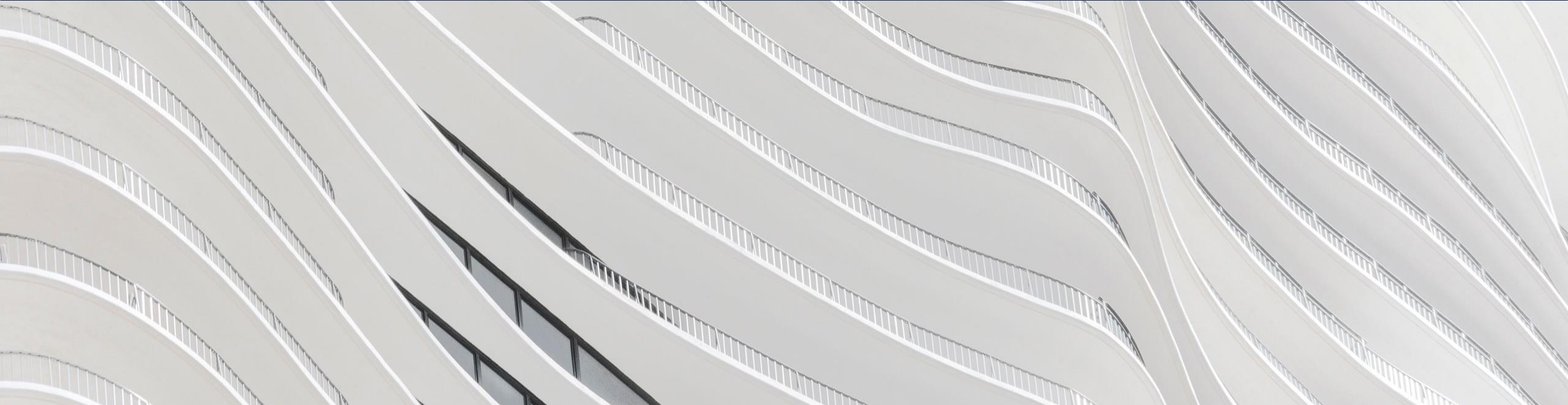
New York

Road Trip

- I. The Legal Status of Cannabis
- II. Development of Commercial Cannabis Enterprises
- III. Disappointed Shareholders Bring Lawsuits
- IV. How this is Playing Out in Court?
- V. What We Have Learned So Far?

Buckle Up!

The Legal Status of Cannabis



Marijuana & Hemp

- Marijuana is “psychoactive” cannabis
 - THC greater than .3%
- Hemp is “non-psychoactive” cannabis
 - THC less than .3%
 - Commercial CBD is typically extracted from hemp



“Legalization” of Hemp/CBD

- 2018 Farm Bill legalizes hemp in US
- Removed hemp from Controlled Substances Act
- CBD products hit the shelves



FDA & CBD

- FDA states CBD may be subject to regulation as drug
- FDA's prior drug exclusion rule prohibits sale of CBD as dietary supplement or included in food
- FDA warns manufacturers that marketing or sale of unapproved CBD may be a violation of FD&C Act



DEA & CBD Extracts

- DEA limits definition of "Marihuana Extract" to extracts "containing greater than 0.3 percent" THC
- Seemingly innocuous rule threatens CBD extraction process
 - Extraction process almost certainly results in temporary THC levels above .3 percent

