

[Banking and Finance Law Daily Wrap Up, TOP STORY—D. Colo.: Did marijuana business credit union plan go up in smoke?, \(Jan. 6, 2016\)](#)

Banking and Finance Law Daily Wrap Up

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By [Richard A. Roth, J.D.](#)

A federal district court judge has declined to order the Federal Reserve Bank of Kansas City to do business with a credit union that intends to serve marijuana-related businesses because a court's equitable powers cannot be used to assist criminal activity. As a result, the Kansas City Fed can refuse to open a master account for The Fourth Corner Credit Union ([Fourth Corner Credit Union v. Federal Reserve Bank of Kansas City](#), Jan. 5, 2016, Jackson, R.).

The problem arose from a conflict between federal and Colorado laws on controlled substances. Federal law generally prohibits possessing or distributing marijuana; on the other hand, the state's constitution permits adults to use marijuana for recreational purposes and also permits related businesses to operate. Many banks refuse to provide services to marijuana-related businesses because the businesses are illegal under federal law, which can force the businesses to operate on a cash-only basis. According to the judge, this has caused safety concerns for employees and for the public, and it also has made regulation and tax collection more difficult.

In an effort to address the problem, a credit union was chartered in Colorado with the intent of providing banking services to marijuana-related businesses under an anti-money laundering program that would be stringent enough to satisfy Bank Secrecy Act guidance issued by the Financial Crimes Enforcement Network. Once it was chartered, Fourth Corner applied to the Kansas City Fed for a master account.

Need for master account. A master account is the vehicle used by an FRBank and a depository institution to keep track of their financial obligations to each other, including the calculation of opening and closing balances. Overnight and daylight credit are managed through a master account, and a depository institution must have access to a master account—its own or an account of another institution—to engage in electronic fund transfers. As the judge said, "Simply put, without this access The Fourth Corner Credit Union is out of business."

The Kansas City Fed refused to open a master account for Fourth Corner.

No ability to order an account. Fourth Corner asserted that the Kansas City Fed was obligated to open a master account based on a federal law that provides, in part, that "All Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions . . ." (12 U.S.C. §248a(c)(2)). The judge agreed that the statute was relevant, but added that it could not be interpreted to require the opening of an account that would facilitate federal crimes.

Fourth Corner's promise to provide banking services only in accordance with federal law did not help, the judge continued. FinCEN's guidance and an accompanying memorandum did not purport to change federal laws on marijuana; in fact, they conceded that marijuana-related activities remained illegal.

The guidance and memo, at most, "suggest that prosecutors and bank regulators might 'look the other way'" if banks chose to facilitate the illegal activities of marijuana-related businesses. However, "A federal court cannot look the other way," the judge said. A court's equity powers simply could not be invoked to protect an illegal business.

The case is [No. 15-cv-01633-RBJ](#).

Attorneys: Gabrielle Z. Lee (Mason Law Firm, PA) for The Fourth Corner Credit Union. Benjamin Ira Kapnik (Wheeler Trigg O'Donnell, LLP) for Federal Reserve Bank of Kansas City.

Companies: The Fourth Corner Credit Union

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