

Current Trends in Cannabis Banking and Merchant Payment Solutions

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There has been a problematic lack of merchant payment solutions and access to banking services for the cannabis industry in the United States since its inception. There are many prevalent misconceptions and myths about why this gap in banking services persists, despite the growing success of the cannabis industry in the United States. While it is understandable that these myths and misinformation persist in the mainstream consciousness, it is necessary to dispel them in order for anti-money

laundering (AML) and banking professionals to make informed and rational decisions regarding working with the cannabis industry. This article will address the most common myths about banking in the cannabis industry, and then speak to a related problem that has been growing in severity over the last decade.

There are hundreds of marijuana-related businesses (MRBs) that are struggling to reconcile a desire to grow their business legitimately, with the reality that too few financial institutions (FIs) are willing to offer banking services to the industry. Many MRBs have resorted to engaging in fraudulent payment processing solutions when faced with exceedingly few legitimate avenues to pursue. This presents problems not only for the cannabis industry, but could have repercussions for the banking industry as well.

To reach a clearer understanding of the issues, let's take a look at both sides.

Five Cannabis Banking Fallacies

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Perhaps the most obvious misconception that should be addressed first is that FIs are hesitant to work with the cannabis industry due to federal prohibition. Only 3% of local and national banks the United States provide services for cannabis businesses.[1] Yet the hesitancy of the remaining 97% to work with this industry stems more from an emotional and fundamentally misinformed perception of cannabis, which understandably many still harbor. It is my opinion that this can be attributed largely to almost a century's worth of fear-based propaganda demonizing cannabis and its usage. (Siff, 2014)

Many examples exist of other high-risk industries that banks work with such as MFPs. For more

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many examples exist of other high-risk industries that banks work with such as: casinos, firearms, and gaming. Although unambiguously legal, all require enhanced due diligence, supervision and compliance, to both domestic and international AML/KYC protocols. (Beurerlein, 2020)

The tension between federal and state legislation is not the core issue; since objectively it's a business decision on the part of the individual institution, which requires the same rational risk assessment as indicated for any other high-risk industry sector. (Lawrence, 2019) Are the expense, additional labor, competitive analysis and manageable risk worth the revenue these clients yield? Often times the answer is affirmative, and should be even more compelling when taking into consideration that the cannabis industry is due to grow at a compound annual growth rate (CAGR) of 21%, to reach more than \$41 billion by 2025 (from \$13.2 billion in 2019). (New Frontier, 2020)

Two other prevailing notions, which are related to the first, are that congressional action is necessary to - provide a safe harbor for cannabis banking, and the belief that the passage of the Secure and Fair Enforcement (SAFE) Banking Act would be impactful in allowing banks to service the cannabis industry.



In fact, *The Secure and Fair Banking Act of 2019, H.R. 1595, 116*, would change little of the existing examination practices already deployed. For several years now, the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and National Credit Union Administration (NCUA) have clearly articulated and updated their examination protocols. Ifs they examine have met their cannabis-related and AML requirements when found to be in conformity with the FFIEC examination manual with appended FinCEN MRB guidance(s). What could produce a more lasting and significant impact would be that individual banks would agree to work with the cannabis industry under the clear and extant regulatory guidelines. In reality, institutions have the opportunity to be proactive in this area, and need not wait on federal relief to move forward. (Black & Galeazzi, 2020)

True, there are certain legal constraints facing the cannabis industry, many imposed by federal prohibition. However, with regard to banking and the financial sector there is generally clear guidance on how to bank cannabis businesses in a compliant manner. (Silvia, 2020) Which brings us to another pervasive myth. There is a widely held belief that banks would face significant legal consequences for banking cannabis businesses. There are no instances in which banks have suffered from the choice of banking cannabis businesses. To be clear, not one bank has lost their license, nor one banker been put in jail for banking cannabis industry clients. (FinCEN, n.d.)

In the 2018 case, Century Bank in Massachusetts was sued in a RICO action. This suit cited Century Bank as a defendant because they provided services for a cannabis cultivation facility, which the plaintiffs argued created a public nuisance. In federal district court, the judge ruled that the plaintiffs did not provide sufficient evidence to prove their case, and opined that Century

Bank's involvement was clearly limited to providing financial services in compliance with existing regulatory guidance. Century Bank was removed from the lawsuit and exonerated entirely. This case is important because it established precedent that protects banks working with plant-touching THC licensees. (*Crimson Galeria Ltd. P'shp vs. Healthy Pharms, Inc.*, 2018)

The last myth is one that has been promoted by blogs, reputable media sources, and industry analysts alike. This fallacy is that there are approximately 700 banks that are working with cannabis businesses across the nation. In reality, the number is much smaller. Many have mistakenly conflated the number of institutions filing Suspicious Activity Reports (SARs), which banks are required to file with FinCEN under the Bank Secrecy Act (BSA), with the number of banks currently serving the cannabis industry. FinCEN guidelines require institutions to file one of three categories of marijuana-related SARs. Marijuana Limited SARs are used to disclose that the bank has an active account with a compliant MRB. Marijuana Priority SARs are where there are 'red-flagged' indications of an existing MRB customer's lack of compliance. Marijuana Terminated SARs are filed when a MRB account is terminated by the bank. (Lawrence, 2019)

Further, FinCEN defines MRBs with related compliance implications as limited to specific 'plant-touching' sectors, i.e., dispensaries, cultivators or manufacturers.

