

Fund Finance Friday



Outside the Lines: A Conversation with Doug Fischer, General Counsel of Greenlane Holdings, Inc.

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Outside the Lines



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In 2019, the U.S. legal cannabis industry generated an estimated \$13.2 billion in sales across all medical and adult-use state markets, according to cannabis analytics firm New Frontier Data. Arcview has estimated that cannabis sales are expected to climb to \$46.8 billion by 2025. This staggering growth is clearly attractive to many investment funds who are eager to get in on the action and many law firms, including Cadwalader, have active cannabis finance advisory practices.

Despite broad investment interest, cannabis remains illegal at the federal level, meaning that many investment funds and banks are hesitant to partake for fear of violating anti-money laundering laws.

Reform does appear to be coming: as of November 2020, cannabis is legal in 35 states and in D.C. for medical and/or recreational purposes, while Canada fully legalized marijuana in 2018, and Mexico looks to follow suit.

This week, we invited Doug Fischer, General Counsel of Greenlane (NASDAQ: GNLN), (arguably) the first ancillary cannabis business to do an IPO on a major U.S. exchange, to discuss this booming industry and some of the associated risks.

Fund Finance Friday: Welcome, Doug, and thank you for “joining” us today. Before jumping into the main discussion, could you please tell us a bit about yourself, and, in particular, how you found your way from Cadwalader to where you are today?

Doug Fischer: My practice at Cadwalader was mostly in the white collar space. Within that practice, I spent a good amount of time working on anti-money laundering matters and controlled substances regulation, both of which are quite relevant to working in the cannabis industry. Around 2013, I saw investor interest in the cannabis industry growing rapidly and recognized an opportunity to apply my knowledge to a new, entrepreneurial space that I truly believe in. I set out to learn more about the industry and develop the right professional network. Cadwalader partner Jodi Avergun was an amazing mentor as I pursued that opportunity. During my time at Cadwalader, my colleagues and I (Jodi, Ira Schacter and others) were fortunate to work with a few clients that were ancillary to the cannabis industry. Working with those clients confirmed my beliefs that cannabis was about to go mainstream and that I would enjoy working in the industry. In 2017, I left Cadwalader to join a cannabis regulatory technology startup that had been a client. I stayed at that position for about a year and a half before moving into my current role.

Could you tell us a bit about Greenlane and your role there as GC?

Greenlane is the leading global platform for the development and distribution of premium cannabis accessories and lifestyle products. Our offerings include vaporizers, glass, child-resistant packaging, rolling papers and lifestyle goods.

We distribute both Greenlane's owned brands and third-party brands to over 11,000 retail locations. Greenlane's owned brands include Pollen Gear child-resistant packaging, the K.Haring Glass Collection by Higher Standards, Marley Natural, and VIBES rolling papers. Additionally, we're the distribution partner of choice for many other industry-leading brands, including PAX Labs, Storz & Bickel (Canopy-owned), Cookies, Gresco Science and DaVinci. We also own and operate Higher Standards retail stores in New York City's Chelsea Market and Malibu, California, as well as Vapor.com and VapoShop.com, two industry-leading, direct-to-consumer e-commerce platforms in North America and Europe, respectively.

Like most GCs in heavily regulated industries, compliance is a top priority. I view compliance as both a challenge and an opportunity. Obviously, it's a lot of work to keep up with regulations that shift almost daily. But each novel situation also presents an opportunity – Greenlane gains a big business advantage every time we figure out how to engage in new activities or bring new products to market compliantly. M&A is another priority. There's a rapid consolidation taking place in the cannabis industry, and Greenlane intends to be active. Finally, intellectual property has taken on an increasing importance to Greenlane and the industry as a whole. As Greenlane rolls out new, differentiated products and brands, we need a strong IP portfolio to protect our business. The rest of my time is spent dealing with all the issues you'd expect for a company of our size, including securities and corporate governance, commercial contracts, employment, litigation, insurance and data privacy.

I note that Greenlane went public in 2019. What issues did you face during the IPO given where the law currently stands? Did you "pave the way" for other cannabis businesses going forward, or were you able to "piggy-back" on any precedent?

