



MARIJUANA BANKING: FRONT LINE PERSPECTIVES FOR AML PROFESSIONALS

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Introduction

It is understandable and reasonable for many folks especially in the conservative mainstream to remain skeptical of recent claims of medical efficacy and harmless non-consequential recreational use of cannabis aka marijuana given decades of pervasive messaging to the contrary. However it is vital for today's AML and banking professionals to learn the real truth to take timely advantage of opportunity as well as to 'nip in the bud' a looming and severe danger both to our communities and our financial system.

The truth is that cannabis is neither a dangerous narcotic nor a 'gateway' drug but is rather a remarkable plant cultivated up until the last century for thousands of years for its breathtaking range of commercial, industrial, wellness and relaxation applications. The truth is that it was hijacked and scapegoated a century ago and since by industrial and political selfish and special interests. Now as the cannabis industry is finally extricating itself from these constraints, can we agree on something? Marijuana-related businesses face a lack of banking support. This is understandable since it is still illegal on the federal level. However, this also means that money is being spent on cannabis and those customers have nowhere to bank their money, or more likely, they are banking it with you but aren't being transparent about it. Things that aren't transparent are inherently suspicious but that doesn't have to be the case. Banks have the ability to work with these customers and putting aside the illegal nature for now, it is simply a policy and procedure update and the opportunity for additional revenue for the bank.

It is also important to recognize the extreme danger our communities face from violent and organized crime awash with new billions of dollars of untracked, poorly accounted-for cash, a great deal of which is presently being laundered in 'masked' bank accounts. As essential stewards of commerce, financial institutions can apply their resources responsibly to both avert this crisis and profit from a generational opportunity.

In this article, we'll cover the history, the risks of banking and not banking the industry, and some considerations.

History and Political Landscape

Part of that truth is that after many thousands of years of human cultivation of this remarkable plant, pernicious special interests whipped up hysteria against it at several times in the 20th century for reasons having nothing to do with its mild psychoactive properties. Although modest restrictions evolved between 1906-1930⁽¹⁵⁾, efforts toward cannabis prohibition did not commence in earnest until a political opportunist named Harry Anslinger arrived on the scene.

“Prior to the end of alcohol prohibition, Anslinger had claimed that cannabis was not a problem, did not harm people, and "*there is no more absurd fallacy*" than the idea it makes people violent. His critics argue he shifted not due to objective evidence but self-interest due to the obsolescence of the Department of Prohibition he headed when alcohol prohibition ceased - campaigning for a new Prohibition against its use. Anslinger collected dubious anecdotes of marijuana causing crime and violence, and ignored contrary evidence such as doctor Walter Bromberg, who pointed out that substance abuse and crime are heavily confounded and that none of a group of 2,216 criminal convictions he examined were clearly done under marijuana's influence,⁽¹⁾ or a discussion forwarded to him by the American Medical Association in which 29 of 30 pharmacists and drug industry representatives objected to his proposals to ban marijuana. One such statement claimed that the proposal was "*Absolute rot. It is not necessary. I have never known of its misuse.*", although only the single dissenter (*who noted he had once encountered a doctor who had been addicted to marijuana*) was preserved in Bureau files.^{(2)'' (3)}

Meanwhile, William Randolph Hearst with his vast holdings of northwest forest land, the DuPont family with their newly-introduced synthetic fiber: nylon, and Andrew Mellon who was heavily invested in nylon all collaborated with Anslinger in a campaign of mutual interest to achieve marijuana prohibition. The campaign relied upon unsubstantiated rumors of Mexicans swarming across the border 'hopped up' (*cannabis is a botanical cousin of the hops plant*) on marijuana committing violent crimes and stealing American jobs and women.⁽⁴⁾

One might conclude that this was not motivated by concern for the mildly intoxicating effects of consuming cannabis (*which troubled no-one for thousands of years up to this point*) but rather intended to unfairly restrain legitimate industrial and commercial marketplace competition.

