Banking Marijuana-Related Businesses:  
A View from Arkansas and Colorado

Thursday, May 11, 2017  
1:00 PM to 2:15 PM CT
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• The opinions expressed in the presentations are intended for informational purposes, and are not formal opinions of, nor binding on, the Arkansas State Bank Department, the Colorado Department of Regulatory Agencies, the Federal Reserve Bank of St. Louis, the Federal Reserve Bank of Kansas City, or the Board of Governors of the Federal Reserve System.
Todays Presenters

- **Julie Stackhouse**
  Executive Vice President
  Federal Reserve Bank of St. Louis

- **Candace Franks**
  Commissioner
  Arkansas State Bank Department

- **Chris Myklebust**
  Commissioner
  Colorado Division of Banking
Todays Presenters

- **Richie Thorne**  
  *Assistant Vice President*  
  Federal Reserve Bank of Kansas City (Denver Branch)

- **Phil Magathan**  
  *Senior Examiner and BSA specialist*  
  Federal Reserve Bank of Kansas City
Banking Marijuana-Related Businesses:

A View from Arkansas
State Legislation - Arkansas

- Issue 6 – The Arkansas Medical Marijuana Amendment of 2016 was passed on November 8, 2016.
- The passage of Issue 6 creates new responsibilities for a variety of state agencies in Arkansas.
- As of today, the rules and regulations and overall guidance related to implementing the Arkansas Medical Marijuana Amendment of 2016 remain pending and in process.
- The Arkansas Medical Marijuana Amendment requires the creation of an independent commission to oversee the licensing and regulation of cultivation facilities and dispensaries. Additional information regarding the Medical Marijuana Amendment can be found at:
  - [http://www.dfa.arkansas.gov/Pages/MedicalMarijuanaAmendment.aspx](http://www.dfa.arkansas.gov/Pages/MedicalMarijuanaAmendment.aspx)
  - [http://www.healthy.arkansas.gov/Pages/MedMarijuana.aspx](http://www.healthy.arkansas.gov/Pages/MedMarijuana.aspx)
- The Arkansas Department of Finance and Administration has not yet begun issuing permits, taking names or applications, or otherwise authorizing the use of marijuana. Use of marijuana under circumstances outside the limits of the amendment is still illegal in Arkansas.
Arkansas State Bank Department Oversight

- On Nov. 29, 2016, the Arkansas State Bank Department issued a memorandum to all Arkansas state-chartered banks titled, “Relationships with Marijuana-Related Businesses.” The memorandum provided the most current and available industry information relating to banks and their potential business plans regarding banking and the marijuana industry.

- Since Nov. 29, no additional information has been issued by the Arkansas State Bank Department.

- The Conference of State Bank Supervisors (CSBS) is also focused on this issue since many states have some type of permissible marijuana activity under state law.

- The Arkansas State Bank Department will continue to work with CSBS and will provide information to Arkansas banks as it becomes available.
Currently, CSBS is working to develop two separate work products regarding the regulatory process and for supervising banks that choose to bank marijuana-related businesses. These are:

- **Marijuana Data Tool** – Will incorporate a state-level legislative tracker that details pending state legislation regarding marijuana legalization, taxation and regulation. It is populated using LexisNexis’ StateNet data. In addition to the legislative tracker, the Data Tool will have interactive maps.

- **Examiner Job Aid** – The Examiner Job Aid will incorporate a series of questions that state banking examiners may use to facilitate conversations with banks regarding the banking of marijuana-related businesses (MRBs). This is not a mandatory job aid but examiners can use as appropriate.

The release of CSBS these work products is subject to CSBS Board approval and timeframes and implementation, if applicable, are yet to be determined.
Banking Marijuana-Related Businesses:
A View from Colorado
Dual Chartering

- National monetary system in the U.S.
- Federal law enforcement and federal regulators do not have the luxury of considering marijuana a “legal” substance under state law.
- Marijuana is ONLY illegal.
- Hat’s off to them for what they have already done!
Risks for Banks Persist

• Guidance is not law.

• Federal consequences remain, including prosecution and seizure of assets.

• Reputation: Not all your customers will be thrilled about your decisions.

• Heightened compliance responsibilities and increased costs.

• No immunity for state employees or regulators.
Guidance Creates Ongoing Confusion – Lessons Learned from Colorado

• Guidance sets compliance expectations; it is not permission to engage in an activity that is illegal at the federal level.

• States should coordinate expectations with federal regulators.

• Stakeholders should have a seed-to-sale tax and licensing structure in place before beginning sales. Banking is not recommended until this is accomplished.

• This is not a "grow as you go" regulatory framework.

• Be transparent and work across state agencies to ensure compliance (e.g. transportation; tax; health; legislature).

• Start with an examination checklist to begin researching issues you will face from a regulatory perspective.
Possible Solutions

• Change the Controlled Substances Act (CSA)?

