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Transitioning from LIBOR to a Replacement Rate Index: What Steps Should Lenders Take Now?

By Andrew Kalgreen

Lenders and borrowers alike are wondering when and how they will adapt to a market in which LIBOR is no longer the preferred interest rate benchmark, a development likely to occur at year-end 2021. Clearly lenders must consider the many effects of replacing LIBOR with another floating rate index. This article discusses the steps lenders should take now, and why.

Financing Robotics: Scoping the Opportunity

By Paul Bent, Shawn Halladay and Andrew G. Mesches

Will the growth of robotics increase financing volume? The jury is out, but niche players with asset management skills will likely discover opportunities. As this article points out, most risks are no different from those faced in any technology-driven asset class: managing residual risk and associated soft costs in a fluid environment.

Analyzing U.S. Cannabis Laws and Their Impact on Financial Services

By Gregory D. Omer

As state cannabis laws become more commonplace, indirect connections to cannabis-related businesses are increasingly harder to avoid. Significant legal risk surrounds deposit services, loans, and commercial finance leases. Here is an overview of the complicated web of state and federal cannabis statutes, rules, and government policies.

A Valentine's Day Massacre of Liquidated Damages: *In re Republic Airways Holdings Inc.*

By Arlene N. Gelman and Edward K. Gross

A bankruptcy court ruling in New York this year could be problematic for lessors when enforcing certain typical acceleration and collection remedies against defaulting customers. Specifically, *In re Republic Airways Holdings Inc.* may impair the reliability of SLV-based liquidated damages provisions even in hell-or-high-water leases and guaranties of those obligations under unconditional and absolute guaranties. The authors will explain why they believe that the court erred, and discuss the enforcement and transactional implications to lessors.



Analyzing U.S. Cannabis Laws and Their Impact on Financial Services

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As state cannabis laws become more commonplace, indirect connections to cannabis-related businesses are increasingly harder to avoid. Significant legal risk surrounds deposit services, loans, and commercial finance leases. Here is an overview of the complicated web of state and federal cannabis statutes, rules, and government policies.

“It is a riddle wrapped in a mystery inside an enigma.”

When Winston Churchill spoke those words, he was not describing the status of the current U.S. cannabis laws, but he could have been.¹

For the past decade, most state governments and the federal government have been busily adopting various types of cannabis laws, rules, and policies. However, none of these efforts have demystified the legal landscape for cannabis activity in the United States. In fact, this morass of government action has added significant confusion to that landscape, not only for companies interested in growing and selling cannabis but also for financial institutions being asked to provide financial services — such as deposit services, loans, and commercial finance leases — to state-authorized cannabis

licensees and the people and companies with which they do business.

The high level of confusion and uncertainty in U.S. cannabis laws has resulted in most financial institutions being very reluctant to provide financial services to cannabis-related businesses, due to the significant legal risks involved.

This article will provide an overview of the complicated web of state and federal cannabis statutes, rules, and governmental policies as well as a basic understanding of the legal risks involved in providing financial services to cannabis businesses.

TYPES OF CANNABIS: MARIJUANA² VERSUS HEMP

State and federal laws, rules, and policies generally address

two different types of cannabis:

- Marijuana, which has a high concentration of delta 9 tetrahydrocannabinol (THC),³ the element that causes the feeling of being “high,” and
- Hemp,⁴ which has a very low concentration of THC (and, therefore, cannot be used to produce the psychoactive high feeling of marijuana) but has other uses, such as use as a material in the manufacture of rope, textiles, clothing, bioplastics, paper, building materials, and certain foods.

At one time, both marijuana and hemp were covered by one definition and equally prohibited under U.S. federal criminal law. However, these two types of cannabis are now defined and treated differently under federal and many state laws.

MARIJUANA LAW SUMMARY

The following is a summary of the current status of marijuana laws in the United States:

Federal Criminal Prohibition on Marijuana

Under federal criminal law (the Controlled Substances Act of 1970⁵), it is illegal in any state in the United States to possess or sell marijuana. This federal criminal prohibition applies regardless of whether the marijuana is for medical or recreational purposes and *supersedes all state marijuana authorization laws*.