“Legalization” of Marijuana

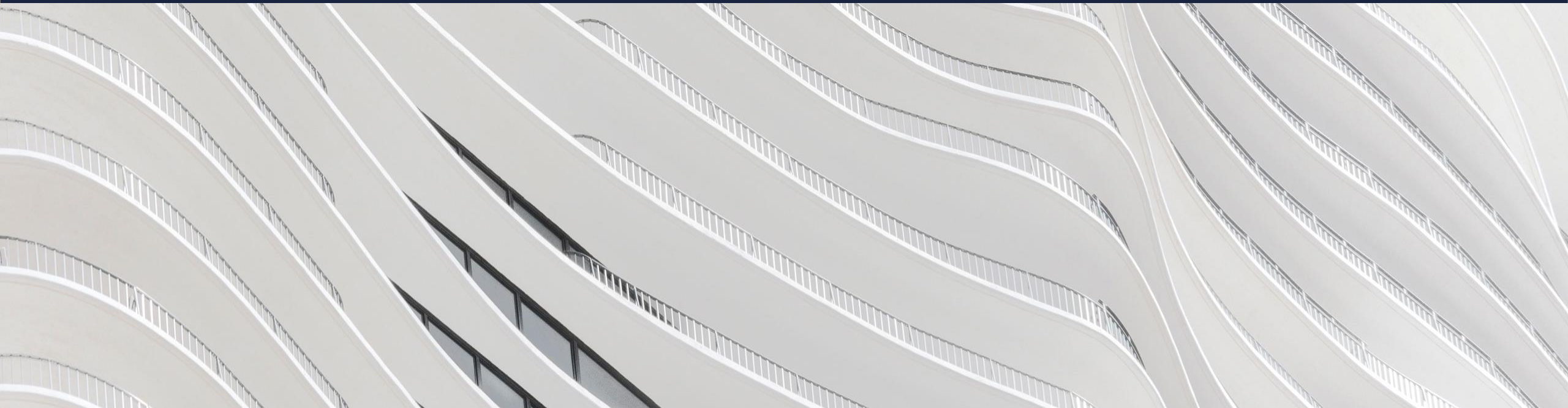
United States

- Majority of states have now legalized marijuana use in some form
- Marijuana remains federally illegal under the Controlled Substances Act

Foreign Jurisdictions

- Several nations, including Canada, have legalized medical and/or recreational marijuana
- Industry faces regulatory uncertainty in these countries