Meanwhile in 1961⁽¹⁷⁾, 1971⁽¹⁸⁾, and 1988⁽¹⁹⁾ international narcotics treaties were adopted including cannabis in its prohibited schedules. In 1970 the Nixon administration included cannabis (*and hemp*) when it pushed the Controlled Substances Act (CSA) through Congress substantially as a vehicle for disrupting and deploying law enforcement against its political opponents.⁽⁵⁾

Cannabis Background

Contrary to popular notion, marijuana appears not to be a ‘gateway drug’ to abusing stronger narcotics⁽¹³⁾; ironically, evidence is growing in legal states of its role as an ‘exit drug’, helping folks off-ramp from dangerous opioid addiction.⁽¹⁴⁾

By way of background, there are two distinct (*male and female*) varieties of the plant species *cannabis sativa*. Hemp (*male*) is grown specifically for the industrial, commercial and medicinal uses of its derived products. It was one of the first plants to be spun into usable fiber 10,000 years ago.⁽⁶⁾ It can be refined into a variety of commercial items including paper, textiles, clothing, biodegradable plastics, paint, insulation, biofuel, food, and animal feed.⁽⁷⁾

The variety typically referred to as marijuana (*female*) is more often used for its mental and physical effects. The earliest recorded uses date from 3000 BC.⁽⁸⁾ The main psychoactive part of cannabis is tetrahydrocannabinol (THC), one of 483 known compounds in the plant,⁽⁹⁾ including at least 65 other cannabinoids.⁽¹⁰⁾ Hemp has lower concentrations of THC and higher concentrations of cannabinoil (CBD) which has recently seen much anecdotal evidence of effective treatment for seizures, inflammation, pain, cancer and numerous other conditions⁽²¹⁾, including enhanced benefits in a variety of combinations with THC and other cannabis-derived compounds, referred to as the ‘entourage effect’.⁽²²⁾



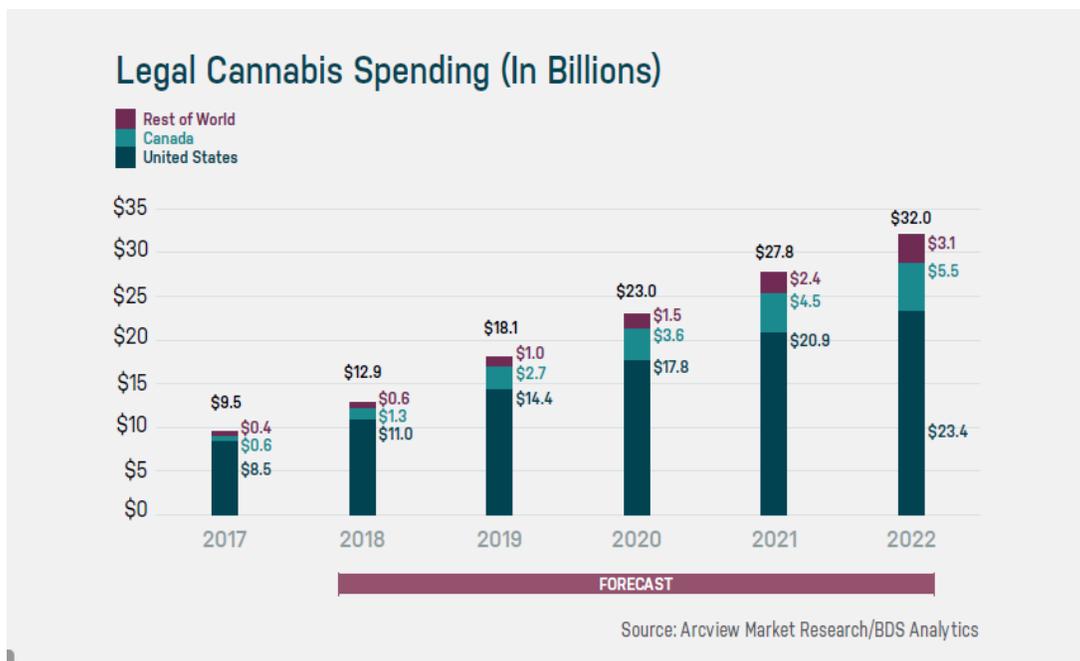
Risk vs Opportunity

Although marijuana, hemp and products derived from them remain illegal on the federal level, the legal cannabis industry today, as well as the ‘ancillary’ companies and professionals, including financial institutions that provide goods and services operate with a level of confidence that the real risk of consequences is mostly theoretical rather than actual. This has been borne out by the industry’s axiomatic experience over the past roughly five years that one’s level of compliance, transparency, reporting, and accountability is directly proportional to the level of actual risk one may be exposed to. In other words, there is a reasonably dependable roadmap to remaining above the fray of potential penalties and negative consequences by adhering to demonstrated ‘best practices’.