This federal criminal prohibition is the most important aspect of the current confusion regarding the legal status of marijuana. In a nutshell, under this federal law, marijuana is illegal and criminally prohibited in

This budget amendment has been adopted as a public law each applicable year, but it does not amend or impact the validity of the Controlled Substances Act or AML law prohibitions related to marijuana.

every state of the United States, regardless of whether the state has marijuana licensing laws and regulatory programs and regardless of whether the marijuana is for medical or recreational purposes.

Federal Criminal Prohibition on Financial Services Related to Marijuana

A related prohibition in the U.S. federal anti-money-laundering (AML) law prohibits financial institutions from knowingly processing transactions involving proceeds of any criminal activity.⁶ Because the possession and sale of marijuana is criminal under federal law, any loan, deposit, commercial finance

lease, or other financial service connected to marijuana activity is prohibited under this federal anti-money-laundering law.

In addition to this direct prohibition in the AML law and the direct prohibition under the Controlled Substances Act, federal law also criminalizes the less direct activity of aiding and abetting violators of these prohibitions and conspiring with others to violate the prohibitions.⁷

The Controlled Substances Act and AML law prohibitions seem very clear, but they are only the starting point for the current maze of state and federal government laws, rules, policies, and pronouncements related to the legal status of marijuana.

State Licensing Laws

As of April 1, 2019, 36 states had adopted laws authorizing either medical or recreational marijuana, or both, and the number of states with such laws continues to increase.⁸ These laws include licensing requirements and other standards for growers, manufacturers, and sellers of marijuana.⁹ Some of these state laws and rules also include guidance for banks and other financial institutions interested in providing financial

services to licensed marijuana-related businesses.¹⁰

All these state laws were passed in spite of the fact that the federal criminal prohibitions described above preempt such state laws.¹¹ Also, when states began to issue licenses under these state laws, the federal government did not take action to stop the licensing by enforcing the Controlled Substances Act and AML federal criminal prohibitions. To the contrary, the federal government took several actions that facilitated these state marijuana licensing laws.

Federal Appropriations Law Restrictions on Enforcement

Since 2014, the United States has repeatedly adopted a federal budget amendment (known most recently as the Rohrabacher-Blumenauer Amendment), which forbids the U.S. Department of Justice from using federally appropriated funds to enforce the federal criminal law prohibitions on marijuana, with regard to violations in states that have *medical marijuana* licensing laws, if the violators are following those state laws.¹² The amendment does not address recreational marijuana issues.¹³

This budget amendment has been adopted as a public law each applicable year, but it does not amend or impact the validity of the Controlled Substances Act or AML law prohibitions related to marijuana. It simply stops the Justice Department from using federally appropriated funds to enforce those prohibitions.

Also, the Rohrabacher-Blumenauer Amendment is a periodic, temporary restriction. In other words, each time the amendment is adopted, it is only applicable to the budgeted federal funds for the specific fiscal year for which it is adopted. When a new fiscal year commences, the amendment must be readopted to have any impact on the funds to be appropriated in that year. Also, if the amendment is not adopted at any point in the future, its terms would not provide any protection for past actions.

Federal Justice Department Policy Limits on Enforcement

From 2014 to 2018, the Justice Department operated under a policy set forth in a set of publicly issued memoranda (collectively referred to as the Cole

Memorandum) under which the Justice Department would not “prioritize” for prosecution violations of federal marijuana laws, if those violations occurred in states that have marijuana licensing laws and the violators were in compliance with those state laws.¹⁴

The Cole Memorandum had a similar impact as the Rohrabacher-Blumenauer Amendment. It did not change the federal criminal prohibitions related to marijuana, but it did indicate the Justice Department’s choice not to enforce those prohibitions in scenarios involving marijuana-based businesses that are compliant with applicable state law regulating marijuana activity.

