

June 21, 2019

The Honorable Randal K. Quarles
Vice Chairman for Supervision
Board of Governors of the Federal Reserve System
Eccles Board Building
20th and C Street, N.W.
Washington, DC 20219

The Honorable Joseph M. Otting
Comptroller of the Currency
400 7th Street, S.W.
Washington, DC 20219

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Kenneth A. Blanco
Director
Financial Crimes Enforcement Network
2070 Chain Bridge Road
Vienna, VA 22182

Re: Hemp and Hemp Derived Products

Dear Vice Chairman Quarles, Comptroller Otting, Chairman McWilliams and Director Blanco:

The American Bankers Association (ABA)¹ requests your assistance to provide the nation's banks with clarity regarding compliance with the Agricultural Improvement Act of 2018 (2018 Farm Bill), which removed hemp from the Controlled Substances Act and classified it as a legal agricultural commodity. Despite the change to federal law, banks remain uncertain about the degree to which they can serve hemp-related companies, and the compliance and reporting requirements that such relationships require.

Although other federal regulators have issued helpful clarifications regarding hemp production², banks are subject to a complex set of legal requirements and regulatory expectations and require specific guidance to ensure they are acting appropriately. Furthermore, the unique nature of hemp as a low-THC strain of marijuana, which remains a Schedule I substance under the CSA, means banks must have a reliable mechanism to distinguish legal hemp from federally illegal marijuana with extreme confidence. Bankers need guidance from their supervisors and FinCEN to understand what steps are necessary to comply.

As noted in a recent letter from Senators McConnell and Wyden, the lingering confusion over the legal status of hemp is frustrating the congressional intent of the 2018 Farm Bill by restricting access to financing, credit products, and traditional banking services for this fledgling industry. Banks want to serve their communities and support their local economies but need clear, unequivocal assurance from their regulators that hemp is distinguishable from cannabis, and that serving the industry will not expose them to criminal and civil liability, or regulatory censure. While we appreciate the encouraging testimony from Federal Reserve Governor Bowman in front of the Senate Banking

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits, and extend nearly \$10 trillion in loans.

² See, e.g., <https://www.ams.usda.gov/content/legal-opinion-authorities-hemp-production>

Committee on June 5th that “hemp is not an illegal crop” and clarifying that the Federal Reserve “would not discourage banks from banking these types of customers,” a formalized statement from the agencies is necessary to enable banking services for the hemp industry on a meaningful scale. Currently, banks are uncertain about what steps they can take under existing requirements and many are hesitant to proceed, believing that the only suitable way to address any risk is to not bank these businesses, despite Congressional intent. Therefore, guidance from your agencies is needed to reassure and provide bankers with clarity about what is appropriate.

Specifically, we ask that the agencies confirm that:

- hemp is no longer a controlled substance, effective as of the enactment of the 2018 Farm Bill, and therefore proceeds derived from hemp businesses are not unlawful, and handling those proceeds does not constitute money laundering;
- banks do not need to file suspicious activity reports solely because a transaction relates to hemp or hemp-derived products;
- banks can rely on a license issued by a state department of agriculture or the U.S. Department of Agriculture to confirm that a hemp producer is operating in compliance with state and federal law, and that their product qualifies as “hemp” as defined in the 2018 Farm Bill;
- in accordance with United States Department of Agriculture (USDA) guidance, banks can serve hemp cultivators and processors operating subject to state pilot programs under the 2014 Farm Bill, effective immediately; and
- as soon as USDA finalizes its regulations related to industrial hemp, banks will be able to serve hemp cultivators and processors operating under state approved plans or direct federal licenses.

Banks would also benefit from guidance regarding retail products containing hemp or hemp-derived CBD and the appropriate procedures for sourcing those products back to legal cultivators and processors. ABA recognizes that this is an evolving area of law and regulation, and that the agencies may not have a complete picture of how federal and state oversight of hemp may impact the banking industry at this time. Nevertheless, there are steps that can be taken now to help clarify legal and regulatory expectations for banks in the current environment, and ABA urges you to take those steps so as not to undermine the mandate provided by Congress to establish an industrial hemp industry in the United States.

If you have any questions or would like to discuss this further, please contact Sabrina Bergen at sbergen@aba.com or (202) 663-5030.

Sincerely,



Virginia O'Neill
Executive Vice President
Regulatory Compliance and Policy