Designing Your Marijuana Strategy

Marijuana, hemp and CBD are confusing and divisive topics and financial institutions are caught in a conundrum wanting to service them but afraid of regulatory oversight. Regulators, FinCEN, and examiners differ on what is acceptable and what is not even within the same body. Therefore, the institutions with whom we deal in numerous states are varied in their approach and include those that want no part of servicing any types of cannabis businesses, those that are moving into the industry to keep customers who themselves are serving the industry, and those that want to jump in to capitalize on the opportunity this industry presents.

The question all financial institutions are asking is, "What are we going to do with this industry? Originally, people thought a simple approach would be, "We just won't bank them." However, as the industry expands, it seems almost every community is seeing businesses moving in that are dealing with this industry. Institutions are finding more and more of their current customer base is selling or considering selling CBD products, growing industrial hemp, or doing business with or as a Marijuana Related Business (MRB).

What should your financial institution do to ensure your program is strong and meets regulatory approval? That is a broad question and entire books have been written to answer it (Navigating Safe Harbor by Sundie Seefried). However, there are some basic guidelines that you can follow to start your institution down the appropriate path.

First and foremost, you should begin with educating yourself and your board on the industry and the opportunities and the risks. Your Board of Directors is ultimately responsible for your entire program, so their risk tolerance should drive your entire program. With that in mind, a comprehensive risk assessment that considers all facets of the industry from marijuana, hemp and CBD should be your first step.

Next, you should consider your institution's regulatory health if you choose to bank MRB's. This is not a decision you should take lightly; your regulators will expect your full attention on this new business line. You likely don't have adequate resources to undertake banking marijuana if you are trying to remediate any component of your CAMELS rating with a score of less than 2, or an enforcement action.

Remember, your state is not your only consideration. States where you process transactions such as ACH, wires, investments, etc. need to be considered as well. When evaluating the risk of different states, go to the state website and look under their department of state, health, agriculture or revenue. Each state is different, but all of them are listing their information somewhere on their state's website. Also, the Marijuana Policy Project is another resource that will keep you up to date on the laws affecting your institution's footprint.

Once you have determined your risks and controls, you must implement a robust customer due diligence program. You should include at a minimum; how you will identify current or new customers involved in the industry, your onboarding requirements, your ongoing monitoring, and the steps to terminate a customer. Include in your program when you will file a SAR and what type of SARs you will file based on the FinCEN guidance. You should also look at software solutions that will interface with the MRB's "seed-to-sale" inventory system and your core so you can compare deposit activity to sales activity. You will also need an exit plan or “kill switch” for the whole customer group in the event the state or federal government change their stance on the legality of the product.

This doesn’t just affect the BSA department. If your institution will be handling customers with large and quickly changing deposit balances, then your liquidity plan will need to be updated. Also, your lending policies will need to reflect your risk appetite for MRB-related collateral. Lending to MRBs or industrial hemp growers is not allowed under the Small Business Administration. The federal illegality of marijuana makes lending to MRBs high risk since the federal government can seize all property related to violations of the Controlled Substances Act. You will also need to ensure your current internal and BSA auditors are up to the task of competently auditing your new program.

As you are designing your program, you must also consider the staffing requirements to implement that program. With additional monitoring, SARs, CTRs, training, site visits, etc., you will need additional staff to cover the regulatory expectations.

Speaking of regulatory expectations, you should reach out to your regulators and let them know the direction you are going and show them your policy and procedures before stepping into this business. Regulators from the OCC, FDIC, and Federal Reserve are not all addressing this line of business the same way. Your state regulators may even have a different view from the federal regulators. Know your regulator’s position before you get involved in this line of business. Also, understand the reputation risk from banking marijuana-related businesses, including the perception of existing customers and the potential adverse effect on any potential merger and/or acquisition opportunities.

If you don’t act with caution and diligence, before stepping into the industry, you may find yourself in over your head. If you do it with foresight and expertise, you may discover a new revenue builder for your institution!

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