Banking Cannabis with Confidence: Complying with Federal Guidelines

ACAMS Southern California Chapter

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How it all began…
Conference Moments
Point of Sale/Seed to Sale

Plant Management

Inventory Management

Patient Management

POS
Banking Marijuana Related Businesses (MRBs)
Things to Consider Before Providing Banking Services to MRBs

• More and more banks are expressing interest in the MRB space

• Two key things you need before boarding accounts
  • Solid BSA/AML program (this includes your written program and automated AML system)
  • Data
Current State Regulatory Wrap up (as of 4/16)

28 states & DC currently have laws legalizing marijuana in some form

Eight states have legalized marijuana for recreational use
- In Alaska, adults 21 & older can now transport, buy or possess up to an ounce of marijuana & six plants
- Oregon allows adults to possess up to an ounce of marijuana in public & 8 ounces at home
- DC is moving w/ plans to implement a marijuana initiative
- Colorado & Washington previously passed similar ballot measures legalizing marijuana in 2012

Some have medical marijuana laws allowing for limited use
- Some medical laws are broader than others, with types of medical conditions varying from state to state

Some states, criminal penalties have been eliminated for small amounts of marijuana
Legalized Marijuana

- Federal Law, under The Controlled Substances Act (CSA), makes it illegal to manufacture, distribute or dispense marijuana.
- **Period.**
- All Financial Institutions are federally regulated.
- Banks have to comply with all federal laws and regulations.
• Congress determines that marijuana is a serious crime providing significant income to criminals, gangs, & cartels

• Advises Prosecutors to focus on preventing:
  • Distribution to minors
  • Revenue from/to criminals, gangs, & cartels
  • Diversion of marijuana to states where illegal
  • Being used as a cover for distribution of other illegal drugs
  • Violence and the use of firearms within the business
  • Drugged driving or other adverse public health issues
  • Growing of marijuana on public lands
  • Possession or use on federal property
FIN-2014-G001
ISSUED February 14, 2014
Subject: BSA Expectations Regarding Marijuana-Related Business

• FinCEN issues guidance to financial institutions due to the contradicting state and federal legislation

• Federal law supersedes state law

• Confusing? Not really
Should Financial Services be Provided?

FinCEN states that the decision to open, close or refuse these businesses should be made by each FI based on associated risks and the ability to mitigate those risks.
Thorough Customer Due Diligence is Critical

- Verify and review state license & registrations
- Periodically update this review as ongoing CDD
- Request information from the state about the business and the related parties
- Understand expected activity for the business, including the types of products to be sold & type of customers to be served (medical vs. recreational)
What triggers the filing of a SAR? If you know, suspect or have reason to suspect there has been a violation of law or regulation. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business…”
Marijuana Limited SAR Filings

- File if there is reasonable belief that no Cole Memo violations have occurred
- Limit content to:
  - Identifying information of the subject and related parties
  - Addresses of the subject and related parties
  - The fact that the SAR is solely because the subject is engaged in a marijuana related business
  - No additional suspicious activity has been identified
  - Use term “MARIJUANA LIMITED” in narrative
Marijuana Priority SAR Filings

- File if there is reasonable belief that Cole Memo violations have occurred
- Same SAR rules apply as for any other suspicious activity
- Use term “MARIJUANA PRIORITY” in narrative
Marijuana Termination SAR Filings

If FI decides to **terminate** a relationship with a marijuana related business in order to maintain an effective AML program:

- File a SAR & note in the narrative the reason for termination
- Use the term “**MARIJUANA TERMINATION**” in the narrative
- FinCEN urges the FI to use Section 314(b) to share with a possible second financial institution
Red Flags – Priority SARs

- Substantially more revenue than is reasonably expected given state limitations
- Cash deposits or withdrawals over a short period of time that appear excessive relative to competitors or expected activity of business
- Financial Statements provided are inconsistent with actual account activity
- Structured Deposits
- Rapid movement of funds (velocity) such as cash deposits immediately followed by cash/wire withdrawals
More Red Flags

- Deposits by third parties with no apparent connection to the accountholder
- Excessive commingling of funds with personal or seemingly unrelated business accounts
- Owner or manager resides outside of state where the business is licensed, or other foreign ties
- Customer seeks to hide nature of business with a non-descript name, such as “consulting”, “holding”, or “management” company
MRB BSA/AML Program

- FinCEN guidance
- Laws/regulations where MRB operates
- Assess, mitigate and manage risk
- Savvy BSA/AML professional
- Sense of CDD
MRBs vs Ancillary Businesses
Payment Options

- Cash
- Check/Money Orders
- Electronic Transfers
- Digital/Virtual/Cyber Currencies
- Converting to a cashless payment system
Options on how to bank MRBs

- Bank Blindly
  - Not collecting data from your MRBs will put you at very high risk
- Manually Collect Data
  - Manually collecting data is time consuming and may require additional staff in order to maintain the accounts
- Electronically Collect Data
Resources for Banking Cannabis

Link to Banking resources:

- **Use L2B Consulting for:**
  - Reviewing and enhance written BSA/AML program to comply with the FinCEN guidelines and Cole Memos
  - Conducting data validations of your core banking and automated AML system
  - Reviewing and enhancing your existing automated AML system to include parameters and rule sets as well as the red flags provided by FinCEN

- **Software - Bankers Link to Cannabis Compliance (BLINCC):**
  - Link the bank to MRB customer data
  - Monitor MRB data for suspicious activity
  - Generate daily, weekly and monthly transaction and financial reports
Questions?
Thank You!

For more information on how Link to Banking can help assist you with your MRB clients, contact us today.

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