



Financial Services & Hemp-Related Business

Regulatory Clarity, Key Takeaways and Next Steps for the Banking Industry

One of the hottest topics on the radars of many bankers is whether the new industrial hemp businesses can be banked safely and profitably.

Banking is one of the key targets that the hemp industry is aiming to secure, as this will allow for an increase in legal hemp business growth and practices. The tides have been rapidly changing for hemp companies to gain access to banking, which has not traditionally been available to hemp companies due to the fact that hemp was federally illegal until about a year ago.

Bankers must understand that the new industrial hemp marketplace involves much more than simply banking farmers. Rather, it will include businesses involved in transportation, warehousing, processing,

manufacturing, distribution, financing and wholesale and retail sales. Banks typically seek to offer depository relationships, loans and treasury management services to their customers, and now face the question which of those services should be offered to hemp-related businesses. Each have their own banking risks.

Since the 2018 Farm Bill was signed and hemp was removed from the Controlled Substances Act, more and more banks and credit unions have taken on various kinds of hemp clients (including hemp cultivators, processors, and even Hemp-CBD sellers). But still, many financial institutions have been extremely cautious, for a good reason, when it comes to servicing hemp clients. One key reason is the fine line between legal and illegal. The main difference be-

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tween hemp and marijuana is that hemp contains very little THC (tetrahydrocannabinol)(0.3%), the psychoactive component of marijuana. This makes regulating hemp very tricky, since it is virtually identical to the marijuana. However, many investors see opportunities.

Banks must have a reliable mechanism to distinguish federally legal hemp from federally illegal marijuana with extreme confidence, according to the American Bankers Association. Adding another layer of uncertainty, U.S. Food and Drug Administration officials have said many hemp CBD products are being marketed illegally and may be unsafe. The banking industry, as a whole, tends to be very cautious and slow-moving in regard to new markets. This is rightly so, as banking leaders have to carefully explore new markets, conduct due diligence and assess risk.

UNDERSTANDING THE REGULATORY REQUIREMENTS

Just last month, on December 3, 2019, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network (“FinCEN”), and the Office of the Comptroller of the Currency in consultation with the Conference of State Bank

Supervisors released joint guidance entitled, “*Providing Financial Services to Customers Engaged in Hemp-Related Businesses.*” The guidance was intended to “provide clarity regarding the legal status of commercial growth and production of hemp and relevant requirements for banks under the Bank Secrecy Act (BSA) and its implementing regulations.”

There are a few key points from the joint guidance:

1. The language refers just to commercial growth and production of hemp and even notes that the FDA retains jurisdiction over foods, drugs, and cosmetics. The 2018 Farm Bill only regulates hemp production, and does not really discuss hemp processing or the sale of Hemp-CBD goods. Therefore, it’s not yet clear whether banks will service clients engaged in those activities.
2. The joint guidance makes clear that banks won’t need to file SARs for clients based solely on the fact that they are engaged in cultivation of hemp. Banks will still need to follow standard SAR procedures and file SARs if there are indicia of suspicious activities.



3. The joint guidance makes clear that banks have discretion about what services to offer, but that bank clients must comply with applicable law. Banks must vet their customers to ensure compliance with hemp laws and regulations. Banks are required to have BSA and anti-money laundering (“AML”) compliance programs commensurate with the level of complexity and risks involved, comply with applicable regulatory requirements for customer identification, SARs, currency transaction reporting, and risk-based customer due diligence (including collecting beneficial ownership information for legal entity customers).
4. Though the joint guidance does cover marijuana businesses, it makes clear that banks servicing those businesses should follow the FinCEN guidance FIN-2014-G001 – BSA Expectations Regarding Marijuana-Related Businesses.

The joint guidance also states that additional FinCen guidance will be released in the future. Hopefully by then, banks will have more comprehensive guidance for servicing hemp clients.

Banks still have complete discretion with respect to whether to provide services to hemp-related businesses, but the guidance points should go a long way toward easing some of the compliance and operational hurdles that have existed for financial institutions interested in serving the cannabis industry.

NEXT STEPS

Currently, thirty-three states, the District of Columbia, Guam and Puerto Rico have all legalized the use of marijuana to some degree. The Motley Fool quotes U.S. sales of CBD products to reach \$23 billion by 2023, which works out to a 107% compound annual growth rate (CAGR).

If there is an opportunity for the banks to serve this industry, innovative banking leaders need to create appropriate internal policies and procedures to enable their institutions to provide financial services to legal hemp-related businesses and the hemp-derived CBD products sector. There have been banks that opened their vault for CBD-related bank accounts, but have yet to open their payment processing services.

Time and education are required to truly understand the risks and opportunities associated with banking hemp-related businesses. Specific questions about compliance concerns and sound banking practices are still in their early stages.

21CFS takes no position on the moral and financial issues raised by conducting business with the hemp industry. This article outlines the current environment and the latest regulations.

Sources:

Banking Exchange: Five Key Issues Banks Must Consider Before Providing Service to Industrial Hemp Customers
American Bankers Association: Cannabis Banking
PewTrust.org
Bigcommerce.com
Federalreserve.gov