Starting 2020 on a High Note

ACAMS – Northern New Jersey Chapter

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Your Presenter
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Amy Bean is an experienced manager of Crowe LLP’s Financial Crime Consulting group. Amy has more than ten years of diverse financial and regulatory experience, specializing in the areas of Bank Secrecy Act (BSA), Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) regulatory compliance domestically and internationally, as well as model risk management, and model validations.

Amy has managed and worked with clients ranging from small community banks and payment processors to international multi-billion dollar financial institutions. Amy also focuses on international regulations within Canada, Australia, Europe, and the United Kingdom.

Highlights

Amy has managed international teams and assisted multiple global financial institutions during her tenure within finance and regulatory compliance. Amy’s experience stems from her background in internal audit, risk management and compliance. She has performed BSA/AML audits for banks and Money Service Businesses, validated sanctions screening, customer risk scoring, and transaction monitoring and enterprise-wide case management systems. Amy has also assisted with special projects for multi-billion dollar institutions assisting with recovery of data for failed integrations of accounting systems.
What is Cannabis?
Cannabis Overview

- Cannabis is a family of plants with two classifications:
  - Indica
  - Sativa L.
- Hemp is derived only from the Cannabis Sativa L.
- Marijuana is derived from either Cannabis Sativa L. or Cannabis Indica
- Hemp and Marijuana both contain Cannabinoids:
  - Tetrahydrocannabinol (THC) is psychoactive
  - Cannabidiol (CBD) is not psychoactive
- Over the centuries Hemp has been modified to produce only trace amounts of THC
  - Marijuana typically contains THC levels of 15% - 40%
  - Hemp contains THC levels of no more than 0.3%
Marijuana Vs Hemp

Marijuana Products
- Produced for medical and recreational purposes
- Product can be smoked, inhaled and ingested
- Product sold intrastate through licensed entities
- Medical marijuana is used to treat seizures, pain, nausea and stress disorders
- In 2018, medical marijuana retail sales were estimated to be $4.5 billion
  - By 2022, retail sales are estimated to grow to $7.3 billion
- In 2018, recreational marijuana retail sales were estimated to be $9.8 billion
  - By 2022, retail sales are estimated to grow to $18.5 billion

Hemp Products
- Produced for commercial and industrial purposes
- Products for human consumption can be smoked, inhaled and ingested
- License required to grow, process and sell hemp
- Used in over 25,000 products: industrial and consumer textiles, industrial products, personal hygiene, oil, paper, fuel, food, building materials, etc.
- U.S. Hemp product sales in 2017 were estimated at $820 million and is expected to grow to $2.5 billion by 2022
  - CBD – 23%
  - Personal care – 22%
  - Industrial – 18%
  - Food – 17%
  - Textiles – 13%
  - Supplements – 5%
  - Other (paper/construction) – 2%
Cannabis Industry Growth

The market will be **ACCELERATING** growing at a **CAGR** of almost **16%**

**INCREMENTAL GROWTH**

- **$3.8 bn**
- **2018**
- **2023**

The year-over-year growth rate for **2019** is estimated at **15.30%**

The market is **FRAGMENTED** with several players occupying the market share

**50%** of the growth will come from **APAC REGION**

one of the **KEY DRIVERS** for this market will be the **HIGH DEMAND FROM TEXTILES INDUSTRY**

READ THE REPORT:

GLOBAL INDUSTRIAL HEMP MARKET
2019-2023

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MATERIALS
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Regulatory Outlook
Marijuana Banking – To Bank or Not to Bank?

• Marijuana is legal in 30+ states (and rising), either for medical or recreational purposes
  • Most states generally have robust application and licensing processes
• Federal law: Controlled Substance Act (CSA) 21 USC 801 still classifies marijuana as "Schedule I" drug
  • Illegal under federal law to manufacture, distribute, or dispense marijuana
December 20, 2018, Agriculture Improvement Act of 2018 ("2018 Farm Bill") signed into law

- Legalizes industrial hemp and excludes hemp from definition of marijuana, removing it from classified Schedule 1 drug list
- Industrial hemp includes hemp seeds and all derivative extracts, CBD, isomers, acids, salts and salts of the isomers with THC concentration of less than 0.3% on dry weight basis
Change in Regulation – “2018 Farm Bill” (cont.)