The Cole Memorandum was rescinded in January 2018 by then-Attorney General Jeff Sessions.¹⁵ However, since that time the Justice Department, including specific U.S. attorneys in several jurisdictions, have either directly or impliedly indicated that they do not intend to target violations of federal marijuana laws if those violations occurred in states that have marijuana licensing laws and the violators are in compliance with those state laws.¹⁶

Treasury Department Guidelines for Financial Services

In 2014, the Financial Crimes Enforcement Network (FinCEN), a division of the U.S. Treasury Department, issued guidance (the FinCEN Guidance) regarding expectations for financial institutions (including banks and certain nonbanks) that deal with the marijuana industry, including due diligence requirements that the financial institutions should implement and specific federal AML law “suspicious activity report” (SAR) filing requirements related to marijuana-related businesses.¹⁷ The FinCEN Guidance specifically references the Cole Memorandum, and it implied that FinCEN would not pursue action against financial institutions that follow the FinCEN Guidance.

Despite the rescission of the Cole Memorandum, the FinCEN Guidance has not yet been rescinded. Secretary of the Treasury Steve Mnuchin testified before Congress in February 2018 that the FinCEN Guidance would not be rescinded “without a replacement.”¹⁸

Like the Rohrabacher-Blumenauer Amendment and the Cole

Memorandum, the FinCEN Guidance:

- was issued despite the fact that the federal AML law prohibits financial institutions from providing financial services to marijuana-related businesses, and
- does not amend or otherwise impact the federal AML law prohibitions on processing financial transactions involving proceeds of marijuana transaction activity.

Due to risk concerns based on the federal AML law and Controlled Substances Act prohibitions, most banks are still reluctant to provide financial services to marijuana-related businesses, despite the FinCEN Guidance.

Absence of Federal Prudential Bank Regulatory Guidance

Perhaps more importantly, despite FinCEN’s efforts at providing guidance for banks to conduct financial services for marijuana-related businesses, FinCEN is not the only — or most significant — federal agency that banks must answer to regarding potential violations of AML law.

FinCEN is not a bank regulatory agency. In other words, although FinCEN has authority to issue guidance and make rules on AML issues and to enforce such rules, FinCEN does not charter banks nor does it conduct bank examinations. The federal agencies that charter and/or examine banks are the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (the Fed), which are collectively referred to as “prudential bank regulatory agencies.”

Every state and federally chartered bank is under the jurisdiction of a federal prudential bank regulatory agency, and none of these agencies has officially adopted or endorsed the FinCEN Guidance or issued any similar type of guidance for banks to follow in connection with providing financial services to marijuana-related businesses.

Aside from occasional oral anecdotal references to the FinCEN Guidance, the prudential bank regulatory agencies have not issued any clear, formal guidance on the issue of financial services for marijuana-

related businesses.¹⁹ Each agency has made statements in certain limited forums that address marijuana banking issues, and the messages have been mixed. For example:

- The Federal Reserve Bank of Kansas City, one of the 12 Federal Reserve Banks that carry out regulatory supervision and examination of banks and bank holding companies, has taken the position in court that:

The manufacture and distribution of marijuana remains illegal under federal law, as does facilitating such actions through the processing of financial transactions with funds derived from marijuana manufacturing and distribution.²⁰

- Similarly, at a meeting of the Advisory Committee on Community Banking of the FDIC in 2016, in response to a question from a committee member about banking services for cannabis businesses, an FDIC staffer commented that “as long as there is a conflict between Federal and state law, the FDIC remains bound by Federal law.”²¹
- However, at a meeting of the Mutual Savings Association Advisory Committee hosted by

the OCC in 2016, a committee member posed a question to an OCC staffer about providing banking services for medical cannabis businesses. In response, the OCC staffer referenced the Cole Memorandum and FinCEN Guidance and responded that, “... it is possible to provide banking services if the right controls are in place.”²²

Aside from occasional oral anecdotal references to the FinCEN Guidance, the prudential bank regulatory agencies have not issued any clear, formal guidance on the issue of financial services for marijuana-related businesses.