The simple fact is that no US financial institution has suffered penalties, sanctions or punishment during this period for making a reasonably compliant (or better) and transparent effort to bank the marijuana industry.⁽²³⁾

One credit union in Colorado⁽¹²⁾ has been successfully banking the cannabis industry for over four years now, having passed all its examinations during this period⁽²⁶⁾, and now even BSA personnel attend them to learn from their success. Its CEO, Sundie Seefried wrote a book in 2016 sharing her perspectives and guidance for banking the industry, called: “*Navigating Safe Harbor – Cannabis Banking in a Time of Uncertainty*”.

In 2018 marijuana-related licensees are projected to reach an aggregated \$10B in revenue⁽²⁰⁾, and anecdotally there is a like additional sum generated by the thousands of businesses and professionals providing support products and services. The current development of the entire industry has been likened to being at the top of the second inning of a baseball game. Combined with its astonishing array of useful cost-effective commercial and industrial applications, enormous pharmaceutical potential, and safer competition with alcohol for leisure use, the industry is could easily reach \$100B+ in global revenue within a decade.



Bear in mind that there are many sectors and verticals in this space, and it is not required that one jump in 100% or not at all. For example, investment, hedge, family offices and/or PE funds derived from qualified and institutional investors may be seeking banking without ‘touching the plant’ (*and so requiring much less rigorous compliance reporting and supervision*). Attorneys, accountants and consultants whose practice includes service to industry clients may be attractive customers. Institutions still hesitant to provide cannabis licensees with accounts may nonetheless be enthusiastic about accepting state-issued Economic Development Authority grant proceeds as deposits from hemp-related entities.

Other examples of ‘non-plant-touching’ verticals within this industry are:

- Business and Capital Formation Advisors
- Finance, Leasing and Asset Management
- Licensing, Regulatory and Compliance Consultants,
- Business Insurance and Risk Management,
- Internal and External Security Consultants and Vendors,
- Landlords and Real Estate Brokers,
- Marketing, Advertising and Branding Professionals,
- Websites and Social Media,
- Public Relations,
- Plumbers, Electricians and General Contractors,
- Personnel and Human Resources,
- Manufacturers and Distributors of Vapes, Dabs, Glassware, Clothing,
- Non-plant-derived Merchandise and Other Smoking Accessories,
- Automobile and Truck dealers,
- Capital Equipment Manufacturers and Distributors,
- Greenhouses, Lighting, Irrigation and Cultivation Systems,
- Soil, Nutrients and Hydroponics,
- Investment advisory, Venture Capital and Angel Investors,
- Education, Printing and Publishing, Trade Shows and Conferences,
- Trade Show Exhibits, Data and Reporting Services,
- Trade Associations, Trade Media,
- Advocacy and Campaigns,
- Medical Practitioners,
- Tour Operators,
- Directories and Information Services.

Such entities represent excellent opportunity, and may provide a more comfortable incremental step since fully transparent compliance protocols and reporting for these business types is considerably less burdensome.

Clearly an end to federal marijuana prohibition will catapult the industry into the mainstream with several primary sector branches and hundreds of sub-sectors. It is therefore of major importance to note that the pending omnibus US Farm Bill of 2018 includes a provision for full legalization of hemp and hemp-derived products (*including CBD*). After resolving a squabble over an unrelated food stamps provision, this legislation is expected to pass Congress either just before or just after the 2018 midterm election.⁽²⁴⁾

This milestone development will fully legalize roughly half of cannabis industry, removing any restraints from participation by major institutions and institutional investment. It is not too soon to commence planning your own strategy for capturing your share.