- As a courtesy, USDA released interim final rule for Fall of 2019 for 2020 planting season on October 29, 2019
- 60-day comment window for feedback – Extended to January 31, 2020
- Commitment to publish final rule within two years

- FDA has authority for regulating Hemp products considered as food or drugs, inclusive of those containing CBD and other Hemp products, but have not included any additional regulatory feedback at this time
Change in Regulation – FinCEN Hemp Clarification

• Joint Inter-Agency Guidance issued for Hemp related activities and SAR filings in December 2019:
  • Emphasis that banks are no longer required to file SARs for customers solely because customers engage in the growth or cultivation of hemp in accordance with applicable laws and regulations.
    • For hemp-related customers, banks are expected to follow standard SAR procedures, and file a SAR if indicia of suspicious activity warrants.

• FinCEN will issue additional guidance after further reviewing and evaluating the USDA interim final rule.

• Banks can contact the joint release agencies with further questions regarding the Agriculture Improvement Act of 2018 (2018 Farm Bill) and its implementing regulations.
Change in Regulation – “Safe Banking Act 2019”

H.R. 1595 “Safe Banking Act of 2019”
(Currently Under Legislative Review)

The purpose of this Act is to increase public safety by expanding financial services to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses.

- Safe Harbor for Depository Institutions
- Stipulation on what Federal Regulators cannot do **if signed into law**
Legislative Efforts

Status of Legislative Efforts:

• SAFE Banking Act passed in House in September 2019

• Senate Banking Committee hearing July 23 entitled “Challenges for Cannabis and Banking: Outside Perspectives”

• Chairman Crapo elaborated on stance in September stating he did not support lifting ban on marijuana, but hoping to “thread the needle” and vote by year-end.
Legislative Efforts Cont.

Status of Legislative Efforts:

- Chairman Crapo issued a new statement on December 18, 2019 issuing a strong stance against the SAFE Banking Act and is now inviting public input.

- “I have significant concerns that the SAFE Banking Act does not address the high level potency of marijuana, marketing tactics to children, lack of research on marijuana’s effects, and the need to prevent bad actors and cartels from using the banks to disguise ill-gotten cash to launder money into the financial system,”
Barriers

• Conflict between state and federal laws, coupled with non-existent federal regulatory guidance

• Some institutions have legacy negative perception of marijuana as illegal drug activity and general unwillingness to bank MRBs

• Negative reports regarding inability of State to regulate cannabis industry - https://mjbizdaily.com/california-report-finds-regulators-unable-fully-oversee-states-marijuana-market/

• Regulators have quietly urged some banks to terminate or otherwise not establish banking relationships with MRBs
USDA Interim Hemp Rule
Rule Overview

- The rules serve to establish standards for plans submitted by states or tribal governments for USDA approval and a separate federal hemp plan under which producers in states or tribal lands that do not establish their own plan may be licensed. These interim rules will expire in 2021, to be followed by final rules.

- Effective Date: October 31, 2019 - November 1, 2021.

- The rule covers the following:
  - Import and Export of hemp (the importation of hemp seeds is covered under the USDA APHIS regulations, so the rule does not address the import/export of hemp)
  - Seed certification (No seed certification is included in the rule)
  - State plan requirements
    - A. Land used for production
    - B. Sampling and Testing for Delta-9 Tetrahydrocannabinol (THC)
    - C. Disposal of Non-Compliant plants
    - D. Compliance with enforcement Procedures including Annual inspection of hemp producers
    - E. Information Sharing
    - F. Certification of Resources
    - G. Plan approval, technical assistance and USDA Oversight
Who’s Affected

STATES AFFECTED BY USDA’S NEW TESTING STANDARDS

HOW HEMP IS DEFINED

ESTIMATED NUMBER OF GROWERS AND ACRES POTENTIALLY AFFECTED

6,803 - 9,300
GROWERS AFFECTED

162,288 - 244,260
ACRES AFFECTED

© 2019 New Frontier Data | Source: Vote Hemp, Clarissa Allen (Whitney Economics)
Interstate Commerce

Key points

• Nothing in this rule prohibits the interstate commerce of hemp. No State or Indian Tribe may prohibit the transportation or shipment of hemp produced in accordance with this part and with section 7606 of the 2014 Farm Bill through the State or the territory of the Indian Tribe, as applicable.