Most banks remain reluctant to provide financial services to marijuana-related businesses because they have no concrete guidance for offering those services from the prudential bank regulatory agency that will be visiting them periodically to conduct examinations, including

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examining their compliance with AML laws, such as the AML laws that prohibit conducting financial transactions involving proceeds from marijuana activity.

Carve-out for Certain Parts of Marijuana Plant

The Controlled Substances Act prohibitions related to marijuana do not apply to certain parts of the marijuana plant, but the practical impact of the exemptions for those plant parts is limited.

The definition of *marijuana* in the Controlled Substances Act states that it applies to “all parts of the plant *Cannabis sativa L.*, whether growing or not ...”²³

However, despite this language, the definition goes on to exempt certain parts of the plant, most notably, the “mature stalks” and “sterilized seed” of the plant, and certain products derived from those stalks and sterilized seeds.²⁴

These definitional carve-outs do not include all parts of the plant. For example, nonsterilized seeds, leaves, and flowers of the plant are not included in the carve-outs. Therefore, the carve-outs do not permit growing any marijuana plants, because growing the plants would necessarily involve nonsterilized seeds, leaves, flowers, and so on. Instead, the carve-outs allow parties in the United States to import the carved-out parts of the plant from foreign jurisdictions, and the carved-out products derived from those parts, without violating the Controlled Substances Act.

In other words, a U.S. resident could import goods made from the carved-out parts of the marijuana plant or import marijuana plant stalks or sterilized seeds to process into the carved-out products. However, such importation and any creation of food or drug products using

imported marijuana plant parts or products are subject to U.S. legal restrictions and conditions. State law could also prohibit the marijuana plant parts exempted under the Controlled Substances Act and related products.

The marijuana definitional carve-outs in the Controlled Substances Act appear to have been initially directed at hemp processing and products, many of which are commonly made from the stalk or seeds of the cannabis plant. However, more significant exemptions were added to the federal law in 2014 and 2018 to authorize domestic U.S. hemp growth under certain conditions, as explained below.

HEMP LAW SUMMARY

Hemp is a type of cannabis cultivated for centuries to make rope, using the fibers of the plant’s stalk, before the advent of synthetic materials.²⁵ Today hemp can be used for a myriad of purposes, ranging from rope and textiles to building materials and composites to certain foods and health products that utilize the cannabidiol (CBD) present in hemp.²⁶

Legal Distinction Between Hemp and Marijuana

As referenced above, hemp has a very low content of THC, the psychoactive ingredient in marijuana. Specifically, hemp is defined under current federal law as cannabis with a THC concentration of not more than 0.3% on a dry weight basis.²⁷ Accordingly, hemp (including the CBD in hemp) cannot produce a high feeling, like marijuana, when ingested.

Hemp and marijuana are varieties of the same plant: *Cannabis sativa L.* The two varieties are generally similar in appearance but have certain physical distinctions: hemp plants tend to be taller with a thinner leaf than marijuana plants.²⁸ However, for U.S. legal purposes, the only distinction between the two varieties is the 0.3% THC content standard.

2014 Farm Bill

For over 40 years, the sale and possession of hemp was prohibited under the Controlled Substances Act because the definition of marijuana under that act was written broadly, to cover all varieties of *Cannabis sativa L.*²⁹ As explained above,

the only significant exemption directed at hemp was for certain parts of the plant and certain products derived from those parts, but these exemptions did not permit growth and cultivation of the plant in the United States.

However, the Agricultural Act of 2014 (the 2014 Farm Bill) created an exemption from the Controlled Substances Act for state-sponsored “pilot programs” for the growth and cultivation of hemp, although the exemption applies only:

- to parties duly licensed by a proper state governmental authority that has established a pilot program consistent with 2014 Farm Bill requirements, and
- if the hemp in question is being grown and cultivated for *research purposes*.³⁰

Licensees under the 2014 Farm Bill remained subject to federal laws governing importation of nonsterilized hemp seeds and restricting any drug products created from hemp, such as federal Food and Drug Administration restrictions.³¹

