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Greenbacks and Green Crack: How Federal Laws and Banking Regulations Impede the Financial Relationships of the Cannabis Industry

Theodore Zarabara

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Greenbacks and Green Crack: How Federal Laws and Banking Regulations Impede the Financial Relationships of the Cannabis Industry

Introduction: Federal Laws and Banking Regulations are Failing the Cannabis Industry

Meet Shea Hynes, Co-Chair of Lux Pot Shops. Hynes operates three dispensaries under the Lux brand in the Seattle area, growing the business from a single medical cannabis dispensary he helped found in 2010.¹ From 2010 through 2021, Hynes was one of the lucky few; his cannabis stores were never robbed.² In January 2022, however, his luck ran out. In a span of only *three weeks* that month, Lux Pot Shops locations were robbed at gunpoint *three times*. Each time, robbers made off with thousands of dollars in cash and merchandise.

Hynes' story is far from unique. As of April 2022, there have been at least 80 reported robberies at Washington state dispensaries so far this year.³ Another cannabis entrepreneur, Molly Honig, operates four dispensaries in Seattle. In March 2022, Honig told reporters that her stores had been robbed at gunpoint “six or seven times” over the past year and a half.² Both Hynes and Honig agree as to why their stores are being targeted; because of current federal banking laws, cannabis businesses are frequently forced to operate almost exclusively in cash, making them prime targets for robbers.

¹ Sarah Elbeshbishi, *Weed Dispensaries Targeted by Robbers: Will SAFE Banking Act Help?*, USA TODAY (Mar. 26, 2022), <https://www.usatoday.com/story/money/business/2022/03/26/pot-shop-robberies-washington-us/7155149001/>.

² Amanda Zhou, *As Armed Robbers Hit WA Marijuana Shops, Owners Say There's a Simple Solution*, THE SEATTLE TIMES (Mar. 22, 2022), <https://www.seattletimes.com/seattle-news/law-justice/as-wa-marijuana-shops-see-more-armed-robberies-owners-and-politicians-say-there-is-a-simple-solution/>.

³ *Pot shop robberies are fueling calls for a U.S. banking bill*, ASSOCIATED PRESS, (Apr. 20, 2022), <https://www.npr.org/2022/04/20/1093841615/pot-shop-robberies-are-fueling-calls-for-a-u-s-banking-bill>

Beginning in 2012 with Colorado and Washington, a growing number of states have legalized the sale and use of recreational cannabis.⁴ As of March 2022, 18 states and several territories have legalized recreational possession, use, and sale of the plant.⁵ Furthermore, the medical use of cannabis is legal in 37 states; nearly 75% of the country.⁶ In 2020 alone, revenues from legal cannabis in the U.S. totaled approximately \$22 billion – more money than was spent on wine in the same year.⁷

Despite this rapid legalization and, as a result, the quick development of a nascent legal cannabis industry, federal laws and regulations have not kept pace. This is primarily because cannabis remains illegal at the federal level, creating an unintended but crucial secondary consequence: most banks refuse to provide service to cannabis businesses. Lack of access to banking has led to various financial problems for the cannabis industry, including the inability to obtain credit, easily transfer funds, and safely protect business capital. This paper argues that Congress and financial industry regulators must act to create exceptions or safe harbors which provide cannabis businesses access to banking and other financial services while cannabis remains illegal at the federal level. Additionally, this paper presents a number of potential solutions available to cannabis companies in the interim until Congressional action is taken.

The paper proceeds in four parts. Part I provides an overview of the relevant bodies of law and financial regulations that impact the cannabis industry. Part II examines and describes the various problems created as a result of these laws and regulations. Part III details the prescriptions and

⁴ Aaron Smith, *Marijuana Legalization Passes in Colorado, Washington*, CNN (Nov. 8, 2012), <https://money.cnn.com/2012/11/07/news/economy/marijuana-legalization-washington-colorado/index.html>.

⁵ *Map of Marijuana Legality by State*, DISA (Mar. 2022), <https://disa.com/map-of-marijuana-legality-by-state>.

⁶ *Id.*

⁷ *The US Cannabis Industry's One Big Problem: Too Much Cash*, ALJAZEERA (May 21, 2021), <https://www.aljazeera.com/economy/2021/5/24/the-us-cannabis-industrys-one-big-problem-too-much-cash>.

potential remedies to problems created as a result of current laws and regulations. Part IV concludes the paper by summarizing the solutions offered in Part III and briefly reflects on their potential for success.

I. An Overview of Federal Law and Banking Regulation as it Relates to the Cannabis Industry

On a basic level, the majority of the cannabis industry's financial woes can be traced to the fact that cannabis remains federally illegal under the Controlled Substances Act ("CSA").⁸ A number of other legal roadblocks to legitimate banking services exist beyond the CSA. In addition to the CSA, cannabis companies are also subject to the Bank Secrecy Act of 1970 ("BSA").⁹ Broadly speaking, the BSA requires financial institutions to proactively guard against money laundering, tax evasion, and financing via other criminal activities.¹⁰ Further, the relevant provisions of the BSA are primarily enforced by the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the U.S. Department of the Treasury.¹¹ The impacts that these statutes and regulatory bodies have on the cannabis industry are outlined in the following sections.

