

Banking the Hemp Industry: Five Things You Should Know

Until recently, hemp and marijuana were classified on Schedule 1 of the Controlled Substances Act (“CSA”). Although hemp and marijuana are derived from the same plant, hemp contains little or no amounts of tetrahydrocannabinol (“THC”), which is the psychoactive ingredient in marijuana. Marijuana typically contains THC levels of 15% - 40%, whereas hemp contains THC levels of no more than 0.3%.

With the passage of the Agricultural Improvement Act of 2018 (the “2018 Farm Bill”), an important distinction between hemp and marijuana was established. The 2018 Farm Bill legalized hemp and set the stage for businesses and entrepreneurs to create opportunities for the production of hemp and hemp-related products. These businesses and entrepreneurs require banking relationships, services and solutions. Unfortunately, there is considerable confusion and misinformation regarding the legality of hemp and the ability of financial institutions to meet the banking needs of hemp-related businesses in an unobstructed manner. This Alert provides some guidance and hopefully clarity for financial institutions relating to the business of banking hemp.

1. Hemp is Legal Under Federal Law

The 2018 Farm Bill:

- provides a definition of “hemp” for Federal law purposes as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomer, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis”;
- excludes hemp from the definition of “marijuana” under the CSA; and
- provides an exception to Schedule I of the CSA for THC in hemp.

These provisions of the 2018 Farm Bill became effective on December 20, 2018. Accordingly, the production, processing, possession and sale of hemp and hemp-derived products is legal as a matter of federal law.

2. Hemp is a Significant and Growing Market

Hemp is currently used in over 25,000 products in the U.S., ranging from industrial to personal care to oil products. Hemp and hemp-derived products are fast-growing markets, with U.S. hemp crop sales estimated to grow to over \$2.5 billion/year by 2022, and hemp-derived cannabidiol (CBD) product sales estimated to grow to \$22 billion/year by 2022. For these reasons, states have been actively encouraging farmers to grow hemp.

3. Growing Hemp is Highly Regulated

Since 2014, various states have established “pilot programs” to license growers, processors and sellers of hemp. These pilot programs require licensees, among other things, to undergo background checks, provide farming experience, establish procedures to test their hemp product, identify the location where hemp will be grown, and establish procedures to destroy any product that exceeds the 0.3% THC threshold.

This state regulatory regime was carried-forward in the 2018 Farm Bill and, once regulations are issued by the U.S. Department of Agriculture (“USDA”), a federal regime will be established by each state to apply to the Secretary of the USDA for approval of its state program under the 2018 Farm Bill.

Until the USDA issues its regulations, state pilot programs may still be established and existing state pilot programs remain effective.

4. Merchants Can Sell Hemp-Derived CBD

The various state agriculture departments do not typically license merchants that sell hemp-derived CBD products. However, a merchant is prohibited from advertising or claiming that the hemp product is a drug or dietary supplement unless the product has been approved as such by the U.S. Food and Drug Administration (“FDA”). With respect to CBD infused food products for human or animal consumption, FDA approval is required for interstate sales; but intrastate sales need only be permissible under applicable state law.

5. Hemp Businesses Can Be Banked Effectively by Depository Institutions

Because of the passage of the 2018 Farm Bill as well as various state laws, a clear path has been established for all financial institutions, regardless of their size and level of expertise, to provide products and services to entities licensed to grow, process and/or sell hemp, including merchants that sell hemp-derived CBD.

* * * * *

Luse Gorman is actively assisting depository institutions nationwide in accessing and addressing the risks related to providing products and services to customers involved at all levels of the hemp industry. If you need any assistance or would like to talk about how we can help you, please contact:

Gary Lax (202) 274-2031
glax@luselaw.com

John Gorman (202) 274-2001
jgorman@luselaw.com

Larry Spaccasi (202) 274-2037
lspaccasi@luselaw.com

Kent Krudys (202) 274-2019
kkrudys@luselaw.com

Kip Weissman (202) 274-2029
kweissman@luselaw.com

Jeff Cardone (202) 274-2033
jcardone@luselaw.com

Tom Hutton (202) 274-2027
thutton@luselaw.com

Scott Brown (202) 274-2013
sbrown@luselaw.com

© 2019 Luse Gorman, PC. Luse Gorman, PC is a Washington, DC-based law firm that specializes in representing domestic and foreign financial institutions in the United States. The information provided herein does not constitute legal advice and relates only to matters of federal law and not to any particular state law.