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Navigating the CBD Landscape post 2018 Farm Bill

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Green Rush in the CBD market

The Agriculture Improvement Act of 2018 (“2018 Farm Bill”) codified hemp as any part of the Cannabis sativa L plant with less than 0.3 percent tetrahydrocannabinol, legalizing its commercial production, distribution, and sale for the first time. These broad changes correlate with the sudden rise of consumer products containing cannabidiol (“CBD”), a chemical compound derived from the cannabis plant, being sold by major health, beauty, and apparel retailers. CBD is publicly touted for its wellness benefits in treating pain, anxiety, and inflammation. Financial experts forecast the CBD market will generate \$16 to \$20 billion in revenue by 2025. This explosive boom in CBD is seemingly ubiquitous as more hemp-derived CBD brands are made available through diverse mainstream retail channels.

Welcome to the Wild West of CBD Merchant Payment Processes

Despite big business expansion into CBD sales and the 2018 Farm Bill’s legalization of hemp-derived products, entrepreneurs with cannabis-adjacent businesses struggle to access basic financial services. These include opening a bank account, accessing loans, and processing credit-card payments. Absent clear federal regulation of CBD products, few banks and payment processing providers are willing to extend their financial services to CBD merchants. Small businesses in the CBD industry therefore risk having payment processors shut down their account, having their funds withheld, or being charged exorbitant fees by offshore processors.

Recent examples demonstrate the litany of difficulties banks face in working with CBD merchants in this growing industry. In March 2019, Elavon, a payment processing subsidiary of U.S. Bank, elected to move away from its growing presence in this industry due to the regulatory difficulties. This

announcement left CBD founders looking for alternative payment processing solutions before their accounts were closed in 45 days. Other online payment processors such as Stripe similarly categorize “cannabis dispensaries and related businesses” as “restricted businesses” with no exceptions for CBD companies. In the e-commerce space, both Amazon and eBay prohibit products containing cannabidiol from their platforms. But, sellers are currently getting around the ban by labeling products as “hemp extract” or “full spectrum hemp oils.” Unlike isolated cannabinoids, full spectrum hemp products contain an array of cannabinoids and other naturally occurring plant compounds found in hemp. These policies highlight the urgent need for the FDA to implement an efficient framework for the cannabidiol market. Specific federal regulations would incentivize more banks and domestic payment processors to include CBD small businesses into their portfolios.

Meanwhile, a few companies are taking the risk and capitalizing on an opportunity to target the underserved, yet trending CBD market. The fintech company Square recently announced an “invite only” pilot program for a small group of CBD companies. Square’s effort to support CBD businesses coincides with the push to pass The Secure and Fair Enforcement (SAFE) Banking Act, which should be presented for a vote in Congress in the coming weeks. Designed to address public safety concerns in states that legalize and regulate marijuana, the SAFE Banking Act prevents federal regulators from punishing financial institutions that provide financial services to cannabis-related legitimate businesses and limits liabilities associated with serving the cannabis industry. By opening access to checking accounts, loans, credit cards, and payment processing systems, these banking protections would help solve the persistent issue of cannabis companies being forced to operate primarily in cash.

Federal and Local Efforts to Regulate the Emerging CBD Industry

When the Federal and Drug Administration (FDA) held a public hearing entitled “Scientific Data and Information About Products Containing Cannabis or Cannabis-Derived Compounds” on May 31, 2019, it marked the first step towards an arduous process of defining a legal path to market around hemp and CBD products. As the FDA moves forward with a notice and comment period until July 2, states like Colorado are taking charge with their own regulatory oversight. In response to the passage of SB 220 “Hemp Regulation Alignment with 2018 Federal Farm Bill” and SB 240 “Industrial Hemp Products Regulation,” the state’s Department of Agriculture is partnering with eight state agencies to establish the Colorado Hemp Advancement and Management Plan (the CHAMP). This statewide initiative further cements Colorado’s leadership in enacting regulations on the hemp industry and easing CBD infused products into the market.

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