A. The Status of the Controlled Substances Act and its Implications for Cannabis Company Finances

As of April 2022, cannabis remains a CSA Schedule I controlled substance.¹² Under the CSA, a Schedule I controlled substance has: (1) a high potential for abuse; (2) no currently accepted medical use, and; (3) no accepted safe usage under medical supervision.¹³ Furthermore, Schedule

⁸ 21 U.S.C. §§ 802(6), 812, 841(a) (prohibiting the manufacture, distribution, or sale of marijuana).

⁹ 31 U.S.C. § 5311 et seq.

¹⁰ P.E. Meltzer, *Keeping Drug Money from Reaching the Wash Cycle: A Guide to the Bank Secrecy Act*, 108 BANKING L.J. 230-255 (1991) (describing the Bank Secrecy Act and its prohibitions on laundering drug money).

¹¹ *FinCEN's Legal Authorities*, FIN. CRIMES ENF'T NETWORK, <https://www.fincen.gov/fincens-legal-authorities>.

¹² 21 U.S.C. § 812(c).

¹³ *Id.* § 812(b)(1).

I controlled substances are illegal “to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense.”¹⁴ This means that as long as cannabis stays a Schedule I controlled substance, it remains illegal in the eyes of the federal government because the CSA, a federal law, effectively preempts state-level cannabis legalization.¹⁵ Therefore, all profits derived from the production or sale of cannabis remain criminalized under federal law. In turn, cannabis-related banking activity triggers the regulatory reporting requirements imposed on financial institutions by federal law discussed in detail below. Thus, while individual states may choose to legalize cannabis as a product, states law does not trump the federal laws and regulations imposed on banks and other financial institutions that require the disclosure of transactions conducted with capital earned via “criminal” means. This conundrum leads us to a discussion and analysis of the BSA and its impacts on cannabis businesses.

B. The Impact of the Bank Secrecy Act on Financial Institutions in Relation to Cannabis Businesses

The BSA requires that financial institutions proactively guard against money laundering, tax evasion, and other criminal activities.¹⁶ This includes the duty to report suspicious transactions potential connected to criminal activity, such as drug trafficking.¹⁷ The relevant provisions of the BSA are primarily enforced by the Financial Crimes Enforcement Network (“FinCEN”), a bureau within the U.S. Department of the Treasury.¹⁸

1. An Overview of the Bank Secrecy Act in Relation to the Cannabis Industry

¹⁴ 21 U.S.C. § 841(a).

¹⁵ Robert A. Mikos, *Preemption Under the Controlled Substances Act*, 16 J. HEALTH CARE L. & POL’Y 5 (2013), <https://scholarship.law.vanderbilt.edu/faculty-publications/743/> (noting that, while the CSA largely preempts state-level cannabis legislation, there may be room for cannabis reforms which are not yet preempted by Congress).

¹⁶ Meltzer, *supra* note 9, at 230-255 (describing the Bank Secrecy Act and its prohibitions on laundering drug money).

¹⁷ *Id.*

¹⁸ *FinCEN’s Legal Authorities*, *supra* note 10.

While the BSA covers a wide variety of issues related to banking transactions, the following discussion is limited to the statute's provisions that are relevant to the cannabis industry. The BSA requires banks and other financial institutions to file "suspicious activity reports" ("SARs") within 30 days of detecting facts which lead the institution to believe that a transaction was conducted with a criminal purpose or criminally obtained funds (e.g., money laundering or drug trafficking profits).¹⁹ These SARs require banks to proactively report economically-oriented wrongdoing to the government in order to combat crime.

According to a 2014 FinCEN guidance memo, banks must file SARs for transactions related to capital obtained via cannabis commerce.²⁰ In that guidance memo, FinCEN explained that banks must be cautious in maintaining compliance with their BSA obligations as cannabis businesses continue to spring up around the country.²¹ Crucially, the memo noted that the obligation of financial institutions to file a SAR "is unaffected by any state law that legalizes marijuana-related activity."²² Accordingly, this memo set the tone for how FinCEN expects financial institutions to comply with their BSA obligations with respect to cannabis companies.

2. The Financial Crimes Enforcement Network's Approach to Cannabis Companies

While some corners of the federal government have taken a more relaxed approach to the state cannabis legalization, FinCEN remains steadfast in its commitment to the BSA as it relates to cannabis industry finances. In its 2014 guidance memo regarding cannabis businesses, FinCEN

¹⁹ Office of the Comptroller of the Currency, *Suspicious Activity Reports (SAR)*, <https://www.occ.treas.gov/topics/supervision-and-examination/bank-operations/financial-crime/suspicious-activity-reports/index-suspicious-activity-reports.html>.

