

June 9, 2021



## Operational issues in the cannabis industry

By Gary I. Levenstein

Recreational marijuana use is now legal in 17 states and Washington, D.C. Research firms project legal U.S. cannabis sales to reach \$22.8 billion this year and \$28.3 billion in 2022 — a 24% annual growth rate. This dramatic growth indicates the ongoing need to address significant operational issues in the cannabis industry. These matters include cash management, insurance, treasury and financial services, and payment solutions.

### Cash management

The cost and risk of handling cash has always been a major issue in the cannabis industry. Cannabis operations should use an integrated solution that offers secure cash-custody processes and real-time visibility of cash. Many sophisticated business processes increasingly offer state-of-the-art tech solutions. Multistate operators and single dispensaries also seek solutions for their transaction logs to enable the efficient management of financial operations and transmission of funds. An integrated back-office, cash-recycling solution has an operational impact at the retail dispensary level and could save many staff hours by making it easier to count, deposit, and record cash.

### Insurance in the cannabis industry

Using insurance advisors with expertise and experience in the industry are very important. Coverage for property, general liability, excess, products, and completed liability, as well as coverage for product withdrawal expense, property in transit, and living plants, must be contemplated. Comprehensive solutions must be considered by cultivators, dispensaries, extractors, processors, product manufacturers, testing labs, landlords, and ancillary businesses in all states where cannabis is legal.

### Treasury and financial services

Cannabis-related businesses must be in compliance with statutory regulations, but in the rapidly growing cannabis industry, limited financial services solutions are available. Cannabis businesses require a suite of services, including cash pickups, receivables management, bill pay, electronic payments, real-time settlements, escrow services, and robust reporting.

Federal regulatory proposals continue to complicate the compliance and reporting landscape for banks and credit unions serving this sector. Solutions are available that eliminate the need for

banks to invest in a new set of operational and technical capabilities to serve the cannabis industry. Banks and credit unions spend extensive time, energy, and funds on guidance through the intensive and complicated process to provide marijuana-related businesses financial solutions.

## **Legitimate payment solutions**

Many banks are unwilling to facilitate electronic payment transactions related to cannabis, even if those transactions are legal under state law, although many banks and credit unions knowingly facilitate electronic payments for the purchase of cannabis, as long as such transactions are conducted with full transparency. This transparency mitigates risks associated with bank fraud and helps financial institutions that are willing to service the cannabis industry by being compliant with the Bank Secrecy Act and FinCEN guidance obligations.

Advancements in the industry have furthered cashless payment solutions in response to the needs of cannabis retailers. However, major credit card networks such as Visa and MasterCard are still not accepting transactions for the purchase of marijuana because it remains illegal to do so under federal law. There are no legitimate merchant codes associated with marijuana. Therefore, if a cannabis business is accepting credit cards for cannabis-related purchases, they are likely doing so without authorization. By executing these transactions, financial institutions run the risk of committing bank fraud. Accepting credit cards for marijuana purchases is a violation of network rules and, if enforced, could result in a permanent ban from the networks.

Electronic payment solutions conducted via ACH networks or ATM networks may be feasible if the payment facilitators can demonstrate that their solutions are transparent. To ensure this, the solution provider must work only with cannabis operators that are licensed and operate in compliance with state and local cannabis laws; work only with financial institutions to originate transactions that knowingly provide services to and on behalf of cannabis-related businesses; and only transmit money to cannabis merchant clients that have compliant cannabis banking accounts with financial institutions that openly serve the cannabis industry.

Cannabis businesses must evaluate proposed payment solutions to be certain that an electronic transaction is transparent and not a “masked” transaction that could be deemed to be bank fraud.

## **Recap**

Significant operational issues affect cannabis businesses. Legal guidance must be obtained regarding applicable local, state, and federal laws and guidelines. Every measure must be taken to minimize risks.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

— Gary I. Levenstein, 312-977-4108, [gilevenstein@nixonpeabody.com](mailto:gilevenstein@nixonpeabody.com)