



TFA

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Transaction Spotlight: Shedding Light on Faciam's Acquisition of Summit Bank and its Potential Impact to the Cannabis Industry

By William Crader, CFA

On November 28, 2018, Faciam Holdings, Inc. and Summit Bancshares, Inc. (parent of Summit Bank headquartered in Oakland, California) jointly announced a definitive agreement in which Faciam will acquire Summit Bank. The deal would mark the first time a Federal Deposit Insurance Corporation (FDIC) insured bank is formally pursuing a business plan to service marijuana related businesses (MRBs) included as a new business line within a change of control application. Accordingly, it also marks the first time the FDIC, which serves as Summit Bank's primary regulator, has been asked directly to grant or deny a bank the ability to provide banking services to MRBs. If successfully consummated, this transaction would act as a monumental step in bolstering MRBs' access to banking services. Within Indian Country, this would imply tribes that are developing MRBs would potentially have access to a vital financial resource.

Why are MRBs denied access to bank services?

The short answer most often offered to this question is it's illegal. But is

banking MRBs really illegal? Michael Cox, who will serve as a director of the new Summit Bank and is spearheading the bank's compliance initiative around banking MRBs, would most definitively disagree. "With proper oversight and compliance procedures, Summit Bank believes that MRBs can legally be banked." The Cole Memo, which was issued in August 2013, and guidance from the Financial Crime Enforcement Network (FinCEN), certainly bolster the legality of banking MRBs even when accounting for former Attorney General Jeff Sessions' 2018 Cole Memo recession memorandum.

Most banks, especially large federally chartered and regulated banks, have stayed well clear of banking MRBs because cannabis (marijuana, THC) is listed as a "Schedule 1 Drug" by the Drug Enforcement Agency (DEA), which makes selling cannabis products federally illegal. Those in Indian Country who are developing MRBs are more than well acquainted with this policy as certain banks have ceased providing banking services to tribes with MRBs. These banks are acting in an abundance of

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IN THE NEWS

Pokagon Band Negotiates Historic Class III Gaming Compact In Indiana

11/4/19 – Indianz.com

Agua Caliente Band Breaks Ground For New Cathedral City Casino

11/8/19 – WorldCasinoNews.com

American Indian Business Enterprise To Jumpstart Small Businesses In Native Communities Across New Mexico

11/12/19 – NativeBusinessMag.com

Native American Tribes Propose Initiative To Legalize Sports Betting In California

11/13/19 – LosAngelesTimes.com

Opening Of Largest Tribal Outpatient Health Center 'Injects Economic Vitality Into The Heart Of The Cherokee Nation'

11/14/19 – NativeBusinessMag.com

LDF Construction Wins First 8(a) Contract For \$1 Million

11/20/19 – NativeBusinessMag.com

Pamunkey Tribe Asserts Rights After Release Of Gaming Study

11/25/19 – Indianz.com

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caution as to not face federal scrutiny themselves. The primary problem being the commingling of assets and banks' ability to lend using those deposit assets. In short, providing banking services to MRBs comes with significant expense, complexity and reputational risk, compounded by a general fear of the unknown.

Although MRB banking has a cloud of uncertainty around it, specific developments, like the introduction of the SAFE Banking Act in March 2019, suggest that even the federal government is recognizing change must be made.

Why is banking MRBs important?

By the very nature of not having access to the banking system, MRBs have only one option: to hoard cash. This causes problems ranging from payment of taxes (which must be paid in cash and physically transported to tax collection centers) to increased targeting of MRBs for assaults and robbery. Lack of banking services also means a massive amount of untraceable cash, which encourages further illegal activity. Summit Bank is implementing the "know your customer" diligence, monitoring and reporting system offered by Safe Harbor Services and developed by a leader in MRB banking, Sundie Seefried; CEO of Partner Colorado Credit Union and creator of the Safe Harbor compliance program to be implemented by Summit Bank. The level of oversight is unmatched and serves to provide regulators, like the FDIC, comfort that cash assets deposited are from fully compliant account holders. Andrew Nash, who serves as the director of Faciam, stated, "the opportunity is enormous, in California alone, the cannabis indus-

try is estimated to generate \$8 billion in sales from licensed MRBs. Currently, only about 5% of license holders have access to any form of transparent, legitimate banking services. Andrew Nash also adds "Most of the financial institutions willing to service the industry currently are small to mid-sized credit unions. These credit unions tend to be at capacity and have long waiting lists for new Cannabis affiliated depositors wanting account access. We want to be able to service the entire community and especially those groups who traditionally have been underbanked."

Importance to Indian Country

Although at this time, the Summit Bank acquisition does not have a direct connection to Indian Country, MRBs have been one of the primary economic diversification efforts being pursued by tribal sovereign nations. MRBs potentially could offer tribes a significant economic opportunity and having access to legitimate banking services will be a critical component of that success. On the margin, this also suggests momen-

tum around financial institutions eventually modifying their views on tribes' involvement in MRBs and not being punitive if offering banking services for Indian Country's primary economic engine: gaming.

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