²⁰ FinCEN, *BSA Expectations Regarding Marijuana-Related Businesses*, (Feb. 14, 2014), <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>.

²¹ *Id.*

²² *Id.*

detailed a number of due diligence obligations that banks must meet if they wish to service cannabis businesses, including:

- Verifying that the business is licensed and registered with state authorities;
- Reviewing the businesses license application and accompanying documentation;
- Requesting information from the state authorities about the business;
- Developing an understanding of the business including its activities, products, customers; and
- Actively monitoring the business, including analyses of any suspicious or illegal activity.²³

Although these guidelines appear to create a path for banks to provide services to cannabis businesses at first glance, they explicitly make clear that “[a] financial institution that decides to provide financial services to a marijuana-related business would [still] be required to file suspicious activity reports.”²⁴

Additionally, the FinCEN memo references the “Cole Memo,” which the U.S. Department of Justice issued in 2013. The Cole Memo describes how the federal government would refrain in its discretion from enforcing federal cannabis prohibitions in states which have legalized cannabis, except in cases that would undermine other federal law enforcement priorities.²⁵ In spite of this reference to the Cole Memo, FinCEN’s guidance focuses on the continued enforcement of the

²³ *Id.*

²⁴ *Id.*

²⁵ Memorandum from James M. Cole, Deputy Att’y Gen., DOJ, to All U.S. Att’ys, Guidance Regarding Marijuana Enforcement 1 (Aug. 29, 2013), <https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2014/02/14/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%202%2014%2014%20%282%29.pdf>.

BSA with respect to cannabis businesses and notes that “[t]he obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity.”²⁶ Understandably, banks have come to view these statements as an affirmed commitment by FinCEN to continue imposing BSA reporting and compliance requirements on cannabis businesses. This guidance has contributed to banks’ hesitancy to provide financial services to cannabis businesses, and a more detailed review of this issue is provided below.

Fortunately, the FinCEN memo ultimately allows for banks to transact with cannabis businesses provided they file modified SARs tailored to the cannabis industry. These include:

- “Marijuana Limited” SAR Filings – for a financial institution providing financial services to cannabis businesses when it (the financial institution) reasonably believes no Cole Memo enforcement priorities or state law violations are implicated.
- “Marijuana Priority” SAR Filings – for financial institutions that reasonably believe a cannabis business is violating state law or implicating a Cole Memo enforcement priority.
- “Marijuana Termination” SAR Filings – for when financial institutions terminate a relationship with a cannabis company on the basis that it (the financial institution) believes the business is violating state law, violating anti-money laundering provisions, or is engaging in other illegal activities.²⁷

These provisions appear to have worked with some level of success, as noted by Professor Julie Andersen Hill of the University of Alabama School of Law. Specifically, Professor Hill points out that since the 2014 FinCEN memo was circulated, “marijuana related businesses with

²⁶ FinCEN, *BSA Expectations Regarding Marijuana-Related Businesses*, (Feb. 14, 2014), <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>.

²⁷ *Id.*

robust internal controls can open bank accounts.”²⁸ Hill continues, noting that as of July 2021, 502 banks and 175 credit unions had active relationships with cannabis-related businesses.²⁹

Despite this limited success, the vast majority of banks continue to refuse to work with cannabis companies due to fear of non-compliance with FinCEN and the BSA.³⁰ As of 2021, approximately 706 of the 4,236 banks registered with the Federal Deposit Insurance Corporation (“FDIC”) worked with cannabis companies.³¹ This means that only 16.6% of U.S. banks were willing to accept the risk of providing services to cannabis companies under the current FinCEN regulatory regime.

In addition, many large banks like JPMorgan and Citigroup have adopted particularly harsh approaches to dealing with cannabis companies. For example, in November 2021, JPMorgan announced that it would no longer allow the trading of shares of U.S. based cannabis companies, citing concerns over “U.S. money laundering laws and regulations regarding restricting certain activities in the securities of U.S. marijuana related businesses.”³² This shows that while some progress has already been made, major banks remain wary of running afoul of FinCEN and the BSA.

²⁸ Julie Andersen Hill, *Cannabis Banking: What Marijuana Can Learn from Hemp*, 101 B.U. L. REV. 1043-1104, 1053 (2021).

²⁹ *Id.*

³⁰ Tiffany Kary, *Cannabis Banking is Booming Despite Federal Uncertainty*, BLOOMBERG NEWS (Jan. 18, 2022), <https://www.bloomberg.com/news/newsletters/2022-01-18/marijuana-banking-is-moving-forward-despite-federal-uncertainty>.

³¹ FinCEN, *Marijuana Banking Update*, (June 30, 2021), https://www.fincen.gov/sites/default/files/shared/303751_MJ%20Banking%20Update%203rd%20QTR%20FY2021_Public.pdf; Federal Deposit Insurance Corporation, *BankFind Suite: Annual Historical Bank Data*, https://banks.data.fdic.gov/explore/historical/?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Character&selectedEndDate=2021&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc.