Development of Commercial Cannabis Enterprises

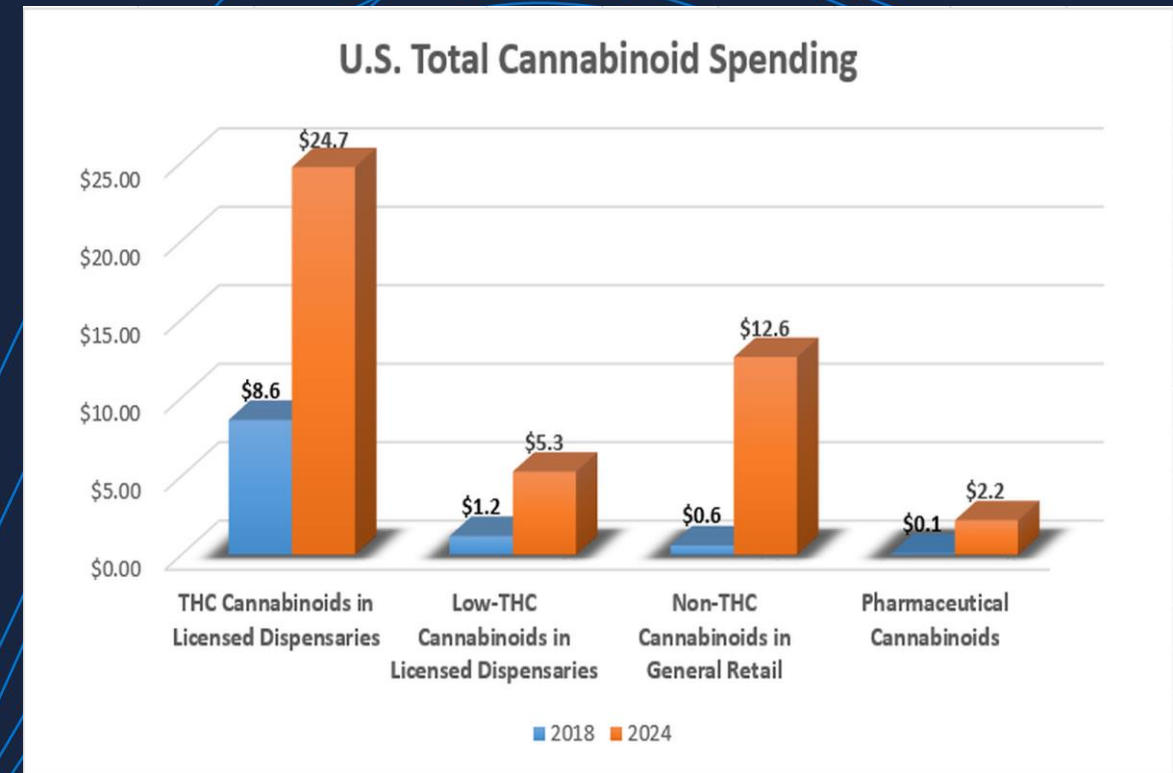


Development of Cannabis-related Enterprises

Commercial cannabis sales:

- 2014 – \$3.4 billion
- 2020 – On pace to exceed \$15 billion
 - 40% increase from 2019 sales figures

2018 Actual Sales v. 2024 Estimates Sales



CREDIT MOTLEY FOOL. DATA SOURCE: ARCVIEW MARKET RESEARCH AND BDS ANALYTICS

Public Commercial Cannabis Corporations

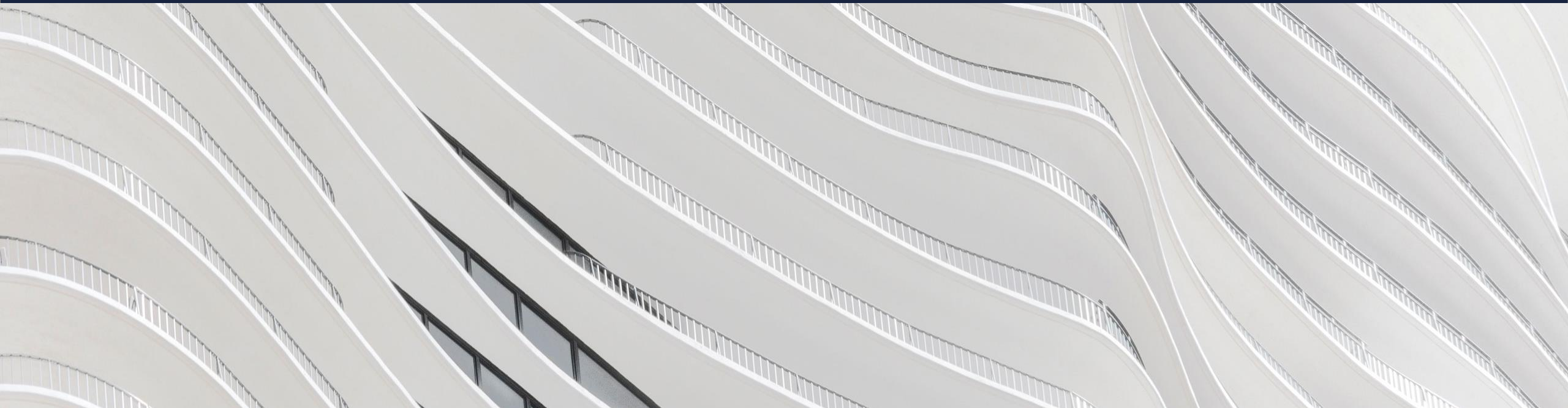
- 2009 - Cannabis-related stock is available for public purchase
- 2018 – Tilray first cannabis corporation to have an initial public offering
- As of April 9, 2020 – At least 24 such stocks available on NYSE or NASDAQ