• Create a safe harbor for legal businesses?

Either Requires U.S. Congress to Act
Banking Marijuana-Related Businesses:

A View from the Federal Reserve Bank of Kansas City
Establishing a Program

• Bank’s decision to establish marijuana accounts
  • FinCEN guidance restated that this is a “Risk Based Decision” for Banks

• Colorado banks banking marijuana
  • 12 to 18 banks per banking associations in Colorado
  • Primarily limited to deposit services

• Bankers’ observations concerning banking marijuana
Establishing a Program (continued)

Supervisory Expectations

• Robust marijuana risk management program
  – Resources and systems should be sufficient
• Strong board and senior management oversight
  – Risk limits should be established
    • Number of clients/accounts, percent of revenue, etc.

Revenue is high but so are compliance costs

• Break even analysis should be conducted

Good practices evidenced

• Selective onboarding, training program, on-site reviews
Staffing Example

88 Clients

6 Private Bankers
- BSA Officer
- BSA Officer
- BSA Officer
- BSA Officer
- BSA Officer
- BSA Officer

2 Compliance Manager CAMs Certified
- COMPLIANCE OFFICER
- COMPLIANCE OFFICER

1 VICE PRESIDENT
Banking Marijuana-Related Businesses:

Bank Secrecy Act (BSA) Considerations
DOJ and FinCEN Guidance

- Department of Justice (DOJ) Memos and Guidance
  - “Cole Memo” (August 29, 2013¹)
    - Eight priorities of law enforcement

- DOJ Guidance on February 14, 2014²
  - Partnered with FinCEN guidance and eight priority reminder

- Financial Crimes Enforcement Network (FinCEN)
  - Fin-2014-G001 on February 14, 2014³
    - Restated that this is a “Risk Based Decision” for banks
    - Outlined regulatory expectations for internal controls (customer due diligence and Suspicious Activity Report filing), primarily tied to the eight priority objectives of the DOJ

Clarification and Regulatory Expectations

- Bank’s decision to provide financial services to marijuana-related businesses (MRBs) consistent with their BSA obligations.

- The regulatory expectation is that customers are effectively risk-assessed and monitored, and that FinCEN and Cole Memo guidance is followed.
  - Robust BSA program
  - Assessing risks
  - Strong board and senior management oversight
  - Risk limits in place
Guidance & BSA Expectations

• Enhanced Due Diligence (EDD) for higher-risk customers is critical in understanding anticipated transactions, and implementing a suspicious activity monitoring system to reduce the bank's reputation, compliance, and transaction risks.

• For MRBs, additional customer due diligence is needed to address factors set forth in FinCEN's "BSA Expectations Regarding Marijuana-Related Businesses."

• The Cole Memo requires that banks consider whether an MRB implicates one of the “priorities” or “violates state law”. As such, EDD will likely be more burdensome than other cash-intensive businesses or higher-risk customers. For example, banks must:
  – Ensure that the businesses remain licensed, check with state to see if inspection reports are accessible.
  – Collect financial information; compare to cash activity
  – Aggregate related account activity (personal, related businesses)
Guidance & BSA Expectations

The goal of the 2014 FinCEN guidance is to:

“Clarify BSA expectations for financial institutions seeking to provide services to marijuana-related businesses" and to "enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses."
Guidance & BSA Expectations (continued)

FinCEN guidance places increased due diligence and reporting obligations on banks that decide to provide financial services to MRBs.

- Some key factors for complying with FinCEN guidance:
  - Customer transparency;
  - Well trained staff;
  - MRB risk assessment process;
  - Frequently updating MRB customer due diligence; and
  - Filing timely and correct SARs (e.g. Limited; Priority; Termination)

- Where could a bank fall short?
  - Insufficient due diligence for adhering to FinCEN guidance; and
  - Monitoring and reporting processes including resources not commensurate with the risks to ensure CTR and SAR compliance.
We don’t bank these – risk mitigation?

• Risk mitigation practices that can help achieve this board driven message:
  – Board approved policy prohibition
  – Risk assessment of geographical impact
  – Customer due diligence questions during onboarding
  – Ongoing customer screening/scrubs against state-licensed businesses
  – Customer screening against state licensed addresses
  – Suspicious Activity Monitoring Services (SAMS) settings to help identify cash intensive businesses, with further due diligence to ensure cash is not derived from marijuana
  – Training
  – SAR filing if suspected/detected
Additional Questions/Guidance for BSA Expectations Regarding MRBs?

- Connect with FinCEN’s Resource Center at: https://www.fincen.gov/contact

- Financial institutions may submit inquiries to the FinCEN Resource Center at: FRC@fincen.gov
Questions

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Thank You

- Following the call a survey will be sent to all participants. Your feedback is very important to us and we appreciate the insight you provide to improve this program.

- For more information on Conversations with the St. Louis Fed please visit: www.stlouisfed.org/conversations