³² A.J. Herrington, *JPMorgan Chase to Restrict Trading in Some U.S. Cannabis Stocks*, FORBES (Nov. 5, 2021), <https://www.forbes.com/sites/ajherrington/2021/11/05/jpmorgan-to-restrict-trading-in-some-us-cannabis-stocks/?sh=31a226e01a3f>.

II. An Examination of the Problems Created for the Cannabis Industry as a Result of Federal Banking Law and Financial Regulation

In the world of modern business transactions, cash is certainly no longer king. A recent article published by consulting giant McKinsey & Co. found that over 82% of Americans conducted digital financial transactions during 2021, up from 78% in 2020, and 72% in 2016.³³ The Federal Reserve also estimated that only approximately 19% of all consumer transactions during 2020 were conducted using cash, down seven points from the prior year.³⁴

Unfortunately for cannabis companies, they are often stuck in the past and forced to operate on a largely cash basis because of federal banking regulations. These regulations have led to a number of negative consequences. First, cannabis companies often struggle to obtain credit, bank accounts, and other basic financial services. Second, cannabis companies have become targeted by robbers because they are forced to carry large quantities of cash. Third, cannabis businesses are faced with a number of accounting and tax challenges, including increased costs for appropriate financial reporting.

A. The Inability of Cannabis Companies to Open Bank Accounts, Obtain Credit, and Access Other Financial Services

It is difficult to overstate the challenges faced by a modern business that cannot open a bank account, access credit-based financing, or easily transfer funds. As previously stated, only around 16.6% of U.S. depository institutions currently transact with cannabis companies. Therefore, cannabis businesses have limited options in selecting which financial institutions they may seek

³³ Vaibhav Goel et al., *New Trends in U.S. Consumer Digital Payments*, MCKINSEY & CO. (Oct. 26, 2021), <https://www.mckinsey.com/industries/financial-services/our-insights/banking-matters/new-trends-in-us-consumer-digital-payments>.

³⁴ Kelsey Coyle et al., *2021 Findings from the Diary of Consumer Payment Choice*, FED. RES. BANK OF SAN FRANCISCO (May 5, 2021), <https://www.frbsf.org/cash/publications/fed-notes/2021/may/2021-findings-from-the-diary-of-consumer-payment-choice/>.

out for services. For example, only one bank in the entire state of Massachusetts offered bank accounts to in-state cannabis companies in 2018 and that bank charged \$5,000 per month for its services.³⁵ Because of the limited supply of financial services providers, cannabis companies are often stuck between a rock and a hard place; they are forced to either accept exorbitant fees, or operate without a bank account.

Various articles and reports show that cannabis companies wishing to open a bank account are often subjected to account opening fees in the thousands of dollars.³⁶ The costs do not end there. Even after making it through the rigorous vetting of the new account opening process, cannabis business bank accounts are frequently subject to high monthly maintenance fees.³⁷ These monthly fees are often in the thousands of dollars.³⁸ Comparatively, most other business bank accounts cost nothing to open, and only cost between \$0 and \$20 per month to maintain.³⁹ As a result, these high costs create massive overhead and increased barriers to entry for an industry that would otherwise be in a stage of lean and inexpensive growth. While it is understandable that the financial institutions transacting with cannabis businesses are subjecting themselves to heightened risk in

³⁵ Jessica Bartlett, ‘*Cannabis Premium*’: *If you want to bank marijuana money, it’ll cost you*, BOSTON BUS. J. (June 27, 2018), <https://www.bizjournals.com/boston/news/2018/06/27/cannabis-premium-if-you-want-to-bank-marijuana.html>.

³⁶ See Hill, *supra* note 23, at 1053 (citing Aaron Gregg, *Bank Eases Pot World’s Cash-Only Handicap*, WASH. POST (Jan. 3, 2018) (reporting that one marijuana-related business “paid \$3,000 to open an account . . . and pays monthly fees of \$1,750”); James Rufus Koren, *Hard to Stash*, L.A. TIMES, (Jul. 9, 2017), at C1 (reporting that an unnamed California credit union charges marijuana growers \$5,000 per month and dispensaries \$7,500 per month for a bank account); Robb Mandelbaum, *High Finance*, N.Y. TIMES MAGAZINE, (Jan. 7, 2018), at 46, 51 (reporting that Partner Colorado, a credit union in Colorado, charges its new marijuana customers \$450 in fees for each \$100,000 deposited—an amount less than most other marijuana account providers); An-Li Herring, *High Banking Costs Hold Back Marijuana Industry*, WITF (Dec. 17, 2019, 10:47 AM), <https://www.witf.org/2019/12/17/high-banking-costs-hold-back-marijuana-industry/> (“[M]edical marijuana businesses in western Pennsylvania said they . . . pay about \$3,000 a month for each of their [bank] accounts.”).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Randa Kriss, *10 Best Business Checking Accounts*, NERDWALLET (Feb. 10, 2022), <https://www.nerdwallet.com/best/small-business/business-checking-accounts>.

the eyes of regulators (and therefore, must charge more as a risk premium), this financial burden is undeniably damaging to the cannabis industry.