In many cases, a bank may file an SAR erroneously or without having ever served a client in the cannabis industry. So, a knowledgeable audit of filed MRB-related SARs would bring the actual number in line with Fincann's "Official Counter of Cannabis Industry Friendly Banks". (Fincann, 2021)

Lack of access to banking services coupled with a rapidly expanding industry, and a global pandemic which has changed Americans' buying and payment habits, has tempted many in the cannabis industry to turn to fraudulent payment processing solutions that risk potentially ruinous consequences, both for themselves and the FIs that knowingly or unknowingly work with them. (Bahouth, 2020)

Trends in Cannabis Merchant Payment Solutions

The pretext the card networks deploy to prohibit the use of their marks and systems for cannabis transactions is that their established rules technically forbid transactions involving 'illegal' goods & services. Their actual reason is perceived reputational risk and sector prejudice.

To cope with limited viable merchant payment solutions, state-licensed dispensaries and delivery services, encouraged by unscrupulous salespeople, have increasingly turned to illegal and risky solutions, e.g., so-called 'cashless ATM's' or 'Point-of-Banking' (POB) despite the fact that these violate AML regulations, federal law (Durbin Amendment) and involve several levels of criminal fraud. (Roberts, 2019)

On February 19, 2021, Jim Patterson, the former CEO of the California cannabis delivery company, Eaze, entered a guilty plea in an action brought by the US attorney in the Southern District of New York. The charges relate to his cooperation in multiple schemes to launder \$100M in cannabis-derived funds via merchant transactions under fraudulent straw entities through unsuspecting FIs in what was described as a “transaction laundering scheme.” (Smith, 2021)



The suit, *United States of America v. Hamid Akhavan, Ruben Weigand*, alleged that Eaze engaged in bank and wire fraud to process credit and debit-card payments from customers, through disguising cannabis transactions as transactions for consumer goods such as carbonated drinks and face creams. This suit is similar to the 2019 lawsuit brought against Eaze by a competitor, DionyMed. (Smith, 2021)

Cashless ATMs and fake company schemes, like the one allegedly used by Eaze, are being used in dispensaries as a way to get around some of the regulations. However, there are obvious and costly risks to using such methods, as they are both fraudulent and illegal. These businesses expose themselves to charges of fraud and money laundering when they pursue non-compliant payment processing solutions, which is evident in the case of the Eaze executives. Potentially, cashless ATM's will be the next target to come under fire, and the fallout could end up hurting not only the cannabis industry, but banks as well. (Migoya, 2016)

The consequences of the cannabis industry's continued lack of access to compliant merchant processing services that until recently tempted many, however wrongly so, to conclude they have no other option than to turn to payment processing solutions such as cashless ATMs in order to grow and sustain their business. This could inadvertently subject banks to multiple jeopardies for inadequate KYC/AML protocols. Additionally, FIs risk examination citations for inadequate vigilance and compliance controls.

A viable alternative would require a cannabis-compliant FI with an examination-proven program to sponsor a fully transparent pin debit or ACH solution and fortunately, there are now two such FIs now actively and courageously offering these solutions.^[2]

There are now numerous financial institutions, which have implemented and operated compliant programs successfully for a number of years, providing proof that compliant cannabis banking is completely feasible, and arguably a practice that would benefit FIs and the cannabis industry alike in the long run. (Skinner, 2020)

Especially in light of recent developments, it may become more difficult to claim ignorance as a defense. Absent adequate controls your institution could inadvertently be subject to suffocating fines and/or civil or even criminal sanctions.

To mitigate risk as well as plan for the future, it may be wise to engage your BSA people now to produce a thorough risk assessment, determine which, if any, cannabis industry sectors your institution will support, now and at least in the medium term, then publish, periodically update and enforce a detailed SOP (Standard Operating Procedure). For support, network with your counterparts at institutions with currently successful cannabis banking programs as well as consult with one or more cannabis banking compliance vendors with proven industry success.

