

# CANNABIS BANKING

SUSPICIOUS ACTIVITY REPORTING  
& INVESTMENT ACCOUNTS



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# THE ISSUE

What sets our firm apart from others is our ability to seamlessly partner with our clients...to be an extension of their Compliance and BSA functions, to provide the expertise, support structure and sounding boards they may not be able to achieve internally for myriad reasons. In partnering with our clients, when they feel the regulatory hurt,

We had one of those days this week. We had one of those days where we had to throw our hands up in frustration for our clients and for the lack of regulatory consistency and perspective when it comes to one specific situation...one that could be applied to other similar circumstances in how financial institutions are being examined for compliance in our world of cannabis banking.



## THE MAN WHO MOVES A MOUNTAIN BEGINS BY CARRYING AWAY SMALL STONES ~ Confucious

whether it be a tough examination or challenges related to implementing new or changing legislation, we want to go to bat for them. We want to help them through the process and while we must be the ones who remain cool-headed and the source of guidance through the toughest of circumstances, there are nevertheless moments that make us want to put our arms in front of our client and hold them back in an attempt to protect them as we hit the breaks when the regulatory bus is going off the rails.

Let's take a look at the situation first: The bank has a Trust Department that, through a third-party administrator, invests its clients' funds. Nothing out of the ordinary about this, right? Well, it so happens that one of the funds into which clients' funds were invested contained a small number of investments in Canadian cannabis companies that are legal, publicly-traded entities. The examiners caught sight of this and raised the red flags.

Before we get into what the examiners saw as remediation, let's dissect this a bit. The bank itself did not invest in cannabis businesses. The bank's customers did not direct such investment. The bank's third-party administrator invested the funds on behalf of the bank's customers. The bank's customers are not considered Marijuana-Related Businesses (MRBs); at the very least they would be considered indirect MRBs...perhaps along the lines of what we would consider Tier III MRBs if we follow the tiering system, but that is a stretch.

The question is: What does the bank do with this knowledge and with these customers now?

The Remediation: The bank was instructed to file Marijuana-Limited SARs on all customers on whose behalf funds were invested in the Canadian cannabis companies. The idea of citing a Matter Requiring Attention (MRA) was also floated out during the soft exit. The Trust Department, with good reason, was incensed.

Let's think this through...the purpose of the Marijuana-Limited SAR is to notify FinCEN and law enforcement when a financial institution is banking a Marijuana-Related Business.

FinCEN has communicated, informally on a bank-by-bank basis, that Marijuana-Limited SARs should not be filed for indirect MRBs. Why? Because it skews the data. Banking indirect MRBs is not an indication of who is banking direct MRBs. Filing on indirect MRBs clogs the system. It is unnecessary.

The customers on whose behalf funds were invested in legal, publicly traded cannabis companies are not MRBs. They are not conducting suspicious activity.

Here's another angle...we would look to the SEC to govern these trades. Much to our delight, a legal opinion has been rendered on this matter (footnoted below). As such, if the bank's Trust Company can demonstrate that the fund reflects the terms discussed in the opinion, there would be no illegal activity being conducted through these transactions...and as such, no suspicious activity reports (marijuana or otherwise) would be warranted.

So, now the bank and its Trust Company have to go to battle. The first step is in attempting to make their case to their examiners that no suspicious activity reports would be necessary. If the examiners do not accept this case, the bank then needs to determine whether keeping their wealthy, well-established customer relationships is worth the cost of administering compliance with initial and ongoing suspicious activity reporting. Could they unwind the investments? Sure. Could they direct the third-party administrator not to invest in such funds going forward? Sure. But why would they?



You know what is ironic? This particular bank had actually gone through an extensive process to create a Cannabis Banking Risk Assessment that drove a comprehensive policy designed to bank direct MRBs...they were getting ready to accept and administer direct MRBs on a case-by-case basis. They have all the controls in place. They have expertise and knowledge. They were going into this eyes wide open, only to be sucker punched in the gut by a skewed interpretation of the FinCEN guidelines.

Here's the thing: I know examiners have a job to do. I get it. I've lived in their world. In their defense, I think they are equally frustrated with the lack of guidance when it comes to cannabis banking. They need to be conservative and they need to do what they need to do to attest to their leadership that they are ensuring the institutions under their supervision are operating in a safe and sound manner.

This is another reason why, as we head toward a vote in Washington, we need to gain solid footing in whatever legislation is passed. It is fair to neither the regulators nor the institutions they supervise to implement legislation that leave so much up to interpretation.

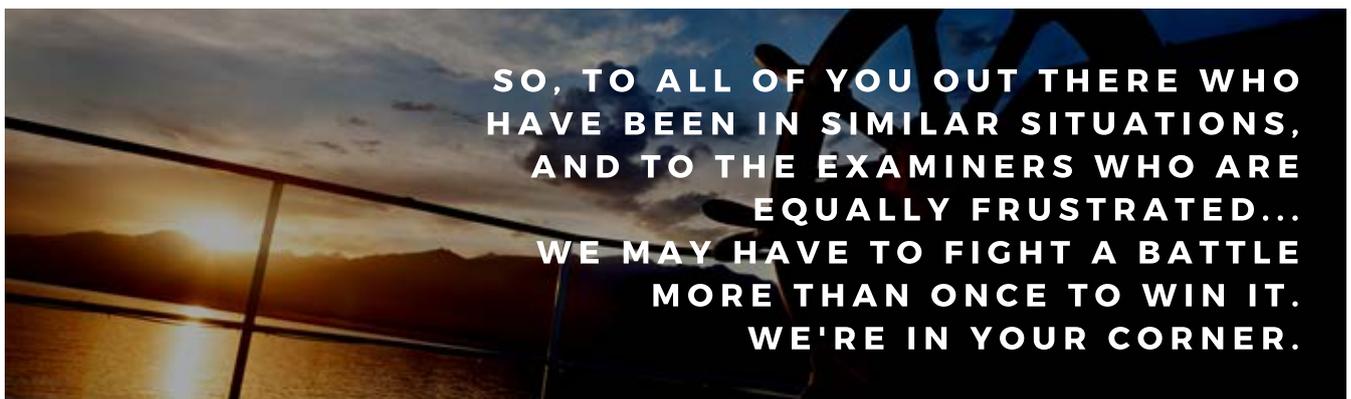
**Integrated Compliance Solutions** is a financial technology, banking compliance and innovative payments solution provider helping financial institutions with complex transactions.

As one of the leading cannabis consulting firms in the United States, ICS provides a complete compliance strategy to Federally regulated institutions that actively bank direct cannabis-related businesses, and those that wish to tailor their Cannabis Banking Programs to specific sectors (e.g. indirect CRBs, hemp or CBD depository services or merchant processing) or establish programs that are carefully crafted to avoid the cannabis space.

Through our extensive and direct work in the industry, and as thought leaders recognized throughout the U.S., ICS is committed to providing sound and stable banking solutions to the legal cannabis industry while assisting financial institutions comply with complex regulatory expectations.

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