

Alcohol Industry & Regulation Overview

Center for Alcohol Policy Forum

Arkansas State Legislature

Little Rock, Arkansas

November 18, 2021

Your Presenters

Patrick Maroney

Former Director: Colorado
Liquor Enforcement Division

President: Maroney Consulting
Services



Paul Pisano

Senior Vice President of
Industry Affairs and
General Counsel

National Beer
Wholesalers Association

Topics to Cover

History of Alcohol Regulation

Industry Regulation to Achieve Public Health Regulation

Challenges (legal and practical) to alcohol regulation

Impacts of Alcohol Regulation

Federal Alcohol Regulation

Takeaways

- 50 different alcohol markets...by constitutional design
- States are the lead, feds are backup guitar
- Higher alcohol products get and deserve more regulation
- There are real and continuing public health problems with alcohol's use and misuse
- The efforts to prevent the pre 1933 alcohol industry from reforming have been successful but economic forces are trying to collapse the tiers.

PROHIBITION ENDS AT LAST!

DECEMBER 5, 1933



Utah Deciding State for 21st Amendment



Timeline of Changes

Early years of country, regulate and taxation of alcohol important part of federal treasury... Whiskey Rebellion put down by President George Washington

1800's changing nature of USA... Rise of prohibition forces

1918 18th Amendment Passed

1933 21st Amendment Passed

1935 Federal Alcohol Administration Act passed

Since 1933 Thousands of state law changes

21st Amendment

The 21st Amendment to the Constitution of the United States

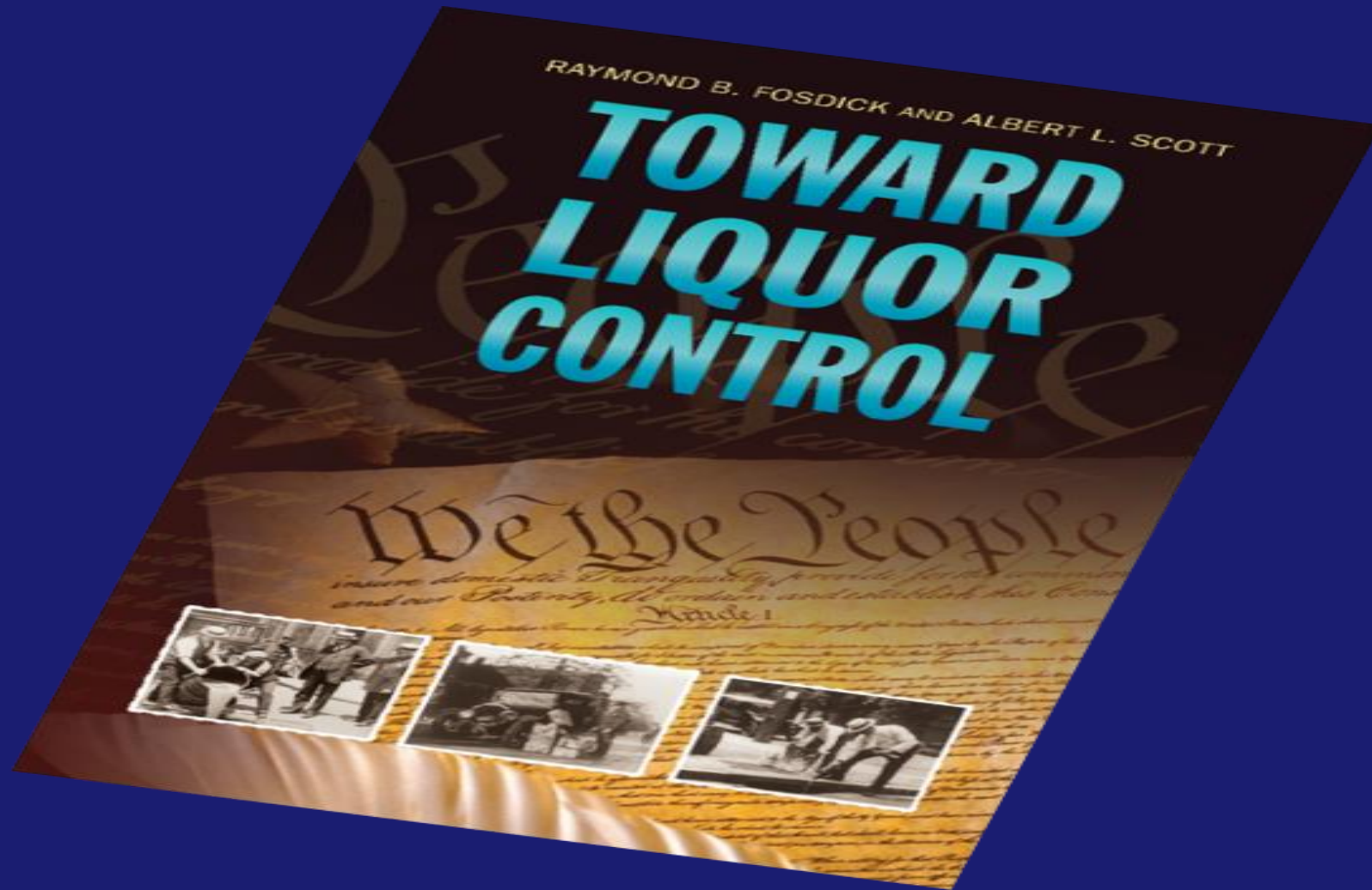
Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