References

1. Beurlein, T. (2020, January 7). *Dispelling Banking Myths In the Cannabis Industry*. <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2020/01/07/dispelling-banking-myths-in-the-cannabis-industry/?sh=2d5d7bd325e2>
2. *United States v. Akhavan*, S3 20-cr-188(JSR) (S.D.N.Y. May. 20, 2020)
<https://www.lib.jjay.cuny.edu/research/quicklegalcite.pdf>
3. *Crimson Galeria Ltd. P'shp vs. Healthy Pharms, Inc.*, 337 F. Supp. 3d 20, 37-38 (D. Mass. 2018) retrieved from: <https://casetext.com/case/united-states-v-akhavan>
4. Bahouth, B. (2020, May 8). *Cash a vector for novel coronavirus, cannabis industry urges congress to grant access to banking services*. Sierra Nevada Daily. <https://sierranevadaally.org/2020/05/08/cash-a-vector-for-novel-coronavirus-cannabis-industry-urges-congress-to-grant-access-to-banking-services-2/>
5. Secure Global Pay (2021, January 3). *Cannabis Dispensary Payment Processing*. Secure Global Pay. <https://secureglobalpay.net/cannabis-dispensary-payment-processing/>
6. GGT, T. & Pollak R. (n.d.). *Part II: Confronting the Banking Dilemma for State-Licensed Marijuana Businesses in the United States*. Secured Finance Network. <https://www.sfnet.com/home/industry-data-publications/the-secured-lender/magazine/tsl-article-detail/part-ii-confronting-the-banking-dilemma-for-state-licensed-marijuana-businesses-in-the-united-states>
7. Migoya, D. (2016, October 2). *ATMs in or near pot shops called "disaster waiting to happen"*. The Denver Post. <https://www.denverpost.com/2014/01/24/atms-in-or-near-pot-shops-called-disaster-waiting-to-happen/>
8. Black, J., & Galeazzi, M. (2020, February 6). *Cannabis Banking: Proceed with Caution*. The American Bar Association. https://www.americanbar.org/groups/business_law/publications/blt/2020/02/cannabis-banking/
9. Silvia, J. (2020, April 24). *Embracing Uncertainty: Banking Cannabis*. The American Bar Association. https://www.americanbar.org/groups/business_law/publications/blt/2020/05/banking-cannabis/
10. The Secure and Fair Banking Act of 2019, H.R. 1595, 116, 2019. <https://www.congress.gov/bill/116th-congress/house-bill/1595/text>
11. Siff, S. The Illegalization of Marijuana: A Brief History. *Origins: Current Events in Historical Perspective* 7, no. 8, (2014): 1-2. Retrieved from: <https://origins.osu.edu/article/illegalization->

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12. Fincann (2021, January 22). *How many federally-insured banks are officially and openly friendly to the cannabis industry?* Retrieved from: <https://fincann.com/cannabis-banking-financial-network/>
13. Lawrence, G. (2019, September). *Marijuana Industry Financial Services: Obstacles and Solutions*. Reason Foundation. Pg. 9-10. <https://reason.org/wp-content/uploads/marijuana-industry-financial-services.pdf>
14. Smith, J. (2021, February 17). *Report: Ex-Eaze CEO to be charged in cannabis payment-processing scheme*. Marijuana Business Daily. <https://mjbizdaily.com/ex-eaze-ceo-to-be-charged-in-100-million-cannabis-payment-processing-scheme/>
15. New Frontier Data (2020). *Cannabis in America for 2021 & Beyond: A New Normal in Consumption and Demand*. New Frontier. <https://www.globenewswire.com/news-release/2020/12/09/2142171/0/en/U-S-Legal-Cannabis-Market-Projected-to-Double-to-41-5B-by-2025.html>
16. Roberts, C. (2019, November 15). *Why Did San Francisco's Cannabis Store 'Cashless ATMs' Suddenly Shut Down?* <https://www.leafly.com/news/industry/why-did-san-franciscos-cannabis-store-cashless-atms-suddenly-shut-down>
17. FinCEN (n.d.). *Marijuana Banking Update*. Financial Crime Enforcement Network. <https://www.sfnet.com/home/industry-data-publications/the-secured-lender/magazine/tsl-article-detail/part-ii-confronting-the-banking-dilemma-for-state-licensed-marijuana-businesses-in-the-united-states>

[1] That 3% comprises 189 banks as of February 2021, and of those only roughly a third support THC licensees. See <https://fincann.com/cannabis-banking-financial-network/> for further information on how this data is collected.

[2] See <https://www.expressach.com/> for further information regarding ACH, and <https://fincann.com/merchant-processing-program/> for card-based merchant processing.

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Nathaniel Gurien is the CEO of FINCANN a Nationwide Compliant, Transparent Banking For Cannabis Licensees & Ancillaries Compliant Merchant Processing & Electronic Payment Solutions, and a Licensed Real Estate Broker. he has 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.

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