The stock exchange and our underwriters had to be comfortable that Greenlane complies with applicable laws. We were fortunate that all the parties involved truly saw the opportunity in the space and wanted to learn about the legal landscape for ancillary businesses in light of cannabis itself still being a controlled substance. We were fortunate to have great advisors that helped educate everyone involved.

I wouldn't use words like "pave the way," which I reserve for the activists and other leaders who have fought to end the war on drugs. But Greenlane's listing on Nasdaq was certainly a step forward for the cannabis industry's ability to access the capital markets. I've heard from a number of lawyers who have looked at our IPO as a precedent for ones that followed.

What are the main issues you face when dealing with other stakeholders in the cannabis space, and how do you combat them? For example, is credit card processing a challenge and is crypto-currency relevant to your business?

A lot of vendors try to charge what we refer to as a "cannabis tax" for all sorts of services from merchant processing to insurance. These fees are sometimes a result of additional perceived risk by the vendor or additional costs for their compliance procedures, but other times they're simply opportunistic. When we come across these issues, there's always an educational component in showing that Greenlane is a consumer packaged goods company in the cannabis space, rather than a cannabis company. We've been largely successful in avoiding the "cannabis tax" because of our scale and our approach to compliance.

Another concern is that service providers like merchant processors or banks may abruptly decide they want no connection to the cannabis industry, no matter who the client is. The only way to address that risk is through preparation. Businesses in the cannabis industry should always have backup plans.

I feel strongly that crypto-currency is the wrong solution for the cannabis industry. To continue gaining political support and legitimacy, the industry needs to be transparent. Crypto-currency is antithetical to that objective. I certainly understand its appeal, especially to people with experience in the legacy market (*i.e.*, prior to state legalization), but it's the wrong solution now.

How are other businesses in the cannabis industry, practically speaking, navigating the legislative gap between federal and state treatment?

It depends on the type of business. For a business that cultivates, processes, or sells cannabis, there's no getting around federal law. "Plant-touching" businesses must be vigilant about compliance with state laws and federal enforcement priorities. For ancillary businesses, it's a much more complicated issue and really depends on the nature of each business. Each business must look at what it can do to ensure it's not participating in or enabling a violation of federal enforcement priorities, which range from preventing gun violence to ensuring minors don't access cannabis. For example, in Greenlane's case, we have controls to ensure we only sell empty vaporizer hardware to businesses

that are licensed in good standing with their state regulators. Financial institutions probably have the biggest challenge as they try to meet their BSA obligations with only vague guidance on how to satisfy their regulators.

I understand that legislative reform in this industry, at least federally, is slow-going. What developments do you see on the horizon? In your opinion, does the new administration represent an opportunity to advance policy in this area?

I wouldn't necessarily characterize it as slow-going, given the massive progress at the state level. Just this year, legalization ballot initiatives were successful in five states, including adult-use legalization in New Jersey and Arizona.

But you're of course correct that reform has been slower at the federal level. The incoming administration has a mixed record on cannabis. While I expect them to continue the government's hands-off approach to state legal cannabis and make progress on criminal justice policies, I'm not confident that cannabis will be a top priority either. The bigger thing to watch is control of the Senate. Legalization and banking reform both have support in the House. But, so far, Republican leadership has not shown an inclination to let those proposals see a vote in the Senate. If the Democrats gain control of the Senate, we might very well see progress. Even if they don't, banking reform remains achievable, given the growing bi-partisan consensus that banking the cannabis issue is a matter of public safety.

Are you seeing an increased appetite of investment funds in this space, and if so, how are they participating?

Yes. We're seeing increased investor appetite in both the public and private markets. In recent quarters, U.S. multi-state operators (*i.e.*, "plant-touching" businesses) have been growing rapidly as they begin to achieve scale. This, combined with continued legal reforms, has really increased investor appetite. Many funds are lending to cannabis businesses, as more traditional forms of credit remain unavailable to most companies in the industry. Other funds are taking equity stakes in both private and public cannabis companies. Just last week a very substantial deal was announced by which a SPAC acquired multiple California-based cannabis brands in one string of transactions, with Jay-Z announced as the Chief Visionary Officer of the newly combined company.