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Via Written Submission

James Hunter
Center for Drug Evaluation and Research
Controlled Substance Staff
Food and Drug Administration
10903 New Hampshire Ave.
Building 51, Room 5150
Silver Spring, MD 20993

**Re: Comments Regarding Policy on Rescheduling Marijuana Under the Controlled Substances Act
– Docket No. FDA-2019-N-0767-0001**

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on the proposed rulemaking regulation regarding the World Health Organization (“WHO”) recommendations to impose international manufacturing and distributing restrictions, under international treaties, on certain drug substances, including marijuana.

ETA is the leading trade association for the payments industry, representing more than 500 companies that offer electronic transaction processing products and services; its membership spans the breadth of the payments industry to include independent sales organizations, payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, equipment suppliers, and online small business lenders.

ETA’s members are dedicated to providing innovative, convenient, secure, and timely financial services and products that make their customers’ lives easier. ETA has no position on whether marijuana should be legal or not. However, once federal and/or state policymakers decide to make it legal, the payments industry stands ready to offer its broad array of payments services and cutting-edge technology to the cannabis space.

Conflict Between Federal and State Law

Under the Controlled Substances Act (“CSA”), the cultivation, possession, and distribution of marijuana are illegal, except for the purposes of sanctioned research. However, thirty-three states and several U.S. territories have legalized marijuana for medical use and ten states have done so for recreational use. A conflict arises because financial institutions attempting to provide services to state-licensed cannabis businesses could find themselves subject to criminal and civil liability under the CSA.

This conflict has spurred several questions for policymakers and businesses, including issues relating to the ability of state-legal business accessing financial services from federally-insured depository institutions for state authorized cannabis-related businesses.

In response to this conflict, the federal government tried to clear matters up. Both the Department of Justice (“DOJ”) and the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) have issued various memos and guidance on the topic to help ease the conflict. For example, in an August 2013 memorandum, former Deputy Attorney General James Cole (the Cole Memo), stated that while marijuana remains an illegal substance under the CSA, the DOJ would focus its resources on the “most significant threats in the most effective, consistent, and rational way.” The memo outlined eight enforcement priorities

for DOJ, including preventing the distribution of marijuana to minors; preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; and preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity.

Additionally, FinCEN issued its own guidance with respect to cannabis-related financial crimes in February 2014. This guidance provided a roadmap for financial institutions seeking to comply with suspicious activity reporting requirements when providing financial services to state authorized cannabis-related businesses.

However, in January 2018, then Attorney General Jeff Sessions issued a new DOJ memo on marijuana enforcement, effectively rescinding the Cole Memo. However, after members of Congress wrote a letter urging FinCEN to maintain their 2014 guidance, the Treasury Department responded that the FinCEN guidance would remain in place.

These developments highlight the existing conflict between federal and state laws explain why financial institutions remain reluctant to serve state-based, legal cannabis-related businesses, and many of those businesses continue to have little to no access to traditional banking services.

The Benefits of the Modern Payments Industry

Despite the public safety and other risks, the conflict between state and federal laws forces these businesses to operate on a cash-only basis. Operating as a purely cash business prohibits these businesses from realizing the many benefits of the modern financial services world, especially the modern payment systems, like the ability to safely accept credit, debit or prepaid cards.

Having access to the financial services system makes it easier for businesses to track revenues for taxation purposes, decreases a public safety threat as cash intensive businesses are often targets for criminal activity, and allows proper tracking of finances for BSA/AML compliance.

While ETA does not take a position on whether marijuana should be made legal, our industry encourages policymakers to resolve the current conflict and we stands ready to deliver the benefits of modern payments world to all legal participants.

ETA appreciates the opportunity to provide input on this important issue. If you have any questions, you can contact me at stalbott@electran.org.

Sincerely,



Scott Talbott
Senior Vice President of Government Relations
Electronic Transactions Association