

Federal Banking Agencies Release Long-Awaited Hemp Guidance

December 4, 2019

On December 3, 2019, almost a year after the 2018 Farm Bill removed hemp from the Controlled Substances Act—effectively legalizing its production and sale as a matter of federal law—the federal banking agencies, Financial Crimes Enforcement Network and Conference of State Bank Supervisors released joint guidance on providing financial services to hemp-related businesses (the “Hemp Guidance”).¹ Although the Hemp Guidance is a welcome development for banking institutions seeking to serve the booming market in hemp and hemp-derived cannabidiol (“CBD”) products, it fails to address many challenging issues.

In this client update we briefly summarize the Hemp Guidance and its implications for banking institutions; we also highlight some of the issues left unresolved.

The Hemp Guidance follows recent publication by the United States Department of Agriculture (“USDA”) of an interim final rule implementing relevant sections of the 2018 Farm Bill. The Hemp Guidance begins by summarizing these hemp-related provisions and the USDA’s interim final rule, which sets minimum standards for approval of state and tribal government plans for regulating hemp production within their borders and establishes a “backstop” federal scheme that will apply in the absence of a USDA-approved state or tribal regulatory framework.²

Perhaps most helpful to banking institutions, the Hemp Guidance then discusses an issue that has proven difficult to navigate given divergent state and federal laws regarding marijuana and hemp—the scope of suspicious activity reporting requirements under the Bank Secrecy Act (“BSA”) and anti-money laundering (“AML”) regulations. Specifically, the agencies make clear that because the production and sale of hemp is no longer prohibited under the federal Controlled Substances Act, “banks are not required to file a Suspicious Activity Report (“SAR”) on customers solely because they are engaged in the growth or cultivation of hemp in accordance with applicable laws and

¹ See Board of Governors of the Federal Reserve System et al., Providing Financial Services to Customers Engaged in Hemp-Related Businesses (Dec. 3, 2019), available [here](#).

² For additional information on the 2018 Farm Bill, please see our related analysis [here](#). Our analysis of the USDA’s interim final rule is available [here](#).

regulations.”³ The Hemp Guidance is also clear, however, that the lack of SAR filing obligations relating to lawfully produced hemp does not relieve institutions of other BSA/AML-related compliance obligations that may apply, including, for example, customer identification program, customer due diligence and currency transaction reporting requirements.

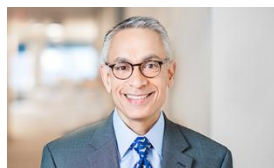
Although banking institutions will no doubt welcome additional clarity regarding the scope of hemp-related SAR filing obligations, the Hemp Guidance falls short in addressing even more vexing issues that arise in connection with serving the hemp and CBD industries. Most notably, it fails to address whether:

- Banks may serve the ingestible CBD industry, which may include products that do not comply with the federal Food, Drug and Cosmetic Act;
- SAR filings are required for transactions involving ingestible CBD products or hemp producers that are not compliant with the relevant state or federal production regulations; and
- Service providers to, or affiliates of, non-compliant hemp producers should be treated in the same manner as non-compliant producers themselves, including with respect to SAR filing obligations.

The Hemp Guidance also is silent on specific steps banking institutions should take when onboarding customers in the hemp business, including the extent to which institutions are expected to test and monitor their customers’ compliance with a rapidly changing legal landscape. As a result, precisely how institutions are expected to serve the hemp industry consistent with an appropriate, risk-based BSA/AML compliance program, at least for now, remains subject to uncertainty.

In summary, although the Hemp Guidance sheds useful light on SAR reporting obligations, its practical value may be limited given the number and significance of issues it leaves open. Until supervisory expectations become clearer, banking institutions would be well-advised to consider carefully (and document) their approach to serving the hemp industry while continuing to satisfy BSA/AML compliance obligations.

³ Board of Governors of the Federal Reserve System et al., Providing Financial Services to Customers Engaged in Hemp-Related Businesses at 2 (Dec. 3, 2019), available [here](#).



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