submitted in 1932 - approved in 1933

The Road Map for Alcohol Regulation



Highlights of Toward Liquor Control

Higher Strength Alcohol Needs More Regulation

State Stores to Sell Alcohol, Regulate Industry Intensely

Don't Raise Taxes Too Much, Drive Out Black Market

On and Off Premise Need Different Regulations

Background

The three-tier system was born shortly after the end of prohibition – mostly designed to keep alcohol sales to consumers from monopolistic entities.

Toward Liquor Control – 1933 report that provides an in-depth analysis of the best methods of starting alcohol sales once Prohibition was repealed. (Republished by the Center of Alcohol Policy in 2011)



Background (cont.)

Two styles of alcohol sales for states were developed:

License States – local/state agencies would issue a liquor license for private companies after due diligence.

Control States – state agencies sell alcohol (mostly liquor)



Background (cont.)

The three tiers of alcohol sales was developed:

- ✓ Manufacturer
- ✓ Wholesaler
- ✓ Retailer



Each is separate and distinct.

Three-tier System Benefits For the Regulator



- ❖ A proven regulatory system that monitors licensing, sales, and compliance with liquor laws
- ❖ Checks and balances to reduce counterfeit alcohol sold to consumers
- ❖ Equal access for all manufacturers to the marketplace that promotes competition and variety of choices for consumers





Three-tier System Benefits For the Regulator

- ❖ Allows for the most efficient collection of alcohol taxes
- ❖ Prevents the monopolization of the alcohol industry and
- ❖ Boosts consumer confidence in the quality of alcohol products



Regulatory system



Local and state agencies can monitor all facets of alcohol sales through regulations that:

1. Issue licenses
2. Track sales
3. Monitors consumption
4. Have the authority to revoke such privileges if abused





Reduces Counterfeit Alcohol

Alcohol sales follow the three-tier system

Manufacturer » Wholesaler » Retailer

At each stage, records are kept to prove movement through the three-tier system and these records are available to regulators for compliance reviews





Reduces Counterfeit Alcohol

Wholesalers are one key to the discovery of counterfeit alcohol

Since retailers have to purchase from wholesalers, any other sales would be suspicious and out of place





Equal Access to Market

With three separate tiers, a large manufacturer is not able to dictate what products are sold to retailers, thus allowing start up companies to entire the market and sell their product

Cola v. craft beer: Compare how craft beers are on the shelf compared to cola products





Collection of Taxes

Most excise taxes are collected by wholesalers who are independent of either other tier

Removing the middle tier would open up the alcohol industry to tax evasion since no independent entity is involved





Prevents Monopolization

Similar to the concept of equal access to market, three-tier laws are designed to prevent a supplier from influencing the product selection of the retailer.

