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February 2, 2016

Subject: HB 4094 (House Business & Labor Committee) - February 3, 2015

Dear Chair Holvey and Members of the Committee:

My name is Brian Doherty and I am with the law firm of Miller Nash Graham & Dunn. I am here today testifying on behalf of our client, PayQwick LLC. Here with me today is Kenneth Berke, CEO of PayQwick, who will be able to provide you with a more in-depth description of PayQwick's business model. I am providing to the committee copies of PayQwick's business plan as well as an article from the State of Washington regarding PayQwick's successful entry into the marijuana money transmission business in that state. PayQwick has applied for and should receive shortly a money transmitter license from the State of Oregon.

PayQwick is federally registered with the United States Department of the Treasury Financial Crimes Enforcement Network ("FinCEN") as a money services business and licensed in Washington as a money transmitter with the Washington State Department of Financial Institutions. PayQwick offers both business to business and end consumers electronic payment services in the marijuana industry. In providing those services, PayQwick is subject to and complies with the Federal Bank Secrecy Act and only provides financial services to the marijuana industry consistent with the FinCEN guidance dated February 14, 2014. PayQwick fully vets all customers and has robust controls in place to ensure that it and its customers are in compliance with the eight federal enforcement priorities detailed in the United States Department of Justice's August 29, 2013, "Cole Memorandum" as reiterated in the FinCEN guidance.

Very truly yours,

Brian B. Doherty, P.C.





## Business Plan

PayQwick, LLC operates a payment processing platform serving the recreational marijuana industry in the State of Washington. PayQwick intends to begin offering services in Oregon once it is licensed in Oregon as a money transmitter and Oregon's traceability system comes "on-line."

PayQwick provides an electronic payment platform for the purchase and sale of marijuana between licensed Producers, Processors, Retailers and consumers, thereby eliminating cash transactions and reducing the risk of violent crime. PayQwick is not involved in the medical marijuana industry.

### 1. Money Collection – How Does Money Get Into the PayQwick System?

PayQwick collects money from its clients depending on the category of client involved. PayQwick has only five categories of clients: (1) Consumers (members of the public purchasing marijuana from a licensed Retailer), (2) Licensed Marijuana Producers, (3) Licensed Marijuana Processors, (4) Licensed Marijuana Retailers, and (5) vendors (*e.g.*, landlords, insurance agents, attorney, accountants, *etc.*) who supply goods and services to licensed marijuana businesses. (Licensed Marijuana Producers, Processors and Retailers are collectively referred to as "PPRs.")

#### A. Consumers:

1. ACH: Consumers transfer money to their PayQwick account over the internet using an ACH transfer from their personal checking or savings account.

#### B. Licensed Retailers:

1. ACH: Retailers can transfer money to their PayQwick account over the internet using an ACH transfer from their checking account.
2. Check by Mail: Retailers can mail a check to PayQwick to fund their account.
3. Payment from Consumers: Consumers purchasing marijuana at a retail store can pay with a PayQwick card or smartphone app, thereby transferring money from the Consumer's PayQwick sub-account to the Retailer's PayQwick sub-account.
4. Cash Pickup by Armored Car: Retailers can have cash picked up from their stores by PayQwick's authorized armored car transport company. The armored car company transports the cash to its cash-processing center where

the money is counted and deposited into PayQwick's bank account.<sup>1</sup> Then, the funds are credited to the Retailer's PayQwick sub-account.

C. Licensed Processors:

1. ACH: Processors can transfer money to their PayQwick account over the internet using an ACH transfer from their checking account.
2. Check by Mail: Processors can mail a check to PayQwick to fund their account.
3. Payment from Retailers: Retailers purchasing marijuana to sell at their retail store can pay the Processor using their PayQwick sub-account, thereby transferring money from the Retailer's PayQwick sub-account to the Processor's PayQwick sub-account.
4. Cash Pickup by Armored Car: Processors can have cash picked up from their processing facility by PayQwick's authorized armored car transport company. The armored car company transports the cash to its cash-processing center where the money is counted and deposited into PayQwick's bank account. Then, the funds are credited to the Processor's PayQwick sub-account.

D. Licensed Producers:

1. ACH: Producers can transfer money to their PayQwick sub-account over the internet using an ACH transfer from their checking account.
2. Check by Mail: Producers can mail a check to PayQwick to fund their PayQwick sub-account.
3. Payment from Processors or Retailers: Processors and Retailers purchasing marijuana for processing or retail sale can pay the Producer using their PayQwick sub-account, thereby transferring money from the Processor's or Retailer's PayQwick sub-account to the Producer's PayQwick sub-account.
4. Cash Pickup by Armored Car: Producers can have cash picked up from their production facility by PayQwick's authorized armored car transport company. The armored car company transports the cash to its cash-processing center where the money is counted and deposited into

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<sup>1</sup> PayQwick may open accounts at other financial institutions to handle funds deposited with PayQwick by Consumers and PPRs. These accounts will only handle funds deposited by PayQwick's clients. PayQwick is in discussions with other financial institutions regarding their interest in opening accounts to accept funds deposited with PayQwick by Consumers and PPRs.