Although the scope of the “research purposes” language

As of April 1, 2019, the USDA had neither established its own hemp licensing and regulatory program nor approved any state hemp licensing and regulatory program.

was not completely clear in the 2014 Farm Bill, several states adopted implementing rules and pilot programs for hemp growth under that law, and they amended their state-controlled substances laws, as necessary, resulting in thousands of acres of legal, state-licensed hemp production under the 2014 Farm Bill.³²

2018 Farm Bill

In December 2018, the Agricultural Improvement Act of 2018 (the 2018 Farm Bill) implemented an exemption for hemp from the definition of marijuana under the Controlled Substances Act.³³ However, the growth, possession, and sale of hemp are still subject to restrictions under federal and state law. For

example, under the 2018 Farm Bill:

- Any state can prohibit hemp activity under state law, in which case hemp will remain illegal in that state.
- Any state that does not prohibit hemp activity under state law can:
 - institute a licensing and regulatory program for hemp activities in compliance with 2018 Farm Bill standards and approved by the U.S. Department of Agriculture (USDA), in which case a licensee can engage in hemp activities pursuant to the terms of that state program, or
 - if the state does not institute its own licensing and regulatory program for hemp activities under the 2018 Farm Bill, the licensing and regulatory program established by the USDA will apply to that state, in which case a licensee under the USDA program can engage in hemp activities pursuant to the terms of that program.³⁴
- Any state can limit interstate transfer of hemp through that state until the USDA federal

and/or USDA-approved state licensing and regulatory programs for hemp under the 2018 Farm Bill are effective. After these licensing regimes are in place, states cannot limit interstate transfer of duly licensed hemp shipments.³⁵

However, as of April 1, 2019, the USDA had neither established its own hemp licensing and regulatory program nor approved any state hemp licensing and regulatory program. Until such licensing and regulatory programs are instituted, hemp cannot be grown, possessed, or sold under the 2018 Farm Bill in any state. In the meantime, licensees under state laws implemented under the 2014 Farm Bill can continue to conduct authorized activities under those laws.

Also, although the 2018 Farm Bill does not include a restriction on the purposes of hemp (such as the “research purposes” restriction in the 2014 Farm Bill), licensees will be subject to federal and state law restrictions on food and drug products created from the hemp and other applicable restrictions, such as restrictions on importing hemp seed.

LEGAL RISKS IN PROVIDING FINANCIAL SERVICES FOR CANNABIS BUSINESSES

Due to the legal issues outlined in this article, providing financial services to cannabis-related businesses – including hemp-related businesses – involves significant risk.

Risks Regarding Financial Services for Hemp-Related Businesses

Although hemp is no longer criminally illegal under the federal Controlled Substances Act:

- possession and sale of hemp may still be criminal under state law;
- the 2018 definitional carve-out for hemp in the Controlled Substances Act is based on the 0.3% THC standard, so any hemp plants that exceed this threshold would be illegal;
- hemp is also subject to other regulations under the 2014 Farm Bill and state implementation laws, and to regulations to be developed under the 2018 Farm Bill and state implementation laws; and
- licensing to grow legally authorized hemp continues to be complicated, with:

- no state or federal licenses yet available under the 2018 Farm Bill, and
- 2014 Farm Bill licenses under state pilot programs being limited to growth for “research purposes.”

Any financial services provider considering offering financial services to a hemp-related business should review the risks involved, including the ability of the provider to implement an appropriate AML law program and undertake the related costs. An appropriate AML law program would have to address the applicable risks, including but not limited to:

- Initial and ongoing due diligence regarding:
 - the customer’s licensing status and legal authority to operate its hemp-related business, as well as its compliance with applicable state and federal hemp law, particularly including the 0.3% THC standard;
 - the customer’s business plan, expected sources and uses of funds, and intended business relationships; and
 - whether the customer’s business or any other commonly controlled businesses

would involve marijuana or proceeds derived from marijuana;

- Consideration of interstate commerce and transportation issues that may be implicated (in light of state-by-state licensing requirements);
- Risk of crop/product seizure and destruction, as well as risk of seizure of other assets, if hemp laws are violated (e.g., the hemp exceeds the 0.3% THC standard);
- Issues in perfecting and enforcing security interests and in taking possession of hemp as collateral due to the state and federal licensing requirements;
- Consideration of FDA oversight and restrictions that may be applicable to the customer's line of business; and
- Consideration of whether the applicable insurance is adequate to protect against risks.