Uncertainties

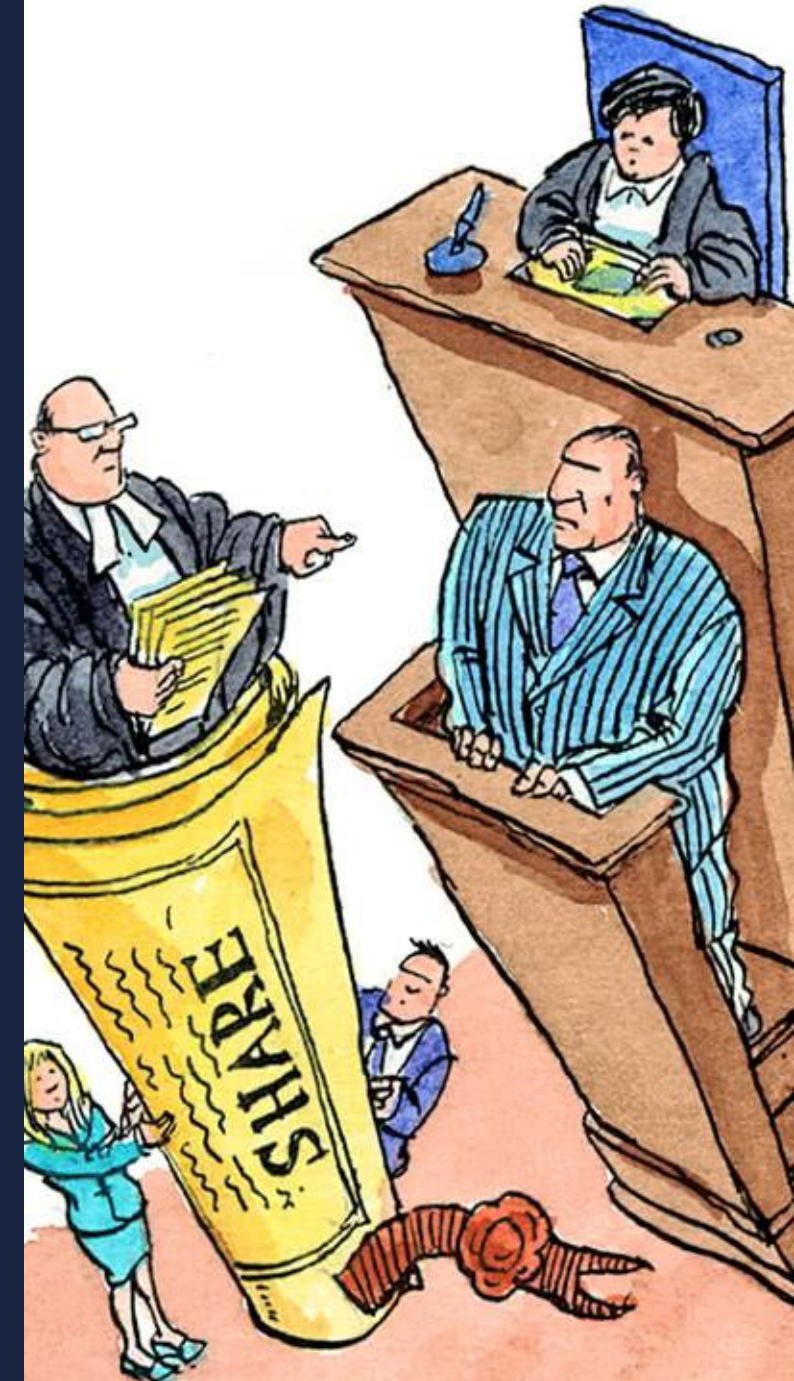
- Difficult for marijuana-related businesses to access banking and insurance services
- No timetable on when (if ever) marijuana will become federally legal
- Prevalent marijuana black market
- No idea how CBD will be regulated
- Hard to predict demand

Disappointed Shareholders Bring Lawsuits



Lawsuits Allege Misrepresentations

- Since October 2018, at least 13 different publicly-traded corporations with an interest in cannabis have been targeted by shareholder lawsuits, including:
 - Cultivators
 - Manufacturers
 - Beverage producers
 - Accessory manufacturers
- Development of cannabis plaintiffs' securities bar



What Laws Underlie These Cases?

