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PERSPECTIVE

Bill looks to end standoff over banking with cannabis businesses

By Matthew Zandi

The legalization of cannabis continues to gain momentum: It is legal in at least some capacity in 33 states and the District of Columbia, and counting. The Catch-22 is that marijuana is illegal at the federal level. Where there is business — and cannabis business is thriving — what are banks to do? As banks are often risk averse, due to the veritable deluge of unknowns involved, most are not willing to throw themselves wholeheartedly into offering banking services to legal cannabis businesses.

The House Financial Services Committee recently convened a hearing in consideration of newly proposed legislation, the Secure and Fair Enforcement Banking Act of 2019 (SAFE Banking Act of 2019), which addresses the standoff between the states and the federal government. Rob Nichols, president of the American Banking Association, in a recent oped forwards a startling statistic gleaned from a current survey: A full 99 percent of banks are in favor of bridging the gap between state and federal marijuana laws. Indeed, three out of four member banks reported turning away business in the form of closing accounts, terminating banking relationships, and/or turning away potential customers. Banks, it can be stated with authority, don't want to unnecessarily turn away business, but they need federal guidance to ensure that they can expand in this area.

Forced out of traditional financial institutions, the way the current setup works — or doesn't, as the case may be — is that legal cannabis businesses are forced into a cash-only business model, which effectively sets them up as crime magnets and poses potential safety risks for the public. Because the cannabis business is booming, it makes things that much more complicated and potentially dangerous; dealing in cash opens

the door to the criminal element to use the cannabis industry as a front for money laundering which is inherently attractive to the criminally inclined.

In a February 18 opinion in *The Hill*, Nichols touts his belief that Washington has reached a “turning point” in the national cannabis and banking debate. This turning point comes in the form of the congressional hearing on the issue, and it includes lawmaker and witness testimony highlighting the harm promulgated by the widening gap between state and federal marijuana laws. While Nichols acknowledges that the American Banking Association takes no position regarding legalization, he is careful to point out that reconciliation of state and federal laws would allow a tremendous amount of profits to safely flow through regulated financial institutions.

A group of four U.S. representatives (bipartisan in makeup) penned and subsequently represented the SAFE Banking Act at the Financial Services Committee hearing. Its impetus is to harmonize discordant state and federal cannabis law in an effort to allow cannabis-related businesses access to banking services. The idea is to offer banking institutions exemption from federal prosecution or investigation that is based solely on providing banking services to legal cannabis businesses and their employees.

California's recently elected state treasurer, Fiona Ma, testified at the hearing, and she brought her unique perspective as a member of the State Board of Equalization, one of the state's two primary tax collection agencies where cannabis businesses are meant to remit their sales taxes. She expounds on the predicament by explaining that “duffel bags and sometime suitcases of cash” show up at their offices. Ma shares her belief that “it's critical we accommodate the magnitude of this economic uptick with access to banking for the

new state-regulated industry.”

Ma put a fine point on the legal cannabis business conundrum by outlining the inherent trickle-down problems of conducting a legal business in the shadows: Because they are unbanked and, thus, can't secure payroll systems, cannabis businesses pay their employees in cash. As a result, these employees can't build credit, which affects their ability to buy homes and cars, or even to rent apartments, in support of their families. Also, Social Security and income taxes generated by cash are difficult to process accurately, and employees are typically cut out of their Social Security benefits.

Ultimately, the risk to employees' safety supersedes even these problems. Cash-only businesses are extremely vulnerable to robberies and other violent threats. Many legal cannabis businesses create elaborate infrastructures of onsite security and employ armored trucks to transport cash in bulk. One D.C. cannabis-business owner testified that the cash predicament presents an “enormous headache and significant public safety threat.”

Not all banks are giving cannabis cash a pass. Rachel Pross, chief risk officer for Maps Credit Union, a mid-sized Oregon financial cooperative and the only financial institution in the state to continually serve cannabis businesses since legalization for recreational use in 2014, testified at the hearing on behalf of the Credit Union National Association — the largest credit union advocacy organization in the United States. Her testimony shed light on the banking inroads being made in the legal cannabis industry.

Maps' process forward encompasses a commitment to the diligent fostering of necessary risk management and compliance. Pross explains that the credit union's goal is to help set a nationwide standard that enables other credit unions by providing time-tested best practices.

These practices are modeled after cannabis business expectations set forth by the Financial Crimes Enforcement Network's (FinCEN's) Bank Secrecy Act.

In its compliance efforts, Maps has invested heavily in building a stalwart infrastructure to establish the rigorous protocols necessary to “appropriately monitor and maintain these high-risk accounts.” Maps' due diligence not only provides cannabis customers with banking services but also helps these businesses remain compliant.

The cannabis industry does not, of course, thrive in a vacuum but, instead, has a broad reach that includes making payments to utility companies, landlords, service providers, and so on. Banks are forced to consider how far back they must dig in their compliance efforts. There are no easy or ready answers. All told, this congressional hearing is another brick in the wall that must be erected before state and federal marijuana laws can live together in perfect harmony.

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