

THE REVIEW OF  
**BANKING & FINANCIAL  
SERVICES**  
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS  
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 36 No. 2 February 2020

## NAVIGATING THE CHALLENGES OF MARIJUANA BANKING

*In this article, the authors provide an overview of the legal and regulatory framework for providing banking services to marijuana-related businesses (“MRBs”). They discuss the federal regulatory response to state legalization, including DOJ and FinCEN guidance to financial institutions. They then turn to best practices for implementing a robust compliance program for AML compliance; these include customer due diligence, SAR reporting, and controls on products and services. They close with a note on the importance of working with MRB customers to develop a responsible customer relationship.*

By Michael J. Bresnick and Andrew E. Bigart \*

While marijuana remains illegal as a Schedule I drug under the federal Controlled Substances Act (“CSA”), almost every state has legalized the sale and use of marijuana in some form, even if just for limited medical purposes. As of the beginning of 2020, 45 states and the District of Columbia have legalized the sale and use of medical marijuana (with varying, even if limited, degrees of restriction), and 11 states plus the District of Columbia have approved recreational sales and use. Accordingly, even though the federal government continues to classify marijuana as harmful as heroin (Schedule I), and more harmful (and with fewer medical benefits) than crack cocaine (Schedule II), the growing, processing, and sale of marijuana has become a multi-billion dollar industry.

Notwithstanding its tremendous growth, the marijuana industry remains primarily cash-based. The lack of basic banking, payments, and other financial

services has increased the risk of money laundering, violent crime, and tax evasion, among other concerns. Given the conflict in federal and state law, solutions for this challenge have proven elusive. In response, federal agencies have issued (and rescinded, in part) guidance explaining how financial institutions can provide services to the marijuana industry, consistent with their anti-money laundering (“AML”) compliance obligations.

Most financial institutions have avoided the industry entirely, regardless of the federal guidance, including by shutting down any accounts for “ancillary” businesses that perform services for marijuana-related businesses (“MRBs”). Nevertheless, an increasing number of financial institutions have begun to serve the industry in states in which the use or sale of medical or recreational marijuana has been legalized. This trend is likely to continue, even if slowly, regardless of a potential federal

---

\* MICHAEL J. BRESNICK is a partner in Venable LLP’s Washington, D.C., office, serving as Chair of the Financial Services Investigations and Enforcement Practice. ANDREW E. BIGART, a partner in Venable’s Washington, D.C. office, helps financial institutions navigate their regulatory environment. Mr. Bresnick and Mr. Bigart have extensive experience providing legal counsel to banks and credit unions that provide banking services to marijuana-related businesses in states where marijuana has been legalized. Their e-mail addresses are [mjbresnick@venable.com](mailto:mjbresnick@venable.com) and [aebigart@venable.com](mailto:aebigart@venable.com).

---

### INSIDE THIS ISSUE

● **THE BIS ENTITY LIST: THE U.S. GOVERNMENT’S “NEW” FOREIGN POLICY STICK**, Page 23

### AUTHORS’ DISCLAIMER:

Using, distributing, possessing, and/or selling marijuana is illegal under existing federal law. Compliance with state law does not guarantee or constitute compliance with federal law. This informational overview, publication, or presentation is not intended to provide any legal advice, or any guidance or assistance in violating federal law.