The hurdles to opening a bank account also create ancillary problems for cannabis businesses. This is because cannabis companies are unable to obtain credit from a financial institution without an account at the institution.⁴⁰ Whether through the issuance of bonds, opening a line of credit, or securing bank loans, the access to credit is fundamental to the growth of virtually every business.⁴¹ As a result, cannabis businesses often find it difficult to build credit, which can be damaging to their relationships with vendors, suppliers, and other trading partners.⁴²

Unfortunately, the denial of access to financial services for cannabis companies is not confined to banks. Payment processors like Visa and MasterCard continue to prohibit merchants from handling cannabis-related transactions.⁴³ As recently as 2021, executives at these major payment processing networks explained that federal law makes cannabis-related transactions over their networks illegal despite the legality of cannabis at the state level.⁴⁴ The implications of this payment processor ban are two-fold. First, it limits the options of cannabis companies as to how to accept payments from their customers and pay their suppliers. Second, it prevents cannabis companies from opening their own business credit cards, something that otherwise would provide a valuable alternative to their inability to access bank loans. These bars to financial services by

⁴⁰ Anh Hatzopoulos, *The Challenge of Building Credit in the Cannabis Industry*, FORBES (Feb. 9, 2021), <https://www.forbes.com/sites/forbesfinancecouncil/2021/02/09/the-challenge-of-building-credit-in-the-cannabis-industry/?sh=6f06b7ba778e>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Jody Godoy, *Mastercard exec says card company sought to avoid legal risk*, REUTERS LEGAL (Mar. 3, 2021), [https://today.westlaw.com/Document/I901ffce07c7711eb85d3f4334d338a19/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Default\)](https://today.westlaw.com/Document/I901ffce07c7711eb85d3f4334d338a19/View/FullText.html?transitionType=SearchItem&contextData=(sc.Default)).

⁴⁴ *Id.*

both banks and payment processors create a litany of additional problems for cannabis companies, which are discussed in the following section.

B. The Problems Associated with Cannabis Businesses Being Forced to Operate with Large Quantities of Cash

As a result of the inability of cannabis companies to access basic financial services like opening bank accounts, obtaining credit, and accessing payment processing networks, cannabis businesses are frequently forced to operate in cash. This makes cannabis businesses easy targets for robberies and burglaries. According to a 2015 study conducted by the Wharton School of Business Public Policy Initiative, **“one in every two cannabis dispensaries were robbed or burglarized—with the average thief walking away with anywhere from \$20,000 to \$50,00 in a single theft.”**⁴⁵ Additionally, the American Bankers Association noted that, in Denver, “cannabis businesses make up less than 1 percent of all local businesses but have accounted for 10 percent of all reported business burglaries from 2012 to 2016.”⁴⁶

In effect, state legalization of cannabis has eliminated one crime while inadvertently promoting another. Cannabis sale and possession became legal and robbery is on the rise. This observation is not meant to imply that these robberies would no longer occur if cannabis remained illegal; the robberies would simply go unreported as most illicit market activity does. Thus, problem is not the legalization of cannabis, it is the absence of banking services safeguarding capital. Simply put, robbers target business that hold cash.⁴⁷ Therefore, instead of continuing to demonize cannabis,

⁴⁵ S. Comm. on Banking, Housing, and Urban Affairs, 116th Cong., Challenges for Cannabis and Banking: Outside Perspectives (2019), <https://www.congress.gov/event/116th-congress/senate-event/LC64544/text?s=1&r=7>.

⁴⁶ *Id.*

⁴⁷ *High Crimes: Robber Gangs Terrorize Colorado Pot Shops*, NBC NEWS (Feb. 3, 2014), <https://www.nbcnews.com/storyline/legal-pot/high-crimes-robber-gangs-terrorize-colorado-pot-shops-n20111> (Article detailing the odds of being robbed based on industry, liquor stores had a 20% chance, banks had a 34% chance, and cannabis businesses had a 50% chance).

we ought to reform federal law to enable cannabis businesses to move away from holding large quantities of cash.

Fortunately, there appears to be an end in sight. A recent string of deadly robberies targeting cannabis businesses in Washington have led lawmakers to aggressively push for federal banking reform.⁴⁸ These potential solutions to the cannabis business cash problem are discussed at length in Part III below.