- ✓ Pay to play schemes
- ✓ Slotting fees
- ✓ Free items





Boost Consumer Confidence

Consumers are assured the product they are purchasing is safe to consume

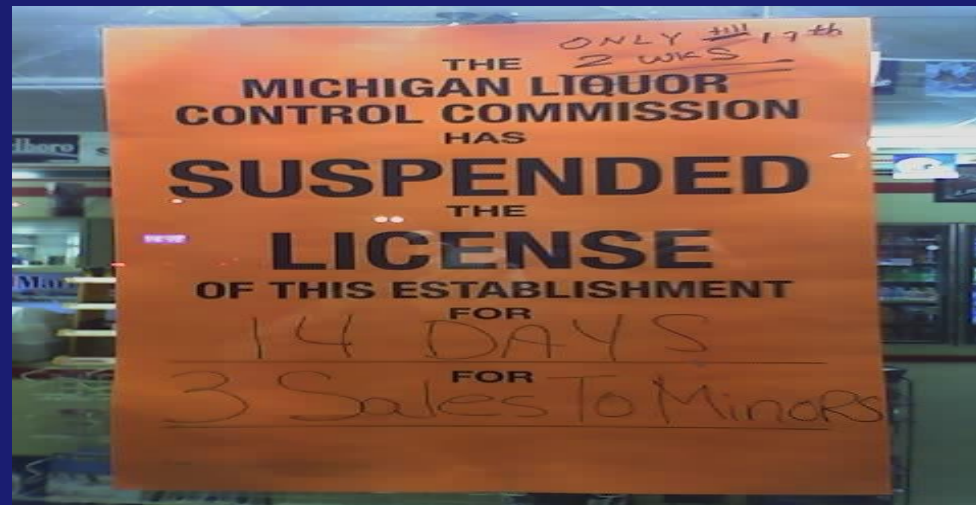
Counterfeit products are rare in the United States due to the three-tier system

Recalls are easily tracked and removed for public safety



America Has Always Regulated the Alcohol Industry to Achieve Public Health Goals

- The alcohol industry is based on INDUSTRY REGULATION, not Self-Regulation.
- DUI, underage drinking issues are modern complements, not replacement to industry regulation



Industry Regulation & Public Health

■ Industry Regulation

- Aggressive Sales Systems
- Fair Competition
- Gangsters
- Corruption of police
- Poisonous Products

■ Public Health

- Nearly 100,000 people a year die due to alcohol per CDC
- 2.8 million life years lost
- Millions of stories of harms or lives impacted
- 1/3 of Americans don't drink alcohol per Gallup annual survey. Unchanged in 80 years. (but they vote)

Industry Regulation

- Only those with licenses/ permits allowed to engage in alcohol commerce
 - Those without license...bootleggers, speakeasy, etc.
- State regulates the terms and conditions on these licenses to serve various public goals: health, taxation, competition
- Failure to comply with laws – lose ability to engage in business
- Regulate the safety of manufacture, the number of retailers, their locations, the distribution and interrelations between the tiers (trade practices/franchise)

Public Health

There is no Federal **Booksellers** Administration Act or State Tied House law for cheese... Alcohol is the issue.

CDC, NIH, HHS, SAMHSA, state departments of health have billions of dollars of research and concerns about the misuse and abuse of alcohol.

Alcohol regulation was not set up as an economic development issue

The Only Constant In the Alcohol Industry Is Change ... And Griping About Regulation



Alcohol Is NOT the Most Regulated Industry



Or Try Opening One of These



No Entry Exams For Participants



Don't Be A Criminal

WANTED!



REWARD

Some Common Laws- Tied House

Separate Retailers from Producers/ Wholesalers:

“The ‘tied house’ system had all the vices of absentee ownership. The manufacturer knew nothing and cared nothing about the community. All he wanted was increased sales. He saw none of the abuses... A license law should endeavor to prohibit all such relations between the manufacturer and the retailer, difficult as this may be.”