The Regulations, Guidance and Industry Experts

Although cannabis (*and hemp*) are classified federally (*and therefore internationally*) as Schedule One narcotics (*dangerous and without medical benefit*), the Federal government has demonstrated its lack of intention to take action against either compliant, state-licensed entities or the compliant financial institutions or ancillaries that service them.⁽¹⁶⁾

The US DOJ is prohibited from deploying any of their resources against state licensees under the Rohrbacher-Blumenauer Amendment to the current budget legislation. The US Dept of Treasury via their BSA-created Financial Crimes Enforcement Bureau (FinCen) issued guidance in 2014⁽¹¹⁾ to financial institutions including these statements:

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

Further on it states: FinCEN's enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance.

In further support of this written guidance, it's worth noting that at the recent ACAMS trade conference in April, 2018 held in Hollywood, Florida, the author heard keynote speaker Ken Blanco (*Director of FinCEN*) explicitly state that the agency was grateful for the excellent AML compliance and reporting his agency receives from financial institutions, especially in filing well-written SARs, and that such was pointedly not a game of 'gotcha' but rather one of collaboration and cooperation. He went on to say that unintentional errors and misinformation would be treated as an opportunity for improvement not punishment.⁽²⁵⁾

David Barr, Director of Communications for the FDIC, recently told this writer that their agency's position on member institutions banking the cannabis industry is limited to directing their examiners to follow this FinCEN guidance as a supplement to current KYC/AML compliance protocols. In fact, this FinCEN guidance is noted or footnoted with the BSA AML Examination Manual⁽¹⁵⁾ in three instances. In addition to the FDIC, the Federal Reserve, CFPB, NCUA, OCC and state liaisons all follow this manual.

The fundamentals of compliantly banking the cannabis industry are quite simple although execution is granular and labor-intensive. The gateway financial institution is primarily obliged to verify:

- KYC and source of funds verification (*including 'hands-on' familiarity with the legitimate scope of licensed operations and that the beneficial owners and principal operators are and remain not bad actors*)
- That the licensed account-holder is operating in compliance with applicable state and federal requirements
- No co-mingling of deposited funds with those derived from other operations (*legal or otherwise*)
- That the amount and value of plant-derived inventory legitimately available to the licensee supports the reported revenue
- That 'marijuana-related' SARs are filed with FinCEN on a timely basis

The most important first step to take if considering providing sustainable service to this industry is to first consult with your regulators and examiners to solicit their recommendations and guidance. Assemble a team of stakeholders, and collaborate to develop protocols and policies. Anyone improperly left out of this preliminary process has the potential to sabotage the best-intentioned efforts.

Conclusion

Currently there are a few dozen small financial institutions around the country transparently, sustainably and successfully banking the industry, and another few dozen providing 'quiet' service to one or a few pre-existing customers. At least one of these now provide formal cannabis-specific education and training programs to financial institutions interested in replicating their proven solution.

Politics aside, the truth is that the federal government earnestly encourages financial institutions to bank the industry; the Treasury Dept, FinCEN and the FDIC via written guidance and examination practice, and the Dept of Justice and Congress via legislative protection from law enforcement.

Many financial institutions have been discouraged from banking the cannabis industry due to potential reputational risk. However one must also consider the serious reputational and regulatory hazards of not transparently banking the industry arising from the billions of dollars currently being laundered via 'masked' accounts. Compliance software to detect this activity only scratches the surface. Additionally, the reputational benefits of and opportunity for leadership in protecting our communities should not be overlooked.

So have you done a full analysis on the risks and rewards with providing banking services to marijuana-related businesses? We are still very early in the game. Many financial institutions are already developing their plans to participate in this exciting, challenging and profitable emerging global industry. For most, it's no longer a matter of 'if' but 'when' and 'how'!

