



Ready for regulations?

No one's talking about it, but N.J. faces a lengthy regulatory process once adult-use goes legal.

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Risk remains a four-letter word for banks when it comes to cannabis, even though there is nothing to fear

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There is still a great deal of misinformation and a lack of information surrounding cannabis banking and the related banking product of MasterCard/Visa merchant processing.

Most glaring is the misinformation that the federal government is the primary obstacle to banks providing even the most basic service of a business checking account for an MRB, or marijuana-related business.

An oft-repeated refrain is that banks worry their involvement with the industry might trigger prosecution for “aiding and abetting narcotics trafficking or money-laundering,” or that they risk their charter and/or deposit insurance.

This is complete nonsense!

The legal cannabis industry and related banking is substantially founded on the “perception of risk” as opposed to “actual risk.” The banker’s real opposition is rooted in an institutional “herd mentality” of prejudice against what they consider as a shady, stigmatized industry more politely referred to as “reputational risk.”

The U.S. Department of the Treasury, via its enforcement bureau, says: Financial Crimes Enforcement Network (FinCEN) along with the U.S. Department of Justice earnestly desire banks to at least provide checking accounts to all state-licensed entities, and in their role as “essential stewards of commerce” both supervise and track the revenue of MRBs, assure that all Enhanced Due Diligence/Know Your Customer/Anti-Money Laundering protocols are followed, and remove the current billions of dollars of untracked cash from our communities.

They are keenly aware of the numerous and acute dangers of allowing the prevailing cash economy to continue with its attendant ills of violent and organized crime, tax evasion, sloppy accounting, and encouragement of shady business practices.

In 2014, FinCEN issued marijuana-specific written guidance to U.S. financial institutions and their regulators encouraging them to bank the industry. The guidance also provided a detailed roadmap for doing so. This guidance appears in no less than three sections of the current 400-plus page standard national bank examiners manual. The annually renewed Rohrbacher/Blumenauer budget amendment (currently in force until September 30, 2018) prohibits any federal agency using any of its budget to enforce federal prohibition in opposition to state law.

The fact is that over the past four years a limited number of banks have provided accounts for MRBs, none with compliant programs in cooperation with their regulators have been sanctioned, penalized or prosecuted in any way for doing so.

The truth is that those banks, MRBs, and “ancillaries” that provide goods and services to MRBs that maintain high standards of compliance, transparency and reporting have nothing to fear.

There are approximately 15,000 licensees around the country, and that number is growing at between 2 percent to 3 percent a month. About 1,000 of these have transparent, compliant checking accounts in partnership with their financial institution; the rest are either unbanked or have unstable or outright fraudulent accounts, subject to closure at any time. Contrary to another oft-repeated misnomer that there are 400-plus financial institutions providing accounts (based upon a misinterpretation of a September 2017 FinCEN report), there actually are roughly three dozen small banks around the country providing compliant, sustainable MRB accounts, with an equal number providing “quiet” accounts to otherwise valued customers — but with questionably sustainable compliance protocols.

Since MasterCard/Visa merchant processing is a banking product, it is subject to its own variation of similar obstacles. MasterCard and Visa consider use of their marks for marijuana transactions to be detrimental to their brand, and so they may impose substantial fines and threaten to revoke their licensees’ charter for habitual offenders. There is no standard industry code provided for MRB merchants and their transactions.

Notwithstanding, our company, Fincann now and via its predecessor R&D entity over the past couple of years, has successfully built a network of U.S. and foreign banks and merchant processors to provide

compliant, transparent, real checking and merchant accounts for many MRBs as well as “ancillaries” that provide MRBs with goods and services in nearly all legal states.