Toward Liquor Control

All About Independence

- Three Tier Laws Assign Separate Responsibility and Independence to each function: Supplier, Distributor, Retailer
- Tied House Laws Keep Suppliers and Wholesalers From Impacting the Independence of Retailers
- Franchise Laws Keep Suppliers and Retailers from Impacting the Independence of Distributors

So Is It Working?

No Three Tier



Independent Three Tier



On Premise – Non Alcoholic



On Premise – Beer





Soda Aisle is 71' Long

Coke takes up 37' of the
soda aisle! 52% of space

Pepsi takes up 30' of the
soda aisle! 42% of space

Soup Aisle is 61' Long

Progresso = 22 Feet



Campbell's = 31 Feet



Beer Aisle is 71' Long



245 Consumer choices in the cold box.

18 Stacks along the cooler for consumers.

Federal Alcohol Regulation

1917/1935 Webb Kenyon Act

Amended in 2000 “21st Amendment Enforcement Act”

1935 Federal Alcohol Administration Act

Only change at federal legislative change is Senator Strom Thurmond’s warning labels addition in the 1980’s

STATES ARE THE LEAD HORSE

Federal Alcohol Administration Act

Legislative purpose to support the 21st Amendment, collect revenue, enforce postal laws, promote competition

Regulate by permits. Promote independence of other tiers.

Breweries and Retailers do not have to get federal permits

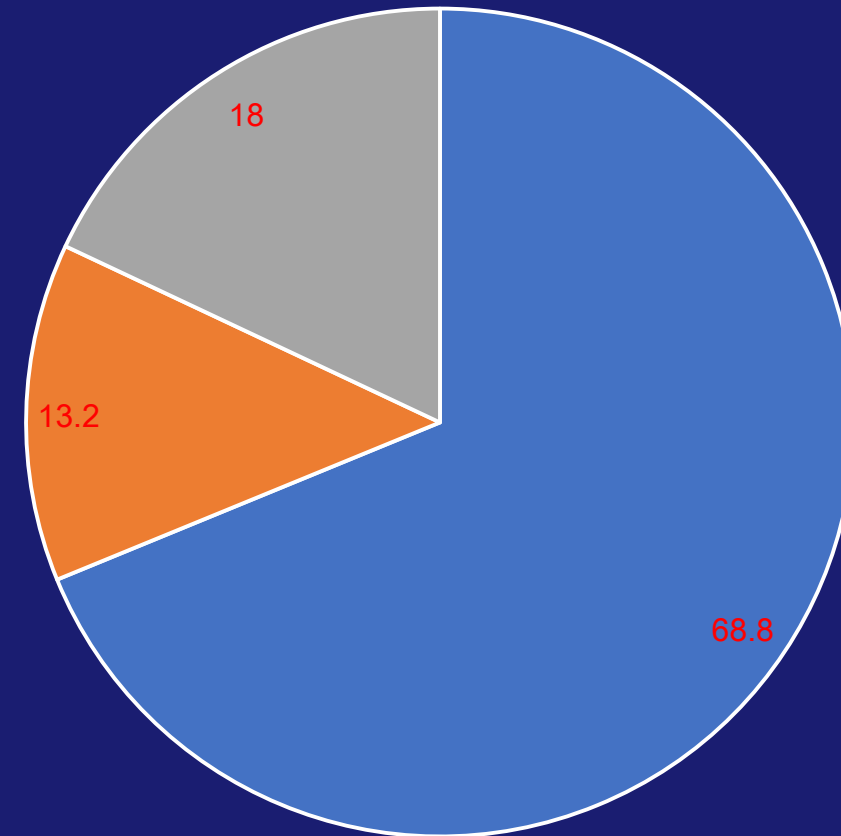
Other parts of FAAA on beer laws require “similar state law” in order for federal law to kick in

Fighting Over the Smaller Piece of Pie

Beer Market Share

Over 12,000
Breweries

Craft is 13 percent



■ Domestic ■ CRAFT ■ IMPORT

Number of State Alcohol Laws Changed Since 2012

1,923 Laws

Reality Check: Alcohol Laws Are Changing

- The way alcohol is sold in America is different in 2021 than it was in 1979.
- And it will likely be different in 2049.
- However, the infrastructure of three-tiered distribution and local control have created growth for all levels and created consumer satisfaction.
- Modern changes are often disguised as “consumer friendly” or “economic development” but are merely efforts to grab more margin.

