

Considerations in Providing Financial Services to Hemp and Cannabis Related Businesses

The Challenges Faced in Obtaining Banking and Payment Solutions



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- Over 28 years of financial services experience
- Former bank Chief Information Officer
- Managed significant issuing and acquiring portfolios
- Experienced in banking high risk industries
- Thought leader in Cannabis banking



About Hypur

Since 2014, Hypur has been solving compliant banking and payment problems for high-risk and cash-intensive industries. Hypur Pay™ is a payment platform designed for the cannabis industry working directly from your bank account and featuring contactless transactions and on-demand ordering. With in-store, delivery, pickup, and B2B payments, the biggest brands in cannabis trust Hypur.



Session Overview

- History and the current state of cannabis and hemp banking
- Federal legalization vs the SAFE Act
- Risks in accepting electronic payments
- Illegal, prohibited, vs permissible activities
- How to select a payment solution



Broad Reach of Cannabis Monies

- Virtually All Institutions Have Marijuana Proceeds
 - Investors
 - Employee Accounts
 - Landlords
 - Mutual Funds
 - Government Entities
- Two choices: Bank or De-risk



2013/2014 Cole Memorandum

- Lays out enforcement of the Controlled Substances Act
- Eight Priority Factors
- Addressed DOJ enforcement of money laundering and BSA laws with respect to banks servicing MRBs
- Same eight enforcement priorities as 2013 Memo – banks must ensure that their MRB customers are in compliance
- Message: Federal law should not be a barrier to banking MRBs



Rescission of the Cole Memo

- January 4, 2018 – DOJ Issues New Guidance
- Jeff Sessions rescinds all previous DOJ Marijuana Guidance
- Now completely up to “prosecutorial discretion” of U.S. Attorneys
- DOJ has “finite resources”
- No coordination with other Federal agencies



FinCEN Guidance: BSA Expectations for Banking MRB's (2014)

- How financial institutions “can” service MRBs consistent with BSA
- Coordination with Cole Memo – same priority factors
- Best practices for due diligence
- SAR reporting requirements: Initial and recurrent
 - Limited, Priority, Termination



Cole Priority Factors

- Prevent distribution of marijuana to minors
- Prevent marijuana revenue from going to criminals, gangs, and cartels
- Prevent the diversion of marijuana where legal to other states
- Prevent state legal marijuana as a cover for other illegal activity
- Prevent violence and the use of firearms surrounding marijuana
- Prevent marijuana drugged driving
- Prevent cultivation on public land
- Prevent marijuana possession or use on federal property



Industrial Hemp and CBD

- 2018 Farm Bill: removed “hemp” from the definition of “marijuana”
- Hemp not considered marijuana if it contains no more than 0.3% THC
- Legalizes hemp-derived CBD with no psychoactive properties
- Hemp still subject to regulation by the Department of Agriculture and FDA
 - States must submit plans for approval
- Can be more confusing than cannabis banking



General Concerns with Hemp and CBD

- Maintaining compliance with the “no more than 0.3% THC” requirement
- Product can be transformed through processing
- FDA Claim Issues
- Truth in Labeling Issues
- Too easy to become marijuana
 - 100 million “hemp” plants seized and destroyed in California (2019)



FinCEN Banking Data

- FinCEN Data
 - 710 institutions reporting marijuana SARs (March 2020)
 - 636 institutions reporting marijuana SARs (March 2019)
 - 747 institutions reporting marijuana SARs (November 2019)
 - 203 institutions also reporting hemp (March 2020)
 - 61 institutions reporting hemp only (March 2020)



SAFE Banking Act

H.R. 1595 aka SAFE Banking Act (Introduced in House 3/7/19)

- A Federal banking regulator may not:
 - Terminate or limit deposit insurance or take adverse action solely for providing MRB services
 - Prohibit, penalize, or discourage an institution from providing services to MRB's
 - Recommend, incentivize, or encourage an institution to not offer MRB services
 - Take adverse action on MRB loans
- Within 180 days for FFIEC to develop uniform guidance and examination procedures



