



Clean Hands With Cannabis Businesses

regulatory business customers risk management

Summary: Banks in states with legalized marijuana may not want to support these businesses. Tips to spot disguised cannabis customers.

Did you hear how a Chick-Fil-A employee helped a 4Y old boy? The boy walked into the men's room even though his mother had planned on taking him to the ladies' room. The boy needed to wash his hands, but soon realized he was too short. So, he did what any kid would do and popped his head under a bathroom stall and then joined an employee in that stall to ask for help. The employee helped the boy and posted a video of it on social media - which went viral with 10mm views! Keeping hands clean is not just a priority for children, but also for banks.

As of this point, marijuana is legal in 9 states and medical marijuana is legal in 29 at the state level. Unfortunately, marijuana remains illegal in all states under federal law per the Controlled Substances Act. Marijuana is currently classified as a Schedule I substance, which is the strongest such classification. These are considered "dangerous" and "with no currently accepted medical use and a high potential for abuse." Beyond marijuana, Schedule I drugs also include heroin, LSD, ecstasy, meth and peyote.

This has been a very big issue for banks operating in all of those states, particularly when it comes to BSA/AML compliance, which had been relying on the 2014 Cole Memo. That memo was a non-binding policy letter written by former Deputy Attorney General James Cole and accompanying guidance from the Financial Crimes Enforcement Network (FinCEN). The memo didn't legalize marijuana at a federal level, but it supported the idea that, under carefully defined circumstances, institutions could accept state-licensed marijuana businesses as customers.

The Cole memo was rescinded January 4 by Attorney General Sessions and that rule change makes providing services to state-legal cannabis businesses even more uncertain. Some institutions that have banked these customers may even be wondering whether following FinCEN's 2014 instruction to file a "marijuana limited," "marijuana priority," or "marijuana termination" suspicious activity report (SAR) for transactions involving marijuana-generated funds means they have created a damning paper trail. This remains a concern, as no assurance has yet come from the government that those who relied on that instruction in good faith will not be prosecuted.

In the meantime, institutions that offer banking services for commercial marijuana companies must stick to FinCEN guidance and BSA/AML due diligence rules around beneficial owners. This could include gathering information on investors, vendors, customers, financial statements, tax forms, business organizing documents, state licenses, leases, handbooks and more.

Institutions that are located in states where medical and/or recreational marijuana are legal under state law, and that don't want to provide banking services to potential cannabis industry customers, should keep their eyes (and noses) open for marijuana-based accounts in disguise.

What are some things to look for?

1. Excessive cash transactions
2. Cash that smells like marijuana
3. Companies with complex structures that may be designed to obscure ownership
4. Customers who are unwilling to provide ownership information, or supply documents that appear altered

This is only a partial list, but a good start. It may not be easy to spot an obscured cannabis business, but it is very necessary, if your bank is going to remain clean at your next BSA/AML exam.

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