Litigation

• District Court



- *Tannins v. KY* (Compliant Dismissed, appeal expected)
- *Lebamoff v Rauner (IL)*
- *Anvar & Drum v. RI* (Motion to dismiss denied)
- *Derek Block v. Ohio Liquor Control* (Partial motion to dismiss)
- *Freeman v. Murphy (NJ)*
- *Thewinetobuy.com LLC v. Cocca (AZ)*
- *Southern Wine v. Harrington (MN)*

• Court of Appeals



- *B-21 Wines v. Stein* (Appeal to 4th Cir. under way)
- *Chicago Wine Company v. IN ATC* (Appeal to 7th Cir. Under way)

• Supreme Court

- *Sarasota Wine v MO* (Court declined)
- Other appeals from 5th and 6th Circuits rejected

Sign up: www.alcoholawreview.com

The screenshot shows a web browser window with the URL alcoholawreview.com. The page features a dark blue header with navigation links for "About" and "Contact", and a search bar with the placeholder text "TYPE HERE TO SEARCH" and a "Search" button. Below the header is a large banner image of a gavel with the "ALCOHOL LAW REVIEW" logo and title centered. The main content area is divided into three columns. The left column, titled "Browse All Topics", contains a vertical list of categories: "All", "21st Amendment", "Alcohol Regulation", "Antitrust", and "Equal Protection". The middle column features a featured article titled "Supreme Court Declines to Review 8th Circuit Ruling for Missouri on Retail Shipping Case", dated "October 12, 2021" and authored by "admin". The right column is titled "Sign Up for New Posts" and contains three input fields for "Email Address*", "First Name", and "Last Name".

Alcohol Law Review

alcoholawreview.com

Apps Public Access to Co... Imported From IE Log In < Alcohol La... Imported

About Contact TYPE HERE TO SEARCH Search

ALCOHOL LAW REVIEW

Browse All Topics

- All
- 21st Amendment
- Alcohol Regulation
- Antitrust
- Equal Protection

Supreme Court Declines to Review 8th Circuit Ruling for Missouri on Retail Shipping Case

October 12, 2021 admin

The Supreme Court today issued its order list from its October 8 conference. The certiorari petition sought to have the court overturn

Sign Up for New Posts

Email Address*

First Name

Last Name

Center for Alcohol Policy

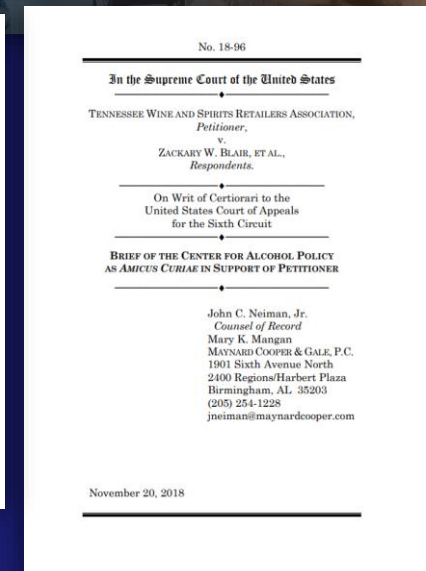
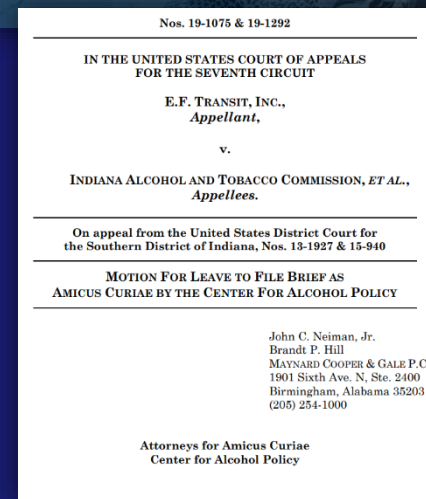


