

Marijuana – Related Businesses and the Banking Industry

West Coast Anti-Money Laundering Forum

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Federal Law Enforcement Background Information

- *Approximately 20 states have authorized usage of marijuana for medical purposes and two states – Colorado and Washington – have authorized recreational use.*
- *The October 2009 Ogden Memorandum*
 - *Advised that it is not likely an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana consistent with applicable state law, or their caregivers.*
- *The June 2011 Cole Memorandum*
 - Reaffirms Cole memorandum, but asserts that the Ogden memorandum was never meant to shield from prosecution large-scale marijuana cultivation or shield those who “engage in transactions involving the proceeds of such activity.”

Federal Law Enforcement Background Information

- *The August 2013 Cole Memorandum*
 - *Updates Ogden and Cole guidance in light of state ballot initiatives that legalize possession for small amounts of marijuana and provide for the regulation of marijuana production, processing and sale.*
 - *Retreats from 2011 Cole memorandum by taking emphasis away from the size of the marijuana cultivation activity and placing it on whether the activity is inconsistent with DoJ enforcement priorities and/or non-compliant with a strong and effective state regulatory scheme.*
- *The February 2014 Cole Memorandum*
 - *Extends the August 2013 Cole Memorandum guidance to federal money laundering, unlicensed money transmitter, and BSA offenses*
 - *But reaffirms that marijuana is illegal under federal law. The memo goes on to state: “Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution.”*

The BSA/AML Regulatory Background

- FIN-2014-G001, BSA Expectations Regarding Marijuana-Related Businesses
 - Guidance clarifies “how financial institutions can provides services to marijuana-related businesses consistent with their BSA obligations, . . .”
 - Specifies expectations for customer due diligence, refresh of due diligence, and evaluation of whether customer activity implicates 2013 Cole Memorandum priorities.
 - SAR filing obligations remain unchanged, but suggests designations: “Marijuana limited,” “Marijuana priority,” and “Marijuana terminated” be used.
 - Identifies “red flags” indicative of marijuana activities that implicate Cole Memorandum priorities.

The BSA/AML Regulatory Background

- April 1, 2014 Letter from Senators Grassley and Feinstein, writing in their capacities as Chairwoman and Co-Chairman of Senator Caucus On International Narcotics Control.
 - “Far from *clarifying* the obligations of financial institutions, FinCEN’s guidance appears to create uncertainty where none had existed beforehand.”
 - Puts eight questions to the FinCEN Director, questions that go mainly to whether FinCEN purports to alter federal criminal laws.
- FinCEN Director’s Response to Senators Grassley and Feinstein
 - FinCEN’s intention behind the guidance was to promote transparency; it did not intend to alter federal criminal laws. FinCEN defers to the Justice Department regarding criminal law enforcement.

Other Odds and Ends

- Operation Choke Point
 - Committee on Oversight and Government Reform (May 29, 2014)
 - Staff Report critical of DoJ initiative to “choke out” the banking of high risk companies.
- Marijuana Business Access to Banking Act (H.R. 2652)
 - The proposed legislation introduced by Rep. Ed Perlmutter (D-CO) would create protections for depository institutions that provide financial services to marijuana-related businesses authorized under state law.
 - The bill has numerous sponsors but as yet as not made it out of committee.
- DEA previously denied a petition in 2011 to reschedule marijuana.
 - The petition had been filed in 2002.
- *United States v. Pickard*, No. 2:11-cr-449-KJM (April 17, 2015 E.D.Cal.)
 - rejects challenge to the classification of marijuana as a Schedule I controlled substance.
- ABA, *Frequently Asked Questions* (February 2014).