PayQwick's bank account. Then, the funds are credited to the Producer's PayQwick sub-account.

E. Vendors:

1. ACH: Vendors can transfer money to their PayQwick sub-account over the internet using an ACH transfer from their checking account.
2. Check by Mail: Vendors can mail a check to PayQwick to fund their PayQwick sub-account.
3. Payment from Producers, Processors or Retailers: Producers, Processors and Retailers purchasing goods or services can pay the Vendor using their PayQwick sub-account, thereby transferring money from the Producer's, Processor's or Retailer's PayQwick sub-account to the Vendor's PayQwick sub-account.
4. Cash Pickup by Armored Car: Vendors can have cash picked up from their offices by PayQwick's authorized armored car transport company. The armored car company transports the cash to its cash-processing center where the money is counted and deposited into PayQwick's bank account. Then, the funds are credited to the Vendor's PayQwick sub-account.

It should be noted that a number of PayQwick's clients hold both a Producer License and Processor License, but this does not alter the manner in which these clients get money into their PayQwick sub-account.

2. Money Transmission – How is Money Transferred Between and Among PayQwick's Clients?

PayQwick maintains two bank accounts at its bank. The first account is PayQwick's Operating Account, which only holds funds owned by PayQwick and is used to fund PayQwick's operating expenses. The second account holds the money deposited by PayQwick's clients, namely Producers, Processors, Retailers, Vendors and Consumers. Funds in the second account are separately allocated to sub-accounts for each individual Consumer, Producer, Processor, Retailer and Vendor. Each Consumer, Producer, Processor, Retailer and Vendor has a sub-account within PayQwick but does not have a separate bank account at PayQwick's bank.

When a Consumer pays a Retailer for marijuana using PayQwick, the funds are transferred electronically from the Consumer's sub-account within PayQwick to the Retailer's sub-account within PayQwick. Similarly, when a Retailer pays a Producer/Processor for marijuana inventory, the funds are transferred electronically from the Retailer's sub-account within PayQwick to the Producer/Processor's sub-account within PayQwick. When a Producer, Processor or Retailer pays a Vendor for goods or services, the funds are transferred electronically from the Producer's, Processor's, or Retailer's sub-account within PayQwick to the Vendor's sub-account within PayQwick.

PayQwick charges fees when clients fund their PayQwick account (e.g., cash pickups for deposit) and when funds are transferred between PayQwick's clients (e.g., when a Consumer pays a Retailer, when a Retailer pays a Producer/Processor or when a Retailer/Producer/Processor pays a Vendor). These fees are deducted from the applicable client's PayQwick sub-account and deposited into PayQwick's Operating Account. Funds owned by PayQwick are never commingled with funds owned by PayQwick's clients.

### 3. Records Collection and Retention

PayQwick is presently looking for a location to open its offices in Washington. PayQwick intends to locate its offices near Sea-Tac airport or in the Federal Way area of Washington so that it is readily accessible for inspection by the Liquor Control Board and the Department of Financial Institutions.

When applying to become a PayQwick client, PPRs will undergo an exhaustive background check and due diligence review process.<sup>2</sup> This process includes an analysis of the business in accordance with PayQwick's Bank Secrecy Act/Anti Money Laundering Compliance Program (the "BSA/AML Compliance Program"). All books and records related to PayQwick's operations and its BSA/AML Compliance Program will be maintained at PayQwick's offices in Washington. Duplicate copies of some of PayQwick's books and records may be maintained at PayQwick's offices in Calabasas, California.

PayQwick will retain copies of all books, records and transactions for a minimum of seven years.

### 4. Delegates and Other Locations

PayQwick does not anticipate opening any additional locations in Washington or Oregon because PayQwick does not accept walk-in cash deposits. Instead, all funds entering the PayQwick system must be deposited as outlined above. PayQwick does not anticipate having any authorized delegates in Washington or Oregon.

### 5. PayQwick's Products and Services

PayQwick provides five basic services:

- A. Purchases of Marijuana: PayQwick's clients can pay for marijuana purchased from other PayQwick clients by electronically transferring money from buyer's PayQwick sub-account to the seller's PayQwick sub-account.

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<sup>2</sup> Only consumers and licensed PPRs will be able to open accounts with PayQwick. Medical marijuana growers and dispensary owners will not be permitted to open accounts with PayQwick.