1933 Securities Act

- Section 11 - private cause of action for misrepresentations in registered offering documents
 - Common cause of action after IPO
- Concurrent state and federal jurisdiction
- Pseudo-strict liability statute

1934 Securities Exchange Act

- Section 10(b) – implied private cause of action for public misrepresentations
- Requires proof of an intent to commit fraud

What Facts Underlie These Cases?

Uncertainties:

- Legal/regulatory
- Commercial
 - Demand
 - Profitability



Legal/Regulatory Uncertainties

Allegations that companies:

- Falsely represented company was making a CBD drink in Malaysia where such manufacture was punishable by death
- Failed to disclose that new CBD products had not been approved by US FDA
- Misrepresented compliance with Canadian grow regulations

Commercial Uncertainties

Allegations that companies:

- Misrepresented demand for product
- Misled investors about the value of an agreement with a third-party vendor
- Misrepresented company's business prospects

Defenses – 1933 & 1934 Acts

Statements Inherently Not Actionable:

- No misrepresentation alleged
- Forward-looking statements accompanied by appropriate risk disclosures
- Non-actionable opinion
- Puffery

Defenses – 1933 & 1934 Acts

Statements Not Actionable Because Shareholder Knew or Should Have Known:

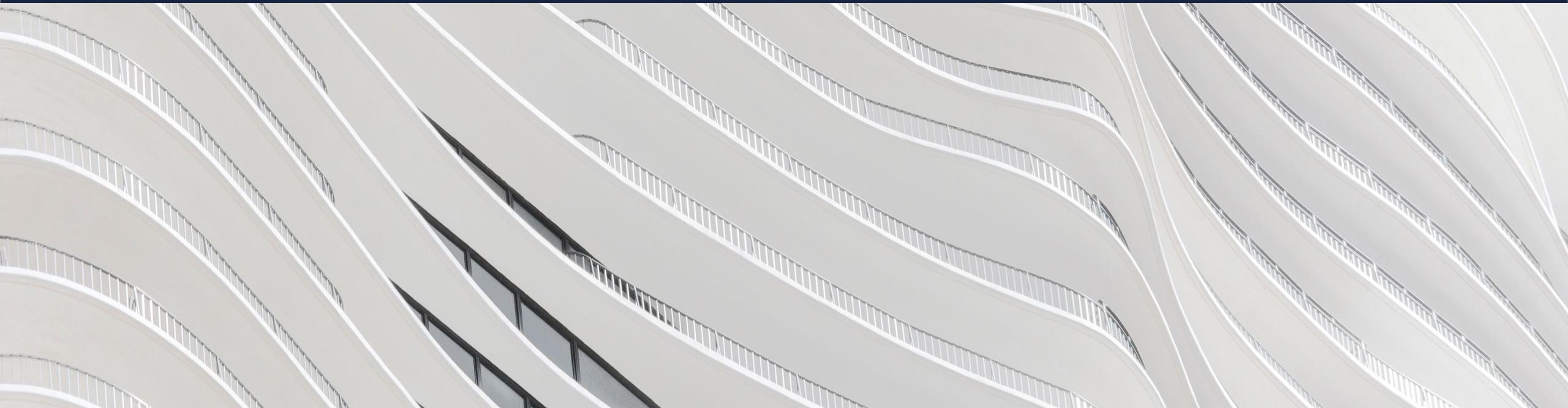
- Company disclosed risk
- Information publicly available (“Truth on the market”)

Defenses – 1934 Act

No Scienter, *i.e.*, No Intent to Defraud

- No motive and opportunity
- No conscious or reckless misbehavior

How is This Playing Out in Court?



