

ENTREPRENEURIAL RISK: MARIJUANA, COMPLIANCE, AND THE SOCIAL CONSTRUCTION OF LAW AND MARKETS

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ABSTRACT:

The schism between federal criminalization and state legalization of the marijuana industry provides a unique opportunity to examine entrepreneurial risk in an emerging market. Marijuana introduces a kaleidoscope of compliance issues including conducting due diligence in mergers and acquisitions, drafting contractual choice-of-forum clauses, engaging in tax planning to garner tax-exempt status, and arranging financial matters so as to sidestep federal money-laundering laws. In these, and many other scenarios, the marijuana entrepreneur must assess the economic risks associated with an exceedingly dynamic legal environment. These assessments ultimately involve educated guesses, many of which motivate ethical considerations.

This article seeks to contribute to the emerging field of corporate legal strategy. That literature typically employs the language of compliance and financial risk management. It also typically assumes that the law embodies a singular command that must be obeyed. Ethical and social responsibility issues arise only after legal obligations have been met, as legitimate economic gain can only be made through lawful means. Yet, the sudden birth of a quasi-legal marijuana industry illustrates that both legal obligations and economic opportunities must be socially constructed by the entrepreneur. Neither law nor markets exist in the abstract; each has meaning only in its evolving manifestations. The responsible entrepreneur recognizes this and injects ethical reflection into the social construction of compliance issues. This article explains this social construction, drawing from legal philosophy, ethical philosophy, and neoclassical economics to advance a vision of ethical compliance with evolving law.