Challenges of Providing Financial Services to Marijuana Related Businesses (MRBs)

August 6, 2017

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Total Assets: $1.1B, 12 full-service branches in Berkshire County (Western MA)
November 2016 voter approval of recreational marijuana in MA changed everything

Classic credit union mission to serve financial services needs in the community (consumers and businesses)

MRB’s about to open in our core service area

Established business banking member becomes investor in MRB – will the credit union accept their deposits?

Management learning curve is steep and the challenges are many

Board governance becomes a critical hurdle

IF we say “yes” it will be a go-slow approach
Challenges

Legal Environment: Conflicts between Federal and State Laws
Federally Chartered Versus State Chartered Institutions
Extensive Initial Due Diligence Requirements
Ongoing Operational Challenges
Risk Exposure
What Saying No Means
Can a financial institution bank marijuana accounts?

Yes, but not without risk: The *Controlled Substances Act* makes it illegal to manufacture, distribute or dispense marijuana from a federal standpoint. Violation of law can carry significant financial fines and even imprisonment.

The inconsistency between state and federal law is the primary reason why many financial institutions have chosen not to bank businesses within the marijuana industry.
Legal Environment

Key Documents:

The “Cole Memo”

The FinCEN Guidance

NCUA: July 2014 Letter indicates as long as a credit union is following the FinCEN Guidance, there would unlikely be any negative repercussions from the regulator

Approximately 350 financial institutions are serving MRBs (according to FinCEN reporting). Only one bank is known to be providing financial services to MRBs in Massachusetts.
Legal Environment

- **29 states** and the District of Columbia have legalized the use of marijuana.
- **8 states**, including Massachusetts and the District of Columbia, have legalized marijuana for **recreational use**.

<table>
<thead>
<tr>
<th>Massachusetts Timeline</th>
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<tr>
<td>2008</td>
<td>MA decriminalizes the possession of small amounts of marijuana</td>
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<tr>
<td>2014</td>
<td>MA legalizes the sale of medical marijuana through dispensaries</td>
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<td>2016-Nov</td>
<td>MA voters pass the <em>Regulation and Taxation of Marijuana Act</em></td>
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<td>2017-July</td>
<td>MA Governor signs new marijuana legislation into law – overhauling the governance and control of both medical and recreational marijuana – Established a Cannabis Control Commission and a Cannabis Advisory Board</td>
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<td>2018-July</td>
<td>The first recreational stores are expected to open</td>
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Charter Differences

State Chartered
  Cole Memo and FinCen Guidance
  State regulator guidance (advantage)

Federally Chartered
  Cole Memo and FinCen Guidance
Due Diligence

Why would we want to do this?
- Community Safety
- They are our members/customers; build relationships
- Credit Union mission to serve the underserved and/or unbanked
- Fee Income
Licensees Approved in GFCU Field of Membership (with Affiliated Entity Locations)

5 licenses ("Provisional Certificates of Registration") have been issued to businesses that intend to operate in Berkshire County
13 dispensaries could potentially be within Greylock's field of membership
Only one entity has been granted a "Final Certificate of Registration"
Due Diligence

Extensive Research includes

Understanding regulatory guidance (Federal & State)

Reading industry articles

Reading Sundie Seefried’s *Navigating Safe Harbor – Cannabis Banking in a Time of Uncertainty* (2016)

Obtaining opinion of facts from legal counsel

Learning from other credit unions that do provide cannabis accounts

Learning from MRBs about their operations
Due Diligence

Extensive Research includes

Meeting with vendors who serve FIs operating in this space
Understanding onboarding requirements
Understanding ongoing monitoring and BSA requirements
Understanding on-site visit requirements
Conducting comprehensive risk assessment
Keeping board and management informed along the way
Management and the Board should have a clear picture of all potential risks (i.e. Strategic, Reputation, Transaction, Compliance, Operational)
Marijuana is still illegal
Anti-Money Laundering Program will be under greater scrutiny
Exposure to criminal activity
MRB risk of property seizure
Exit Strategy
Risk Factors

What Saying No Means

Potentially unsafe community
Marijuana money could still make its way to the FI
Employees of MRBs are paid in cash
Lack of transparency in large cash deposits
There is a path to bank MRBs, but not without risks

**Opportunities**
- Fulfilling Needs of Underserved and Unbanked
- Public Safety
- Build Relationships
- Fee Income

**Risks**
- Increased Regulatory Scrutiny
- Strategic, Reputational, Transactional, Compliance, and Operational Risk Considerations
- Fines and Possible Jail Time
- Exit Strategy
- Saying no to MRBs
How State Legislatures Can Help

Create a clear path allowing financial institutions to serve this underbanked and growing segment of the states economies

Eliminate the fear of jail time for the employees and board members of financial institutions operating responsibly in this space

Support the US Congressional efforts to allow marijuana related businesses to gain access to the kind of routine banking services other businesses take for granted
Resources


FinCEN – Marijuana Banking Update: Depository Institutions (by type) Providing Banking Services to Marijuana Related Businesses. Available at: https://www.fincen.gov/sites/default/files/shared/Marijuana_Banking_Update_Through_Q1_2017.pdf


MA Supreme Court ruling on the legality of medical marijuana in the workplace. Available at: http://www.mass.gov/courts/docs/sjc/reporter-of-decisions/new-opinions/12226.pdf