

**Testimony of Mr. John Lord, CEO and Owner of LivWell Enlightened Health
Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs
Challenges for Cannabis and Banking: Outside Perspectives
July 23, 2019**

Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you for providing me the opportunity to share my perspective on the issue of banking in the cannabis industry. It is truly an honor. My name is John Lord and I am the owner and CEO of LivWell Enlightened Health, a vertically-integrated cultivator, manufacturer, and retailer of cannabis products under the laws of Colorado. LivWell is one of the largest cannabis companies in Colorado, with more than 600 employees and approximately \$100 million in annual revenue. Yet because of the current status of the law, we are forced to operate as an all-cash business.

Overview of LivWell, CTF, and the Cannabis Industry

I am here today representing not only LivWell but also the Cannabis Trade Federation, for which I am currently the chair of the Board of Directors. CTF is a national coalition of cannabis-related businesses dedicated to professionalizing, diversifying, and unifying the cannabis business community. Our members are some of the most successful and responsible operators in the U.S. cannabis market today, generating billions of dollars in sales while navigating and complying with regulations that are not only comprehensive in scope, but vary significantly from state-to-state. Our board is comprised of companies that cover the full range of the cannabis supply chain. We also have ancillary companies that focus on technology and others that provide supplies, such as Scotts Miracle-Gro, which launched a cannabis-focused subsidiary, Hawthorne Gardening Company, in 2014.

Our industry has experienced a remarkable transformation over the past decade. What started with caregivers and cooperatives primarily providing raw flower products to qualifying patients has now evolved into an industry that provides an incredibly broad range of products to millions of patients and non-patients alike. Altogether, 33 states, the District of Columbia, and numerous U.S. territories have passed effective medical cannabis laws and 11 of those states, DC, and two territories have made cannabis legal for all adults. Nationally, the Marijuana Business Daily's Annual Fact Book estimates state-legal cannabis sales will exceed \$12 billion in 2019. Included in that overall sales figure are flower products; oils for vaporization; edible products, such as fine chocolates and infused beverages; topical products, from salves to lotions to transdermal patches; and other products, like tablets, capsules, and tinctures. Our company alone now has 19 stock keeping units (SKUs) on the production side and close to 400 SKUs available overall at our retail outlets. For those of you who have not seen the cannabis market in person and only have imagined what it is like, I strongly encourage you to visit Colorado to see it for yourself. You will see that while cannabis is a truly unique product, the industry itself operates like any other industry.

Before telling you more about my experience at LivWell, I wanted to share a bit about my background as a businessperson. As you may have detected, I was born in New Zealand where I was a dairy farmer until I found the next chapter of my professional life. I moved into importation, manufacturing and wholesale of child safety seats and baby products, ultimately selling my products in over 30 countries, including the United States. I moved to Denver, Colorado, in 1998 as I began sales to Walmart, Toys R Us, JC Penny, among other retail outlets. With the commute from New Zealand being challenging and because I love the United States, I became an American citizen

in March 2007. My company prospered, and in 2008, I sold it to a public company. However, I quickly found I was not suited to retirement and began looking for my next venture just as the medical cannabis industry was getting off the ground in Colorado. With my experience in manufacturing, compliance, and warehouse management, I believed I could succeed by applying my general business acumen and by bringing professionalism to this new field.

The past decade has been an adventure to say the least. In many ways, my company and the industry have grown up together. In 2009, we began with a small warehouse for cultivation and opened a dispensary under the provisions of the Colorado Constitution, serving the medicinal needs of a few hundred medical marijuana patients. In 2010, state policy makers decided that the system needed to be regulated and controlled, and the Colorado General Assembly passed the world's first law to establish an open but regulated market for the production and sale of cannabis products. I was very supportive of that law and embraced the opportunity to expand our operations in strict accordance with the rules and regulations established by the state. We gradually increased our cultivation space and opened additional dispensaries across the state. After the voters of Colorado legalized cannabis for all adults in 2012, our facilities became dual-use – for both medical and what we call “adult-use” cannabis – in 2014. Today, we manage 15 retail stores in Colorado with each store averaging close to \$20,000 per day in transactions and serve approximately 4,500 people per day.