C. Taxation Challenges Faced by Cannabis Companies

Perhaps shockingly, the Internal Revenue Service (“IRS”) does not distinguish between income earned legally and income earned illegally.⁴⁹ Therefore, as far as the federal government is concerned, cannabis businesses must still report their income as well as all cash transactions exceeding \$10,000 even while these businesses remain illegal under federal law.⁵⁰ To make matters worse, the IRS does not allow businesses to deduct expenses from their taxes if the business is involved in the sale of illicit controlled substances.⁵¹ Therefore, cannabis businesses cannot deduct normal business expenses on their taxes because cannabis remains an illicit Schedule I controlled substance under federal law, even in states where the drug is legal.⁵²

At the state level, cannabis companies have found some relief. In California, for example, licensed cannabis businesses may deduct normal operating expenses like costs of goods sold or

⁴⁸ Kyle Jaeger, *After Surge of Deadly Robberies at Marijuana Shops in Washington State, Officials Push for Federal Banking Reform*, MARIJUANA MOMENT (Mar. 24, 2022), <https://www.marijuanamoment.net/after-surge-of-deadly-robberies-at-marijuana-shops-in-washington-state-officials-push-for-federal-banking-reform/>.

⁴⁹ 26 U.S.C. § 61.

⁵⁰ *Id.* § 60501.

⁵¹ *Id.* § 280E.

⁵² *See United States v. Oakland Cannabis Buyers’ Co-op.*, 532 U.S. 483 (2001).

administrative expenses from their state taxes.⁵³ The taxation situation at the state level, however, is not without its own challenges; cannabis cultivators and distributors are often subject to varying excise taxes which further complicates the situation and increases costs.⁵⁴

These combined federal and state tax challenges present yet another financial challenge to cannabis companies. Unfortunately, it remains unclear if improved access to banking would alleviate all of the taxation woes faced by cannabis businesses. This is because the IRS would likely still enforce its rules in a similar manner, regardless of where cannabis businesses hold their capital. Therefore, changes in the Internal Revenue Code (“IRC”) are likely also needed to remedy the federal taxation problems facing the cannabis industry. It nonetheless seems that access to banking would improve the accounting and record keeping practices of cannabis companies and thereby lower tax reporting costs and reduce the number of cash transactions with additional reporting requirements.

III. Offering and Understanding Potential Solutions to the Cannabis Industry’s Lack of Access to Financial Institutions

There are a number of potential solutions on the table designed to remedy the cannabis industry’s inability to access banking services. First, Congress could deschedule cannabis from the CSA. This plan is currently being advanced via the Marijuana Opportunity Reinvestment and Expungement Act (“MORE Act”).⁵⁵ Second, Congress could address the problem via passage of the Secure and Fair Enforcement Banking Act (“SAFE Banking Act”), which would create protections for banks transacting with cannabis businesses.⁵⁶ The third Congressional option is the

⁵³ Igor Drabkin, *Tax Issues in the Cannabis Industry*, HOLTZ, SLAVETT & DRABKIN FORMER IRS TAX ATT’YS (Mar. 14, 2022), https://www.hsdtaxlaw.com/tax-issues-in-the-cannabis-industry?utm_source=rss&utm_medium=rss&utm_campaign=tax-issues-in-the-cannabis-industry.

⁵⁴ *Id.*

⁵⁵ MORE Act of 2021, H.R. 3617, 117th Cong. (2021).

⁵⁶ SAFE Banking Act of 2021, H.R. 1996, 117th Cong. (2021).

Strengthening the Tenth Amendment Through Entrusting States Act (“STATES Act”), which exempts profits earned from legal transactions at the state level from provisions of the BSA (among other amendments to the CSA).⁵⁷

Although federal legislation is likely the ultimate goal to resolve the cannabis banking problem, there are a number of other interim solutions that would be helpful in the meantime. First, the U.S. Department of the Treasury and FinCEN could reduce the burdensome reporting requirements imposed on both banks and cannabis companies. Second, cannabis companies may want to consider alternate forms of corporate structuring that would allow them to operate under the umbrella of a holding company that does not itself deal in cannabis products. Third, cannabis companies could band together at an industry level, and create their own credit union (and effectively, banking services), while remaining in compliance with current FinCEN regulations. Lastly, cannabis businesses may want to consider conducting business transactions with modern alternatives to cash, such as cryptocurrency.

A. The Elephant in the Room: Removal of Cannabis from Schedule I of the Controlled Substances Act and the MORE Act

Ultimately, federal cannabis legalization is likely the closest thing to a “silver bullet” that the industry can hope for with respect to its banking problem. Some scholars argue, however, that even federal legalization will not solve cannabis banking problems overnight because acceptance of cannabis businesses by the mainstream banking industry will still take time.⁵⁸ This is because even if cannabis is completely descheduled, major banks are likely remain cautious until a new

⁵⁷ STATES Act, S. 1028, 116th Cong. (2019).

⁵⁸ See Hill, *supra* note 23, at 1098.

regulatory regime is fully established (likely with some combination of FDA regulation and banking specific regulation).⁵⁹

Despite the challenges that may persist in a post-CSA world, the MORE Act, which removes cannabis from the CSA altogether, is a particularly attractive option.⁶⁰ This is primarily because the statute ensures that states that legalize cannabis are no longer conflict with federal law.⁶¹ It should be noted, however, that the MORE Act makes no explicit mention of banks or other financial institutions.⁶² That said, many industry insiders believe that licensed cannabis businesses in states that have legalized the drug would have increased opportunities to banking if the MORE Act passes.⁶³ I am inclined to agree with these commentators. Although the MORE Act does not mention banks explicitly, several banks, payment processors, and other financial institutions have stated that the reason they refuse to work with cannabis companies is because cannabis remains federally illegal.⁶⁴ Therefore, if the roadblock of federal illegality is removed, it appears likely that at least some of these banks would open their doors to the cannabis industry.