Resources: Center for Alcohol Policy

- Annual Alcohol Law and Policy Conference
- White Papers
- Amici



Sunday, August 29 - Tuesday, August 31, 2021
Hyatt Centric Chicago Magnificent Mile, Chicago, IL



Resources: Patrick Maroney



Maroney Consulting Services, LLC
303-710-3424
Patrick@MaroneyConsulting.com

Distributor's Checklist

This checklist provides a guide on some issues and topics to cover with regulators during a meeting or inspection at your business. A physical visit can be invaluable to help demonstrate why your processes and records are better for state regulation than trying to remotely regulate a business several states away:

- Provide a tour of your facility to show:
 - ✓ The physical outline of the licensed premises to ensure product does not leave (specifically important if more than one licensed premises is located within the same warehouse)
 - ✓ Where items are received, what paperwork/system accompanies deliveries in and out of the warehouse
 - ✓ How items are tracked and counted
 - ✓ Where items are considered to be "come to rest"
 - ✓ Where returns are processed
 - ✓ Where items are packaged and prepared for shipment to retailers
 - ✓ How out-of-code product is pulled from retail accounts, replaced at distributor's cost, and subsequently destroyed.
- Meet with accounting & sales staff to discuss:
 - ✓ How excise tax is determined
 - ✓ Process for payment of excise tax to state and federal government agencies
 - ✓ Where and how long are tax and sales records retained

A Guide Through Alcohol Policy & Regulations

JUNE 2021 PREPARED BY
Patrick Maroney



MARONEY
CONSULTING
SERVICES, LLC



Maroney Consulting Services, LLC
303-710-3424
Patrick@MaroneyConsulting.com

Regulator's Checklist

This checklist provides a guide on some issues and topics to cover with distributors during a meeting or inspection at the distributor's warehouse. The regulator should consider how in-person, physical inspections help the state better achieve its regulatory goals:

- Prior to the inspection
 - ✓ Confirm validity of the distributor's license
 - ✓ Review diagram of licensed premises
 - ✓ Review file for ownership structure
 - ✓ Review territory or franchise agreement
 - ✓ Review brand registrations/label approval of products the distributor carries
 - ✓ Review previous enforcement/administrative action taken against the distributor
 - ✓ Review records from companies that provide payment systems between distributors and retailers
 - Look for credits
 - Look for payment timelines (do they meet the credit terms, COD, etc.)
- Visit the Distributor:
 - ✓ Tour the facility (you may want to tour the facility at different times to view the areas for receiving, packaging the loading for deliveries):
 - Is all of the alcohol product stored properly? (within licensed premises)
 - Do a spot check on randomly selected or high-profile alcohol products to ensure the alcohol products are registered properly and have approved labels
 - How are the incoming products (from suppliers) counted for tracking and excise tax purposes?
 - Does all alcohol products come to rest within the licensed premises?

Departing Thoughts

- Consumers Win- Unrivaled Selection
- Brewers Win: 10,000+ and growing
- Voters Happy: 87% of Americans Support Current System
- You care about the U.S. Constitution- Support state alcohol regulation
- You care about public health: Support ability of states to regulate
- Embrace the regulation of our industry to support public health, competition and consumer choice

Three Tier Is Like Cheese



Questions?



Thank You

Paul Pisano
National Beer Wholesalers
Association
1101 King Street
Suite 600
Alexandria, VA 22314
(703) 370-2256
ppisano@nbwa.org
#beerasonian

Patrick Maroney
Maroney Consulting Services
(303) 710-3424
[patrick@maroneyconsulting.co
m](mailto:patrick@maroneyconsulting.com)