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Bank on Hemp: Federal Banking Regulators Loosen the Reins

On December 3, 2019, four federal agencies[1], in conjunction with state bank regulators, issued a statement clarifying the legal status of hemp and banks' related requirements under the Bank Secrecy Act (BSA). The statement clarifies that hemp growth and production is a legal activity under federal law and states that banks no longer need to submit suspicious activity reports (SARs) on customers solely because they are engaged in the growth or production of hemp.

Although hemp has been legal under federal law since the 2018 Farm Bill went into effect, hemp businesses continually face great difficulties securing loans and gaining access to banking services. Additional protections for banks working with hemp businesses have been incorporated into the SAFE Banking Act, a bill approved by the United States House of Representatives in September, but which has not yet passed in the Senate.

Importantly, the statement also confirms that banks should continue to follow the guidance issued by the Financial Crimes Enforcement Network (FinCEN) in February of 2014 when dealing with marijuana-related businesses. The 2014 guidance issued by FinCEN lays out the procedures banks should follow when filing SARs in connection with marijuana-related businesses and the diligence required to be conducted in connection therewith. There had been some question as to the effectiveness of the 2014 guidance as the Cole Memo on which the guidance heavily relies was rescinded in January of 2018.

Finally, the statement indicated that FinCEN will be issuing additional guidance after it has the opportunity to review and consider the interim final rule issued by the U.S. Department of Agriculture establishing the domestic hemp production regulatory program. Reinhart plans to send out additional updates on this guidance when available.

The joint statement and 2014 FinCEN guidance can be viewed by clicking on the following links: 2019 Joint Statement and 2014 FinCEN Guidance

Questions regarding banking hemp or marijuana-related business can be directed to Sara McNamara or any member of Reinhart's Cannabis Law group.

[1] The guidance was issued by the Federal Reserve Board, the Federal Deposit

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Insurance Corporation, the Financial Crimes Enforcement Network and the Office of the Comptroller of the Currency. The Conference of State Bank Supervisors also joined in on the guidance.

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