FOOTNOTES

(1)Pg 44-46 of Sloman, Reefer Madness

(2)Pg 38-41 of Sloman, Reefer Madness

(3)https://en.wikipedia.org/wiki/Harry_J._Anslinger

(4)Anslinger, Harry J.; Oursler, Will (1961). The Murderers, the story of the narcotic gangs. pp. 541–554 + “Victor Licata’s Strange Legacy” Thursday Review, May 30, 2014

(5) <https://www.cnn.com/2016/03/23/politics/john-ehrllichman-richard-nixon-drug-war-blacks-hippie/index.html>

(6) Tourangeau, Wesley (2015), "Re-defining Environmental Harms: Green Criminology and the State of Canada's Hemp Industry", Canadian Journal of Criminology & Criminal Justice, **57** (4): 528–554

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(8) Booth M (2003). Cannabis: A History. Transworld. p. 36. ISBN 978-1-4090-8489-1

(9) Russo EB (2013). Cannabis and Cannabinoids: Pharmacology, Toxicology, and Therapeutic Potential. Routledge. p. 28. ISBN 978-1-136-61493-4

(10) Newton DE (2013). Marijuana: a reference handbook. Santa Barbara, Calif.: ABC-CLIO. p. 7. ISBN 9781610691499

(11) FIN-2014-G001Issued:February 14, 2014 Subject:BSA Expectations Regarding Marijuana-Related Businesses

(12) Partner Colorado Credit Union, dba: Safe Harbor Private Banking

(13) Reassessing the Marijuana Gateway Effect, Morral, McCaffrey & Paddock, Drug Policy Research Center, RAND, Arlington, VA. October 16, 2001

(14) theexitdrug.com

(15) FFIEC BSA Examination Manual 2014

(16) Seefried, Sundie LinkedIn post - <https://lnkd.in/eTaCAGZ>

(17) Single Convention on Narcotic Drugs

(18) Convention on Psychotropic Substances

(19) Convention Against Illicit Traffic in Narcotic Drugs & Psychotropic Substances

(20) Arcview Market Research and BDS Analytics

(21) <https://www.healthline.com/health/cbd-oil-benefits>

(22) <https://www.scientificamerican.com/article/some-of-the-parts-is-marijuana-s-entourage-effect-scientifically-valid/>

(23)https://www.fincen.gov/sites/default/files/shared/273281%20EA%204th%20Q%20MJ%20Stats_Public_Web.pdf

(24) <https://www.congress.gov/bill/115th-congress/house-bill/2/text>

(25) Blanco, K.A. (2018, April 9). Keynote Speaker, Speech presented at ACAMS moneylaundering.com 24th Annual International AML & Financial Crime Conference in FL., Hollywood

(26) Verbal confirmation via Partner Colorado Credit Union CEO Sundie Seefried



Nathaniel Gurien, CEO

I know what it's like to be a rebel industry pioneer entrepreneur. It's been a central part of my character for the last 50 years. I've operated many small to medium size innovative & disruptive companies. I've had decades of experience with sales, vertical integration, marketing, HR, negotiation, advertising, campaigning, e-commerce, warehousing, international & domestic trade as well as with attorneys, accountants, bankers, designers, politicians, financiers, investors, government officials, lenders, activists, merchants, builders, etc.

I find simple innovative solutions to complicated and seemingly intractable challenges. I set goals and achieve via meticulous strategic and tactical planning and execution.

CERTIFICATIONS:

Licensed NYS Real Estate Broker
ABA - BSA/AML Certification
Certified Buyers Representative™

About FINCANN

Our firm introduces marijuana licensees, ancillaries, multi-state and public clients to compliant, legal depository banking and merchant payment processing. We also work directly with financial institutions nationwide to guide them in providing sustainable, compliant, transparent accounts for all industry segments. As of 2/Q 2018, the Company is now the first to provide real bank accounts in all legal states. We have been successful in obtaining for our clients transparent compliant commercial banking in **California, Louisiana, Maryland, New York, Washington, New Jersey, Colorado, DC, Nevada, Florida** and more, as well as the same for ancillary clients around the country who accept payment from licensees.

ASSOCIATIONS & MEMBERSHIPS:

ACAMS - Association of Certified Anti-Money Laundering Specialists
ACFCS - Association of Certified Financial Crime Specialists
REBNY - Real Estate Board of New York
NCIA - National Cannabis Industry Association - Banking Advisory Committee
NJCIA - NJ Cannabis Industry Association
cLAB - Cannabis Law, Accounting & Business
MJBA - Marijuana Business Association
WOMEN GROW