The Impact and Challenges Current Federal Banking Laws Place on LivWell and Other Companies Operating in The Cannabis Industry

But our evolution as a company has not always been smooth. And the greatest reason for that is the lack of reliable access to traditional banking services. Due to the dichotomy between state and federal laws, banks and credit unions have been reluctant to serve cannabis businesses or have refused to do so altogether. In some cases, banks that were willing to work with cannabis companies were discouraged or prevented from doing so by their regulators. As a result, we have frequently struggled to obtain and maintain bank accounts with egregiously high fees. At one point, the amount of cash we had on hand created such a security issue that I rented out a former bank building just so that I could use the vault to store cash. Another time, I had no choice but to travel to the Internal Revenue Service office in Denver with more than \$3 million *in cash* in order to send the federal government our taxes from our state-legal cannabis business. It took more than three hours for them to count it all! Due to the large volume of cash coming in from the industry overall, the Denver IRS office actually had to modify the openings in their teller windows and purchase money counters.

Over our 10 years of operations, we have had accounts closed at over a dozen financial institutions. As you can imagine, this is incredibly disruptive. Imagine running a manufacturing, wholesale, and retail operation with hundreds of employees and having to make all payments, including payroll, in cash. It is difficult and, frankly, it is dangerous. This is something hundreds, if not thousands, of state-legal cannabis companies have had to struggle with. And not just business accounts are affected. Financial institutions often close personal accounts of owners and even the accounts of family members. I have had personal accounts closed, along with my senior staff, as well as mortgages and car loans denied. In addition, my Chief Financial Officer served on a regional bank's board of directors, and due to his association with LivWell, was asked to resign.

While our company now has a more stable banking relationship, we are still far too dependent on cash. The status of cannabis and banking at the federal level has resulted in credit card companies

refusing to process transactions for cannabis stores. So we are forced to take cash from customers and then have that cash collected by armored car so that it can be deposited with our bank. There are risks and hazards throughout this process. And, of course, this situation is not unique to our company. It affects every cannabis business in the country. Although the required security systems and equipment at cannabis facilities are extensive, we still must worry about theft and armed robberies. During one such robbery attempt in 2016, a security guard at a dispensary in Aurora, Colorado, who was a Marine Corps veteran, was shot and killed. Passage of the SAFE Banking Act could prevent similar tragedies from occurring in the future.

I would note that the news about cannabis banking is not all bad. Notwithstanding the fact that the Department of Justice rescinded several memoranda regarding cannabis enforcement in January 2018, the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has maintained its 2014 guidance titled "[BSA Expectations Regarding Marijuana-Related Businesses](#)." As FinCEN explained, the "guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities." Of course, from a law enforcement perspective, this makes eminent sense as it is always easier for law enforcement to detect illicit activity if the proceeds of that activity are run through the regulated banking system. Under the FinCEN guidance there has been a steady increase in the number of financial institutions serving cannabis businesses. Data released by FinCEN last month showed that more than 633 financial institutions had filed marijuana-related suspicious activity reports in the first quarter of 2019, indicating some level of interaction with the industry. This was an increase of more than 50 percent over the end of the first quarter of 2018.

But this access to financial institutions comes at a steep cost. As I mentioned above, due to the significant compliance costs associated with serving cannabis customers under existing policies, financial institutions charge cannabis businesses substantial monthly fees. Our company pays in excess of \$3,000 per month for the mere privilege of having an account. The current situation is especially challenging for small businesses. While we, due to our size, are able to absorb the additional costs associated with cash management and exorbitant bank fees, many small businesses are not. Furthermore, resolving the banking issue could significantly aid cannabis businesses in securing business loans. This is critical to small business owners who may not have access to other sources of capital. It should be noted that these small businesses are also being squeezed by Section 280E of the Internal Revenue Code, which prevents all cannabis companies from deducting standard business expenses when they calculate their taxes. If there is any hope in helping small businesses – including minority- and women-owned companies – survive and thrive, we must fix the banking situation and amend Section 280E so that cannabis businesses are taxed like any other business.

Thank you again for inviting me here today. I look forward to answering your questions.