Complaint Dismissed

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK
COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

*In re Sundial Growers Inc. Securities
Litigation*

INDEX NO.	655178/2019
MOTION DATE	
MOTION SEQ. NO.	001

DECISION + ORDER ON MOTION

- 1933 Act class action alleging misrepresentation of company in IPO “as a producer of ‘high-quality’ and ‘premium’ cannabis”
- Court found:
 - Puffery
 - Use of “terms ‘high quality’ and ‘premium’ are” non-actionable “puffery”
 - Company disclosed the risk
 - “Robust 35-page risk disclosure section” that was “ignore[d] by the plaintiff,” “utterly refutes” the claims

Pending Motion to Dismiss

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE SUNDIAL GROWERS INC.
SECURITIES LITIGATION

Master File No. 1:19-cv-08913-ALC

This Document Relates To:
All Actions

This Consolidated Action Is Related To:
1:20-cv-03579-ALC

Oral Argument Requested

- Same claims and defendants as NY State Court action
- Added allegation that Sundial overstated estimated revenue in advance of its IPO in order to attract investors
- Motion to dismiss:
 - Forward-looking statement accompanied by appropriate risk disclosures
- Fully briefed

Pending Motion to Dismiss

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re CURALEAF HOLDINGS, INC.
SECURITIES LITIGATION

Case No. 1:19-cv-04486-BMC

ORAL ARGUMENT REQUESTED

- 1934 Act case alleging that company failed to disclose the company's CBD products were not approved by the FDA
- Motion to dismiss:
 - Company disclosed risk
 - Information publicly available
 - No scienter
- Fully briefed

Pending Motion to Dismiss

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EDUARDO ORTIZ, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CANOPY GROWTH CORPORATION,
BRUCE LINTON, MARK ZEKULIN, MIKE
LEE, TIM SAUNDERS, DAVID KLEIN, and
RADE KOVACEVIC

Defendants.

Case No. 2:19-cv-20543-KM-ESK

AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

- 1934 Act case alleging company falsely represented significant demand for product without supporting data
- Motion to Dismiss
 - Forward-looking statements accompanied by appropriate risk disclosures
 - Non-actionable opinion
 - No scienter

Pending Motion to Dismiss

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ALDE-BINET TCHATCHOU, on behalf of
himself and all others similarly situated

Plaintiff

v.

INDIA GLOBALIZATION
CAPITAL, INC., et al.

Defendants

Case No. 8:18-cv-03396-PWG
Hon. Paul W. Grimm

CONSOLIDATED CASE
CLASS ACTION

- 1934 Act case alleging company falsely announced manufacture of CBD drink in Malaysia where such manufacture punishable by death
- Motion to Dismiss:
 - No misrepresentation alleged
 - No scienter

Pending Motion to Dismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

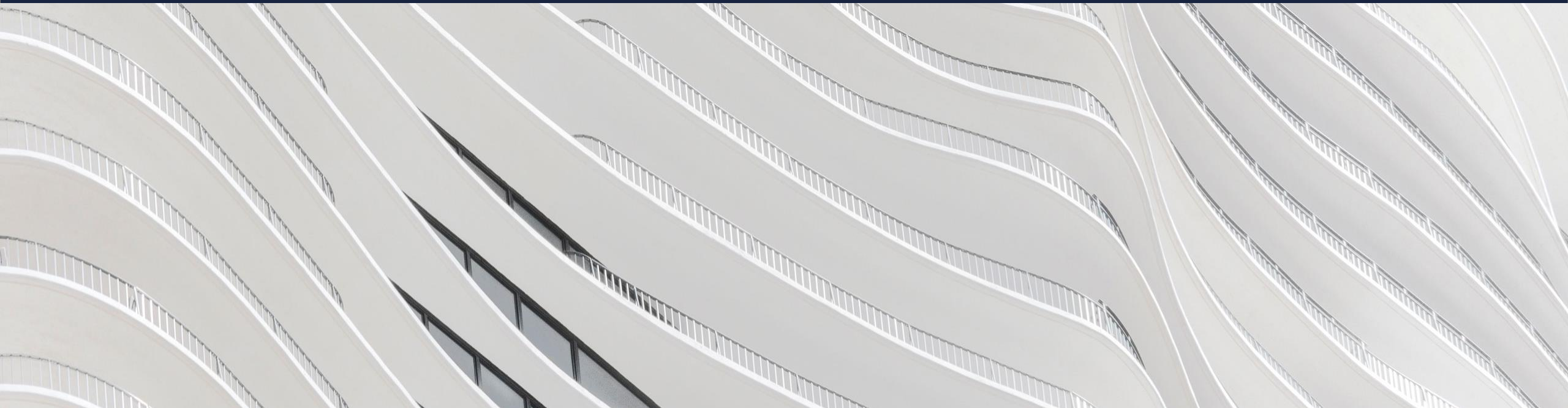
IN RE HEXO CORPORATION
SECURITIES LITIGATION