- B. Purchases of Goods and Services: PayQwick's clients can pay for goods and services purchased from other PayQwick Vendors by electronically transferring money from buyer's PayQwick sub-account to the seller's PayQwick sub-account.
- C. Bill Pay Function: PayQwick's PPR clients can pay their business' bills and operational costs using PayQwick's "Bill Pay" function. Once the PPR client requests a payment be made to one of its payees who are not also PayQwick account holders, PayQwick generates, prints and mails a paper check to the applicable payee.
- D. Cash Pickups: Using PayQwick's authorized armored car service, PPRs can have cash picked up at their locations and transported to a cash processing center for eventual deposit into the PPRs' PayQwick sub-account.
- E. ACH Transfer to the Washington Department of Revenue: PayQwick's PPR clients can pay their monthly excise taxes to the Washington Department of Revenue via ACH transfer.
- F. ACH Transfer to Other Bank Accounts: PayQwick's clients can transfer funds from their PayQwick sub-account to a third party's bank account via ACH transfer.





# Compliance Program Helps Marijuana Businesses Get Banking Services

By BEN DIPIETRO, 12/23/2015



A customer buys recreational marijuana at retailer High Society in Everett, Wash., using a PayQwick card.

Photo by Justin Anderson, courtesy of The Fearey Group

In states where recreational use of marijuana is legal, companies involved in the industry can encounter problems accessing banking services, as the federal government still classifies pot as an illegal drug. A company in Washington state has created a program that helps comply with that state's marijuana banking laws, allowing sellers, growers and other companies providing services to the industry to gain access to the banking system.

PayQwick is registered federally as a money services business and is a licensed money transmitter in Washington state, licensed by the state's Department of Financial Institutions. The company tailored its compliance program to meet the terms of the Washington state law that legalized the recreational use of marijuana, I-502, said Chief Executive Ken Berke.

Its compliance program handles compliance assessments, Bank Secrecy Act and anti-money laundering compliance, know-your-customer due diligence, transaction due diligence and other compliance-related functions including filing currency transaction reports and suspicious activity reports.

With these features, banks using the program are assured they are doing business with marijuana companies that comply with I-502, Mr. Berke said. "Banks are using us and will open a normal business bank account for any of our clients," said Mr. Berke. "They trust us and trust our compliance program to keep them safe."

M. Neil Zick, president and chief executive of Twin City Bank in Longview, Wash., said the bank decided to accept marijuana businesses as clients as long as they were licensed by the state. The company began working with PayQwick because "we found that their interests were similar to ours with regard to compliance," said Mr. Zick. "With any venture that's totally new, everybody is blazing a new trail and there are a lot of factors required...and we just found it helpful to both be going in that direction."

In addition to its compliance elements, the system removes cash transactions from seed to sale, thereby lessening the chances of money laundering and other illegal payments, and eliminates the chances that marijuana businesses, growers or customers will be robbed as they conduct their sales, said Mr. Berke.

"How to handle all the cash is the biggest issue," he said. PayQwick issues cards to each client; customers download cash from their bank accounts onto their card, and use the card to buy marijuana from a retailer. The retailer can keep the money on its card and use it to pay bills or buy more marijuana from growers, or transfer the money into their own bank accounts. Growers accept payments onto their cards, allowing them to avoid driving around with large amounts of cash as they make deliveries and eliminating the chance they will be targeted for robbery, said Mr. Berke.

"People in the industry have got to trust...and we were able to gain their trust and show them what we are doing from a compliance standpoint," Mr. Berke said. "Ancillary service providers who have been getting paid in cash—lawyers, accountants, electric companies, landlords—contacted us seeking to open accounts so growers could pay their bills online."

As long as the marijuana companies are not violating the principles set out by a memo issued in 2013 by then-Assistant U.S. Attorney General James Cole that spelled out how marijuana companies could avoid federal prosecution—or the guidelines put out by the Financial Crimes Enforcement Network, and as long as they comply with all laws in the state in which they operate, the federal government has told its prosecutors to leave these businesses alone.

The government instead instructed prosecutors to focus on those entities engaging in what Mr. Berke calls "bad boy acts" such as distribution to minors, sales to drug cartels and gangs and diversion of marijuana into states where it remains illegal. "We are relying on prosecutorial discretion to avoid being prosecuted federally," he said.

The Cole memo and Fincen guidelines say marijuana businesses can bank as long as their money is coming from legal sales. As each marijuana plant is required by state law to have a bar code so it can be tracked from seed through sale, that allows PayQwick to track the money at every step of the process, said Mr. Berke.

To get licensed by the state, PayQwick had to undergo an application process that included background checks and the adoption of a full BSA/AML compliance program for the business, and also had to submit a business plan and financial statements. Before it takes on a marijuana business as a client, Mr. Berke said PayQwick conducts a full onsite assessment of the business—and follows up every quarter with another assessment to make sure everything remains in compliance.

Neary Ouch, owner of High Society, a retail marijuana store in Everett, Wash., said one of her many challenges was dealing with the "overwhelming" number of cash transactions, as the use of debit and credit cards isn't allowed. PayQwick ensures the business stays in compliance with state law, and provides "many services that we are unable to get elsewhere due to our status as a recreational marijuana store," Ms. Ouch said.

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