Risks Regarding Financial Services for Marijuana-Related Businesses

Any financial services provider considering offering financial services to marijuana-related businesses should consult its legal counsel regarding the

federal criminal prohibitions and the related direct and indirect risks and costs, including the myriad of issues that could arise in connection with providing financial services to a customer engaging in an activity that is criminally prohibited under federal law.

Financial services providers considering accepting those risks should also consult with their federal and state regulators before making the decision. Even careful execution of related risk mitigation steps will not insulate a financial services provider from the major risks involved in working with marijuana-related customers. As long as marijuana remains federally criminal, these risks will remain, also.

CONCLUSION

Based on the current state of the law, most banking organizations and many other financial services providers are reluctant to assume the risks involved with providing financial services to marijuana-related businesses. Many are similarly leery of providing services to hemp-related businesses.

Unfortunately, as state cannabis laws become more

commonplace, many financial companies will find that indirect connections to cannabis-related businesses will be increasingly harder to avoid. For example, a bank in a state with medical or recreational marijuana licensing laws may have a policy not to lend to or take deposits from a state-licensed marijuana grower or dispensary company. However, that same bank may learn that many of its existing customers have relationships with marijuana licensees in which those existing customers are receiving funds from the licensees.

These existing customers may include employees of the licensees, sellers or lessors of equipment or real estate to those licensees, and miscellaneous other service providers for those licensees. Ironically, even local and state governments will likely be in receipt of funds from marijuana licensees in the form of tax and fee payments.

Accordingly, many financial services providers are already finding it hard to avoid some potential exposure to AML law issues based on the federal prohibitions on processing transactions involving funds from marijuana activity.

Obviously, federal legislation is needed to solve the current disconnect between federal prohibitions on marijuana activities and the state laws licensing those same activities. Multiple pieces of federal legislation are currently being considered to provide resolutions to the set of mysterious riddles and enigmas that comprise current U.S. cannabis law.

Accordingly, one of the biggest understatements of 2019 may be Federal Reserve Board Chairman Jerome Powell's quote about U.S. cannabis laws when he testified before Congress in February: "I think it would be great to have clarity."⁶

Endnotes

1. With this quote from a 1939 BBC broadcast, Churchill was actually referring to the potential action of the Soviet Union at the outset of World War II. See The Churchill Society, "The Russian Enigma Broadcast," available at www.churchill-society-london.org.uk/RusnEnig.html.

2. The spelling *marihuana* is used in the federal Controlled Substances Act (see 21 USC Sec. 802(16)) and certain other laws, rules, and government policies, rather than the more common *marijuana* spelling. This article uses only the more widely accepted *marijuana* spelling.

3. See, e.g., 21 USC Sec. 802(16) and 7 USC Sec. 1639o(1).

4. *Ibid.* The term *hemp* as used in this article refers only to "hemp" as defined in 21 USC Sec. 802(16) and 7 USC Sec. 1639o(1), which is the variety of *Cannabis sativa L.* with a THC concentration of not more than 0.3% on a dry weight basis.

5. See 21 USC Sec. 841(a) and 12 CFR Sec. 1308 *et seq.* Marijuana is classified by the U.S. Drug Enforcement Administration as a Schedule 1 controlled substance.

6. 18 USC secs. 1956 and 1957.

7. 18 USC Sec. 2(a) and 21 USC Sec. 846.

8. See the website of the Conference of State Bank Supervisors at www.csbs.org/marijuana-state-policy-map.

9. See, e.g., Chapter 69.50 Revised Code of Washington.

10. See, e.g., <https://dfi.wa.gov/documents/banks/marijuana-faqs.pdf> and <https://dfi.wa.gov/banks/marijuana>.

11. *Gonzales v. Raich*, 545 US 1 (2005).