Analogously, when hemp was removed from Schedule I of the CSA via the Agriculture Improvement Act of 2018, the Federal Reserve (“Fed”) released guidance regarding BSA

⁵⁹ *Id.*

⁶⁰ MORE Act of 2021, H.R. 3617, 117th Cong. (2021).

⁶¹ Joanna R. Lampe, *The MORE Act: House Plans Historic Vote on Federal Marijuana Legalization* 3, CONG. RSCH. SERV. (Nov. 25, 2020), <https://crsreports.congress.gov/product/pdf/LSB/LSB10556>.

⁶² See Hill, *supra* note 23, at 1065.

⁶³ See, e.g., Ashley Priest, *Why Is It So Difficult to Get Approved for a Loan as a Cannabis Employee?*, VERIHEAL (Sept. 16, 2020, 10:52 AM), <https://www.veriheal.com/blog/why-is-it-so-difficult-to-get-approved-for-a-loan-as-a-cannabis-employee/> (stating that the MORE Act “could pave a path for banks being much more open to working with not just cannabis businesses but also those who are employed within them”); Jonathan D. Salant, *House to Vote on Removing the Federal Ban on Marijuana*, NJ.COM (Aug. 30, 2020), <https://www.nj.com/marijuana/2020/08/house-to-vote-on-removing-the-federal-ban-on-marijuana.html>; Jeff Smith, *US House Poised to Act This Week on Landmark Marijuana Legalization Bill*, MARIJUANA BUS. DAILY (Nov. 30, 2020), <https://mjbizdaily.com/us-house-poised-to-act-this-week-on-landmark-marijuana-legalization-bill/>.

⁶⁴ See, e.g., A.J. Herrington, *JPMorgan Chase to Restrict Trading in Some U.S. Cannabis Stocks*, FORBES (Nov. 5, 2021), <https://www.forbes.com/sites/ajherrington/2021/11/05/jpmorgan-to-restrict-trading-in-some-us-cannabis-stocks/?sh=31a226e01a3f>.

considerations.⁶⁵ In its press release, the Fed stated, “[b]ecause hemp is no longer a Schedule I controlled substance under the Controlled Substances Act, banks are not required to file a Suspicious Activity Report (SAR) on customers solely because they are engaged in the growth or cultivation of hemp.”⁶⁶ Assuming cannabis was subjected to the same treatment as hemp (i.e., removed from Schedule I of the CSA), banks would no longer be required to file SARs for cannabis businesses.

Another less obvious benefit of the MORE Act is its tax implications for cannabis businesses. This is because the MORE Act deschedules cannabis from the CSA altogether and, therefore, the provisions of the IRC which prohibit expense deductions for businesses engaged in the sale of illicit drugs would no longer apply.⁶⁷ Thus, the MORE Act could positively impact multiple financial challenges for cannabis businesses.

At the time of this writing, the MORE Act has passed the House of Representatives and has moved to the Senate for consideration.⁶⁸ This is the second time the bill has passed the House, and the bill is likely to face strong opposition in the Senate with most commentators doubting its further passage.⁶⁹

B. Congressional Passage of the SAFE Banking Act

⁶⁵ Press Release, Board of Governors of the Federal Reserve System, et al., Providing Services to Customers Engaged in Hemp-Related Businesses, (Dec. 2019), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20191203a1.pdf>.

⁶⁶ *Id.*

⁶⁷ MORE Act of 2021, H.R. 3617, 117th Cong. § 3 (2021).

⁶⁸ Will Yankowicz, *U.S. House of Representatives Passes Federal Cannabis Legalization Bill MORE Act*, FORBES (Apr. 1, 2022), <https://www.forbes.com/sites/willyakowicz/2022/04/01/us-house-of-representatives-pass-federal-cannabis-legalization-bill-more-act/?sh=711126e66d7f>.

⁶⁹ *Id.*

The SAFE Banking Act presents another option for Congressional action, and this legislation directly targets the cannabis banking problem.⁷⁰ Under the SAFE Banking Act, federal regulators may not “prohibit, penalize, or otherwise discourage a depository institution from providing financial services to a cannabis-related legitimate business or service provider.”⁷¹ The legislation also prohibits regulators from closing cannabis business bank accounts, denying loan applications, and revoking deposit insurance.⁷² Additionally, the SAFE Banking Act shields officers, directors, and employees of Federal Reserve Banks and Federal Home Loan Banks from liability for servicing cannabis businesses.⁷³