• States and Indian Tribes may not prevent the movement of hemp through their States or territories even if they prohibit its production.

What that means for the hemp industry?

• The transport provision in the rule will not only afford the trucking industry a potentially lucrative — and legal — new business venture, it also will allow hemp producers better access to nationwide markets.
Licenses Issued in 2019

HEMP LICENSES ISSUED BY STATE 2019

FOR MORE INSIGHTS LIKE THIS, VISIT: NEWFRONTIERDATA.COM

480,334 ACRES
TOTAL 2019 CULTIVATION ACRES LICENSED FOR GROWING AND PROCESSING HEMP

+328%
IN LICENSES ISSUED SINCE 2018

Data includes state licenses for both growing and processing hemp.
© 2019 New Frontier Data | Sources: State Departments of Agriculture, Vote Hemp, Hemp Business Journal
Banking MRBs
Number of Depository Institutions Actively Banking
Marijuana Related Businesses in the United States
(Reported in SARs)
Baseline Approach – Tiered for Your Risk Profile

Large Banks are staying away from MRBs and those who bank them are taking very risk averse approach

• Legal departments and approval processes incorporated into acceptance processes

Those wishing to potentially bank MRBs utilizing baseline three-tiered risk approach and modifying their risk profile

• Tier I – Direct Contact
  Examples: Cannabis Seeds, Processing, Testing, Retail Delivery, Planting, Packaging, Transporting, Cultivation, Infused Products, Medical Dispensary, Industrial Hemp

• Tier II – Focused on Servicing Tier I
  Examples: Hydroponic Supplies, Payment Processors, Packaging, Marketing/Advertising

• Tier III – Any type of business but generally include professional services firms
  Examples: Attorneys, Accountants, Registered Agents, Commercial Property Owners

1Defining Marijuana Related Businesses, Steven Kemmerling, MRB Monitor, ACAMS Today, November 2016
What to Do? What to Think About?

Would we set risk appetite outside of conventional retailers because they might contain certain products purchased by their MRB-direct customers?

• What could impact be?
• Are we ready for Compliance Implications?

Would we exclude computer software Tier I MRBs license for business use?

• Could this impact portfolios or other relationships?
• Where do we and how do we draw the line?
• How does that impact due diligence, risk rating, ongoing monitoring, and overall risk assessment?
• Are we sufficiently staffed for decisions we make?
• How do we identify clients we already have?
Understanding an MRB Program – Are you Prepared?

1. Define your Risk Areas and Exposure;
   - LOB/Departments
   - Products/services/programs
   - Solutions
   - Policies/process

2. Identify, Measure, and Evaluate Inherent Risks
   - Channels of onboarding
   - Customer Identification and Onboarding
   - Document Collection
   - Tracking and alignment with state laws
   - Offered products, services and programs
   - Suspicious Activity Monitoring
   - Ongoing Government Reporting

3. Evaluate Controls and Determine Gaps
   - Existing policies and procedures
   - Various customer onboarding solutions
   - Exception tracking and resolution
   - Customer due diligence solutions (CDD/EDD)
   - Various customer screening (Core/funds transfer/other)
   - AML monitoring solution
   - Governance/oversight program
   - Training solution/program
Additional Considerations of an MRB Program

• Monitoring
  • Determine frequency
  • Determine baseline
  • Transaction monitoring (legality of funds)
    • Estimate-to-actual
    • Deposits and disbursements
  • On-Site Visits
    • Availability of sales data published by state and/or third-parties

• Reporting
  • CTR and SAR reporting
  • Internal
    • Regular senior management reports
    • Monthly/Quarterly Board reports
Benefits and Risks of onboarding MRBs

Benefits

• Benefits to Bank
  • Provides benefits to the community
  • Increased liquidity
  • Increased non-interest income
  • Increased business opportunities

Risks

• Risks to the Bank
  • Criminal Prosecution
  • Regulatory Criticism/Enforcement Action
  • Reputation
Thank You

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