12. See, e.g., Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348.

13. *Ibid.*

14. James M. Cole, Deputy Attorney General, U.S. Department of Justice, "Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement" (August 29, 2013), available at www.justice.gov/iso/opa/resourceresources/3052013829132756857467.pdf; James M. Cole, Deputy Attorney General, U.S. Department of Justice, "Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes" (February 14, 2014).

15. Jefferson B. Sessions III, Attorney General, U.S. Department of Justice, "Memorandum for All United States Attorneys: Marijuana Enforcement" (January 4, 2018).

16. See, e.g., Letter from William P. Barr (current U.S. Attorney General, then nominee) to Lindsey Graham, Chairman, U.S. Senate Committee on the Judiciary, and Dianne Feinstein, Ranking Member, U.S. Senate Committee on the Judiciary (January 27, 2019); Department of Justice, U.S. Attorney's Office, Eastern District of Washington, "Federal Marijuana Enforcement Policy," news release (January 5, 2018).

17. Financial Crimes Enforcement Network Guidance, "BSA Expectations Regarding Marijuana-Related Businesses," FIN-2104-G001 (February 14, 2014).

18. Tom Angell, "Trump Treasury Secretary Wants Marijuana Money in Banks," *Forbes* (February 6, 2018).

19. See, e.g., presentations by staff members of the OCC, FDIC, and Federal Reserve Bank of Kansas City at the Missouri Bankers Association Marijuana Banking Seminar, Columbia, Missouri (March 20, 2019).

20. See Answer Brief of Appellee at 12, *The Fourth Corner Credit Union v. Federal Reserve Bank of Kansas City*, 861 F.3d 1052 (10th Cir. 2017) (No. 16-1016). This document was filed July 5, 2016.

21. Minutes from FDIC Meeting of the Advisory Committee on Community Banking (November 3, 2016).

22. Minutes from OCC Meeting of the Mutual Savings Association Advisory Committee (August 3, 2016).

23. 21 USC § 802(16).

24. *Ibid.*

25. "Industrial Hemp in the United States: Status and Market Potential," U.S. Department of Agriculture, Economic Research Service (January 2000).

26. *Ibid.*

27. See, e.g., 21 USC Sec. 802(16) and 7 USC Sec. 1639o(1).

28. Jeremy Berke, "Mitch McConnell Wants to Legalize Hemp – Here's How It's Different from Marijuana," *Business Insider* (March 27, 2018). Note that, by analogy, the differences in these two varieties of *Cannabis sativa L.* could be seen as similar to the differences in various breeds of dogs, all of which are *Canis familiaris*.

29. See "FDA Regulation of Cannabis and Cannabis-Derived Products: Questions and Answers," U.S. Food and Drug Administration, available at www.fda.gov/newsevents/publichealthfocus/ucm421168.htm#whatare.

30. Agricultural Act of 2014, P.L. 113-79, Sec. 7606; 81 Fed. Reg. 53395 (August 12, 2016).

31. *Ibid.*

32. See, e.g., "2018 Farm Bill Provides A Path Forward for Industrial Hemp," American Farm Bureau Federation (February 28, 2019), available at www.fb.org/market-intel/2018-farm-bill-provides-a-path-forward-for-industrial-hemp.

33. Agriculture Improvement Act of 2018, P.L. 115-334.

34. *Ibid.*; see also "Agriculture Improvement Act of 2018: Highlights and Implications," U.S. Department of Agriculture, Economic Research Service (February 25, 2019), and "The 2018 Farm Bill (P.L. 115-334): Summary and Side-

by-Side Comparison," Congressional Research Service (February 22, 2019).

35. *Big Sky Scientific LLC v. Idaho State Police*, 2019 WL 438336 (D. Idaho 2019).

36. "Federal Reserve Head Calls for Clarity on Marijuana Banking Issues," *Boston Globe* (February 26, 2019).



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