

FinCEN Clarifies Position on Hemp SARs

Cannabis Business Legal News

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On December 3, 2019, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network, and the Office of the Comptroller of the Currency issued joint guidance to financial institutions providing or seeking to provide financial services to hemp-related businesses. The joint guidance clarifies FinCEN's position that banks serving hemp-related businesses need not file suspicious activity reports ("SARs") based solely on their customers' otherwise legal hemp-related business. However, the guidance emphasizes that banks remain obligated to file SARs if indicia of suspicious activity warrants. The guidance also warns banks serving the hemp industry that regulators continue to expect absolute compliance with the requirements of the Farm Bill of 2018 (the legislation which de-scheduled hemp) and its implementing regulations, as well as banks' ever-present BSA/AML, currency transaction report, customer identification, and other customer due diligence obligations. Finally, the guidance makes clear that it applies only to financial institutions serving hemp-related businesses and not in any way to those servicing cannabis-related businesses. Careful not to send any mixed message, the guidance reiterates that cannabis remains a Schedule I drug under the Controlled Substances Act, illegal under Federal law and that banks providing services to cannabis-related businesses are to continue following the guidance provided to them under previous FinCEN guidance on BSA Expectations Regarding Marijuana-Related Business.

The joint guidance should serve as a welcome clarification for financial institutions serving or considering whether or not to serve the now legal hemp industry. And while not mentioned by name in the joint guidance, perhaps the greatest implication of the joint guidance will be seen by financial institutions providing financial services to businesses involved in the now massive CBD market – and not just those businesses centered around CBD, but also those selling CBD as an ancillary part of their business. Banking these businesses, businesses whose operations did not focus on the sale of CBD but which sold CBD merely as another part of its overall product mix (sometimes just a small part), has provided financial institutions with some of the greatest compliance vagueries under existing law. However, with the newly issued joint guidance, banks servicing customers able to establish their compliance with legalized hemp regulations, including the production and sale of hemp-derived CBD, should be able to rely on that guidance to remain themselves compliant with what can only be described as a particularly complex Federal scheme of banking

regulation in this industry.

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