SAFE Banking Act



Other Legal / Regulatory Activity

FinCEN Hemp Guidance June 29, 2020

- SAR's not required for legal activity
- Sets some basic due diligence standards

California AB 1525

- Provides a safe harbor

Over 1,449 cannabis related bills in state legislatures and Congress

COVID inclusions



Legacy Deposits

Legacy Cash vs Legacy Deposits

- Checks, Cashiers Checks, wires, ACH
- Risk based approach
 - Is it from a financial institution known for banking MRB's?
 - Does the size of the item seem reasonable for the business?
 - Were they transparent with their true nature?
 - Was the MRB de-risked or terminated from the other institution?
 - Is the item size within your risk tolerance?
- When in doubt, a 314(b) request is a good option



Why should I care about the payment solution used by my MRB customer?



Risk Factors

- Many Cannabis Payment Solutions are established under false pretenses
- Potential Money Laundering
- Facilitating Fraud
- Risk of Lawsuits

Bottom line: Reliance on other financial institutions is not a given



Payment Types

- Open Loop
- Closed Loop
- Semi Open/Closed
 - Dual function – Often used to circumvent



Common Rails

- Debit Card and Credit Card Branded Networks
 - MC, VISA, Discover, AMEX have all prohibited cannabis transactions (both debit and credit)
- Federal Reserve Bank
 - Traditional banking products
- Alternative
 - Digital Currencies



Can I Issue a Debit Card to My MRB?

Most people only focus on acquiring

What if the debit card is used to common purchases such as office supplies, gasoline, and other routine purchases?

Is there a cannabis specific regulation that prohibits issuing a debit card?

Why do some financial institutions issue debit cards to their MRB clients?

Does their processor know? Does the network know? Does their primary regulator know?



Mobile Payments

Apple App Store

- “Apps that encourage consumption of tobacco and vape products, illegal drugs, or excessive amounts of alcohol are not permitted on the App Store. Apps that encourage minors to consume any of these substances will be rejected. Facilitating the sale of marijuana, tobacco, or controlled substances (except for licensed pharmacies) isn’t allowed.”

Google Play Store

- Prohibits apps that facilitate or promote illegal activity

Both have PII (Personally Identifiable Information) collection restrictions and requirements



Hemp Payments

- 'Pent-up' prospective volume
- Labor intensive (EDD) Enhanced Due Diligence processes (Merchant apps, THC product lab results, product label photos,
- Ongoing due diligence (ongoing document requests, product changes, updated THC lab result tests, etc)
- Limited ecommerce/website monitoring solutions
- Blind spots in the retail brick & mortar stores
- 'One and done' is not a sustainable solution for this industry



Cannabis Payments

“It’s not a payments problem, it’s a banking problem.”

- The long-term solution for payments is compliant banking
 - Too many companies approach this as a payment issue. Payments are easy, Compliance is difficult hard work.
 - No “Double Secret Special Deals”
 - Transparency, Transparency, Transparency



Cannabis Payment Case Study

Eaze

- Unfair competition
- Alleged Telephone Consumer Protection Act
 - Unsolicited text messages
- Alleged Stolen User Data
- Alleged Card laundering
- Alleged fraud lawsuit against payment operators



Payment Problems

Lying to a financial institution carries a penalty of up to 30 years in federal prison and a fine of up to \$1 million for each charge.

“Whack-a-mole” with the branded card networks.

Payment solution provider “carnage”

- Investor lawsuits / out of business
- AZ/NV dispensary owed \$1.5 million, Vegas dispensary owed \$939k, plus others with overseas losses
- IT pros indicted for arranging credit card payments (Dog toys, carbonated drinks, diving gear, etc)
- Payment providers placed in receivership



Common Workarounds

- Reverse ATM machines / Script machines – Often go dark.
- Offshore banks and processing
- Non-transparent card solutions
- Old school ATM machines
- Cryptocurrencies
- Gold and precious metals



Pitfalls to Avoid

- Lack of transparency
- Third-Party Payment Processors
- Indirect relationships
- Funds residing in a third-party's account
- Lack of Redundancy
- Lack of audit
- Compliance deficiencies
- Shell companies
- Hiding the true nature of the transaction
- High consumer fees



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