No. 1:19-cv-10965-NRB (DCF)

ORAL ARGUMENT REQUESTED

- 1933 and 1934 Act claims alleging company misrepresented its business prospects
- Motion to Dismiss:
 - No misrepresentation alleged
 - Forward-looking statement accompanied by appropriate risk disclosures
 - No scienter

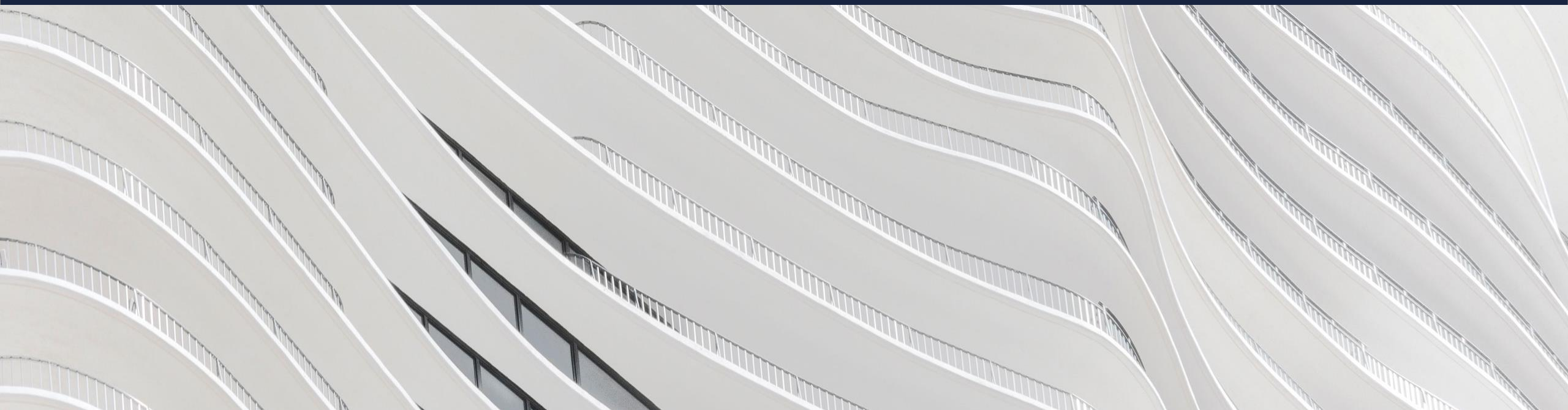
What Have We Learned So Far?



Risk Disclosures Provide Protection

- As with every industry, need for appropriate risk disclosures
- In cannabis industry, need for acknowledgment/warning in public statements of the unusual level of uncertainty:
 - How will the FDA regulate CBD?
 - Will marijuana become federally legal?
 - What is the role of other federal, state, and local regulations?
 - What is the public demand for commercially produced marijuana?
 - What is the role of the black market?

Questions & Answers



Thank you