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The Human Side of Ethics: Why Good People Make Bad Choices

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How to Bank Marijuana Related Businesses

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After the passage of "The Arkansas Medical Marijuana Amendment of 2016," I wrote an article in *The Arkansas Banker* that addressed the risks associated with providing banking services to marijuana related businesses ("MRBs"). Because of such risks, a majority of financial institutions will refuse to offer banking services to MRBs and their vendors when MRBs begin to operate in Arkansas. Some may choose, however, to take the risk. Several financial institutions across the country are currently banking MRBs and sharing their practices with others. Regulators also have experience with financial institutions banking MRBs and have provided additional guidance to help those who are willing to provide services to the industry.

GUIDANCE FROM THE REGULATORS

Providing banking services to MRBs place financial institutions in a very unusual situation. The use and distribution of marijuana in some form has been legalized in 29 states and Washington D.C., but it is still prohibited under federal law. However, as discussed in my last article, the Department of Justice set priorities for enforcement against the use and distribution of marijuana in the Cole Memo, and the Treasury, through FinCEN, provided additional guidance for financial institutions banking to MRBs – including a system for filing different categories of Suspicious Activity Reports ("SARs").

Recently the Arkansas Bank Department, Federal Reserve Bank of St. Louis, Banking Division of the Colorado Department of Regulatory Agencies, and Federal Reserve Bank of Kansas City, hosted a webinar to discuss some of the issues financial institutions face on a

daily basis – even though no regulator would comment on whether it endorses financial institutions banking MRBs. In that webinar, the representatives for the Banking Division of the Colorado Department of Regulatory Agencies and the Federal Reserve Bank of Kansas City stressed the importance of financial institutions maintaining a strong compliance policy where MRBs serve as partners in tracking every dollar that comes in and out of the business. If money can't be tracked, it can't be banked.

Before moving forward with banking MRBs, financial institutions should have full buy-in from their board of directors and keep its regulators fully informed of their decision to move forward with banking MRBs. Once this occurs, the next step is to create a full written compliance program to ensure the financial institution and their MRB customers fully comply with state law and federal guidance. Executives of financial institutions should oversee the development of the compliance program and include their BSA officers in creating the program.

LESSONS FROM OTHER FINANCIAL INSTITUTIONS

In addition to guidance from regulators, financial institutions have gained extensive experience banking MRBs and some are sharing that experience with others. Sundie Seefried is the CEO of Partners Colorado Credit Union and has written a book which has some of the same advice provided by regulators in the webinar. Seefried stressed that financial institutions should start banking MRBs slowly to ensure they can handle deposit growth. It is a good practice to segregate the MRB business from the rest of the financial institution. For example, Partners Colorado Credit Union created a subsidiary to deal exclusively with MRB activity, which was staffed by BSA certified employees who would perform on-site examination of MRBs on a quarterly basis. It is typical for compliance officers to spend 60% of their time strictly dealing with compliance issues. Because FinCEN requires Marijuana Limited SARs for legitimate MRB transactions, it is estimated that each financial institution in Colorado providing banking services to MRBs may be filing, on average, 54 SARs a month.

The MRBs financial institutions provide banking services to should be professional and willing to deal with compliance standards imposed by the institutions. If not, their account should be terminated. Any financial institution banking MRBs must to have a strong understanding of the medical marijuana industry, and should spend a significant amount of time learning their clients' businesses. Interviews should be conducted with prospective MRB clients. Financial institutions should determine whether a prospective MRB customer has the ability to sustain future success, has sufficient internal compliance programs, whether its employees are properly trained, and whether the financial institution feels comfortable with the MRB. Typical due diligence of an MRB client could take up to two weeks. Due to the sensitivity of the business, each MRB and the core staff handling MRB accounts should sign non-disclosure agreements and staff should have appropriate security clearance and training before handling such accounts.

It may take over a month to develop a proper compliance program, and another month testing the program with a limited number of clients. Segregating the MRB line of business from the rest of the financial institution should help evaluate costs, asset & liability value, income, and other accounting and compliance procedures. The process may become streamlined if the financial institutions develop proper code and transaction types to identify incoming information and red flags for reporting purposes.

It is estimated that 12 to 18 banks in Colorado are currently providing banking services to MRBs. Colorado has allowed medical marijuana since 2000 and legalized recreational use of marijuana in 2012. Currently it is a multi-billion dollar industry with over 23,000 full-time jobs created just in Colorado and is being banked by a handful of financial institutions. Fees for deposit accounts are priced differently ranging from flat fees to percentages of overall deposits. The goal is not to gouge customers, but to recognize that there is an elevated cost and risk associated with banking MRBs.

CONCLUSION

While Arkansas will not have near the volume of business as states with legalized recreational marijuana, such as Colorado or California, any financial institution banking MRBs will need to hire additional staff to oversee compliance. A large amount of revenue will be generated from the 5 cultivators and 32 dispensaries authorized to provide medical marijuana in Arkansas, as well as the ancillary services that will develop around the industry. MRBs need banking services to provide legitimacy and safety for their employees and the communities where MRBs are located. With a majority of the states having legalized some form of marijuana use, it is likely that the drug will be decriminalized at the federal level sometime in the future. Until that time comes, financial institutions providing banking services to MRBs will remain in a precarious situation and will need to maintain diligent compliance with state law and federal guidelines.