

November 26, 2018

## The cannabis conundrum

Many financial institutions could lose out on billion-dollar marijuana industry

BY MARTIN DAKS

The North American legalized cannabis market is worth anywhere from \$10 billion to \$50 billion, according to some estimates. New Jersey, with a dense, fairly well-off population could capture a sizable chunk of this pot of gold. The dispensaries and other legal outlets will have to put their money someplace for safekeeping, but there is some question about the ability of banks to get a piece of the action.

Across the country, laws governing medicinal and, in some cases adult-recreational use of marijuana, are being loosened. But under federal law it's still a controlled substance, and therein lies the wrinkle, according to some lawyers.

### Some banks wary

"Banks in New Jersey can handle funds for cannabis-related companies, but it may trigger significantly more compliance issues," said Ivan Tukhtin, an associate with law firm Scarinci Hollenbeck LLC. "It seems to be scaring off some of the bigger institutions, which may be worried about how some of their other clients may feel about the situation. From what we've seen, it's mainly state credit unions and local banks who are willing to work with legal cannabis-related companies" like the alternative treatment centers that are licensed to dispense medical marijuana.

His firm has helped some New Jersey-based financial institutions — Tukhtin wouldn't drop any names — with issues like filing Suspicious Activity Reports or documents that financial institutions must file with the Financial Crimes Enforcement Network following a suspected incident of money laundering or fraud.

They're also helping banks "ensure that the money comes from a clean source and can be accounted for; and their cannabis clients have to document that they're complying with applicable licensing and other regulations," he said.

For financial institutions, it's been a twisted road. The Obama administration appeared to be easing up on banks in 2013 when it released the Cole Memo — named for then-



Tukhtin

### A primer for cannabis banking

Sundie Seefried is the CEO and president of Partner Colorado Credit Union, which offers financial transaction services for legal cannabis companies in her state. She spoke with NJBIZ about navigating the divide between state and federal rules.

**NJBIZ:** What services do you provide?

**Seefried:** We basically provide depository services to include savings, checking and access to funds via normal channels. What we do not provide would include international wires and credit options at this point.

Service is limited to the Safe Harbor Division, so branch access is normally limited as this cannabis group requires a private banking division to meet compliance obligations sufficiently.

**NJBIZ:** How do you ensure that you're not on the wrong side of federal law?

**Seefried:** Very carefully. We monitor news far more frequently on the cannabis topic and national activities pertaining to this subject. We also utilize more external professional resources like West Coast [Anti-Money Laundering Forum,



Seefried

deputy attorney general James Cole, who authored it — which instructed U.S. attorneys to focus on drug cartels and cross-border trafficking instead of on marijuana outlets that were complying with state regulations. That move acknowledged the state-federal divide over cannabis but appeared to protect marijuana-legal states from federal action.

That guardrail went away in January when then-Attorney General Jeff Sessions reversed the Obama-era policy.

Banks and credit unions in New Jersey and other states that are willing to work with cannabis-related companies generally rely on a guidance issued by FinCEN in 2014 that clarified "Bank Secrecy Act expectations for financial institutions seeking to provide services to marijuana-related businesses."

Unlike the Cole Memo, the FinCEN guidance has not been revoked. This back-and-forth means that "there's no bright-line rule for the services that financial institutions can offer," added Tukhtin. "A lot depends on the business plan put forward by the dispensary or other cannabis-related company. It's a matter of engaging in a risk analysis to be sure the bank's client isn't just joining the 'green rush.'"

The issue is so sensitive that even some ancillary companies are getting

a national annual conference and information source] to assist with navigating the necessary law enforcement perspective and activities required by guidance.

We also spend much more time training on BSA obligations to ensure our staff is sufficiently prepared to meet personal obligations. We have staffed a separate division of specialized talent to manage this portfolio, and we are consistently monitoring for new and emerging risks that force program changes and updates regularly to meet compliance obligations for this emerging market.

**NJBIZ:** Were you able to carve a space out in this niche because you're a state credit union, not a national one?

**Seefried:** People often view state-chartered financial institutions as the charter that can bank cannabis entities. Logically, one could easily conclude that a state-chartered financial institution falls under state law and legal cannabis funds are therefore acceptable to bank, pushing federal charters out of the picture. This is not the case.

We are a state-chartered credit union with federal insurance backed by the federal government and that ties state charters to federal examination, scrutiny and, of course, regulations. The playing field is the same when it comes to cannabis. I would argue that state-chartered financial institutions are perhaps more in tune with their

community and entered the market sooner rather than later to solve a community safety issue.

**NJBIZ:** What kind of hoops did you have to jump through to enter the cannabis financial services market?

**Seefried:** I onboarded all cannabis clients for the first year and a half to learn the industry in order to mitigate risks sufficiently. I developed the program start to finish to ensure enough experienced resources were on task.

Do you have to process additional paperwork or regulatory oversight?

FinCEN guidance requires extra reporting. In 2017, there were additional reports in excess of 7,000 for this niche alone, while the [traditional] credit union had approximately 200 normal FinCEN reports. We also had eight federal and state exams in the past three and half years, when normally one would expect three exams during that time.

**NJBIZ:** Any advice for other financial institutions?

**Seefried:** It's not for every financial institution, because of the demand on resources and talent. It takes a solid base of clients/volume to build a business case and implement a long-term sustainable program. A financial institution must have the stomach to operate in such uncertain times and realize we are still on the bleeding edge of this endeavor creating standards and best practices.

caught up in the whirlwind. "I have a client who operates an online 'head shop' that sells bongos and other paraphernalia, which are marketed for the tobacco market, although they're often used to smoke marijuana," said Tukhtin. "And they had a devil of a time trying to find a credit card company that wouldn't charge them outrageous fees, because something that's even associated with cannabis can be a gray area."

Compassionate Care Foundation, a licensed Egg Harbor Township-based dispensary, managed to find a banking partner. "We have established a checking account with Parke Bank," according to David Knowlton, CCF's founder and president. "Our landlord suggested the bank, and we were set up with them from Day One, which is great because there's a problem if you have to handle everything in cash."

It's not perfect, because right now CCF is basically limited to the checking account. "We don't have instruments like a credit card," he said. "But the bank does help us with wire transfers. We process payroll ourselves, though."

Parke Bank declined to comment.

Credit card companies may have reason to be skittish about handling cannabis-related companies, noted Gene Markin, a Lawrenceville-based shareholder at the law

firm Stark & Stark. "Credit card companies — and financial institutions that operate in multiple states — have a variety of concerns. One is that some of the states they operate in may have legalized some form of cannabis use while others haven't, and that can get tricky when funds are crossing state lines. Also every purchase they process is technically a violation of federal law and it could possibly open them up to money laundering or other charges. Finally, if someone buys marijuana and then gets injured or injures someone else (while operating a motor vehicle, for instance) the credit card company might be sued."

Start & Stark advises banks on ensuring that their cannabis-related clients "are properly licensed and compliant," he added. "We also connect banks with operators and would-be operators. Many of the banks don't want to publicize their ties, though. Anecdotally I've heard that some, which process payroll for these clients, don't even put the bank's name on the payroll checks. The check displays the routing number and other data, so they're valid, but the bank's name doesn't appear anywhere."

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