Unfortunately, the SAFE Banking Act maintains the current requirement that banks continue to comply with FinCEN guidance with respect to SARs; this means that without updated FinCEN guidance, reporting requirements would remain expansive and banks may remain hesitant to enter the cannabis industry.⁷⁴ The following paragraph of the SAFE Banking Act, however, provides hope for the industry, stating, “[n]ot later than the end of the 180-day period beginning on the date of enactment of this paragraph, the Secretary shall update the February 14, 2014, guidance titled ‘BSA Expectations Regarding Marijuana-Related Businesses’ (FIN-2014-G001) to ensure that the [updated] guidance is consistent with the purpose and intent of the SAFE Banking Act of 2021 and does not significantly inhibit the provision of financial services to a cannabis-related legitimate business”⁷⁵ This provision appears to show that Congress is signaling to FinCEN that, should the bill pass, FinCEN must adopt new guidance that reduces the reporting requirements on legitimate cannabis businesses. In turn, these reduced reporting requirements (and, as a result,

⁷⁰ SAFE Banking Act of 2021, H.R. 1996, 117th Cong. (2021).

⁷¹ *Id.* at §2(a)(2).

⁷² *Id.* at §2(a) et seq.

⁷³ *Id.* at §4(b).

⁷⁴ *Id.* at §6.

⁷⁵ *Id.*

risks), may favorably influence a bank’s decision to service a cannabis company. It warrants mention, however, that some observers have noted that reporting costs may remain high and many banks may remain hesitant even if Congress requires revised FinCEN banking guidance with respect to cannabis companies.⁷⁶

The current version of the SAFE Banking Act passed the House of Representatives in February 2022 and has been referred to committee in the Senate.⁷⁷ The act’s fate in the Senate is uncertain. There is evidence, however, that it has a greater bipartisan support than the MORE Act, and some members of Congress remain hopeful it will be enacted into law.⁷⁸

C. Congressional Passage of the STATES Act

The STATES Act is the third option currently available to Congress to create a viable path to banking services for cannabis companies. Like the MORE Act, the STATES Act amends the CSA.⁷⁹ Unlike the MORE Act, on the other hand, the STATES Act does not fully deschedule cannabis from the CSA. Instead, it modifies the CSA to “not apply to any person acting in compliance with State law relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marijuana.”⁸⁰ Therefore, under the STATES Act, cannabis would remain illegal at the federal level for states that have not legalized it, but would become legal at the federal level for states that have legalized it.⁸¹

⁷⁶ See Hill, *supra* note 23, at 1062.

⁷⁷ Press Release, Rep. Ed Perlmutter, *SAFE Banking Act* (February 2022), <https://perlmutter.house.gov/safe-banking-act/>.

⁷⁸ Ketan Bhirud et al., *Will the Fifth Time Be the Charm for the Cannabis SAFE Banking Act?*, JD SUPRA (Oct. 5, 2021), <https://www.jdsupra.com/legalnews/will-the-fifth-time-be-the-charm-for-6564248/>.

⁷⁹ STATES Act, S. 1028, 116th Cong. § 2 (2019).

⁸⁰ *Id.*

⁸¹ See Hill, *supra* note 23, at 1063.

Also similar to the MORE Act, the STATES Act makes no explicit mention of banking or the cannabis industry's access to financial services.⁸² The original Senate sponsors of the bill, Elizabeth Warren (D-MA) and Cory Gardner (R-CO) (no longer a Senator), however, have argued that the bill "[a]ddresses financial issues caused by federal prohibition by clearly stating that compliant transactions are not trafficking and [therefore] do not result in proceeds of an unlawful transaction."⁸³ Despite these remarks by the bill's sponsors, some commentators believe that the STATES Act does not do enough to address the cannabis banking problem.⁸⁴

I am inclined to agree with these more pessimistic scholars. If Congress is going to enact legislation that addresses the inability of cannabis businesses to access financial services, the bill should make explicit reference to this intent. Leaving these legal questions open to the interpretation of banking regulators and banking institutions will not fully address the problem. Banks tend to be risk-averse by their very nature.⁸⁵ Therefore, both banks and their regulators are apt to err on the side of caution in the absence of Congressional clarity. Thus far, neither house of Congress has passed the STATES Act.

D. Reform of Federal Banking Regulations via the Executive Branch

While an act of Congress is almost certainly required to remove cannabis from the CSA and finally put an end to the cannabis industry's banking issues, both the President of the United States

⁸² *Id.*

⁸³ Press Release, Sen. Elizabeth Warren, Senators Warren and Gardner Reintroduce Bipartisan, Bicameral Legislation to Protect States' Marijuana Policies (Apr. 4, 2019), <https://www.warren.senate.gov/newsroom/press-releases/senators-warren-and-gardner-reintroduce-bipartisan-bicameral-legislation-to-protect-states-marijuana-policies>.

⁸⁴ See Hill, *supra* note 23, at 1064.

⁸⁵ Yasuo Nishiyama, *Are Banks Risk-Averse?*, Vol. 33, No. 4 EASTERN ECONOMIC JOURNAL 471, 486 (2007) (Showing an economic and statistical analysis which concluded that banks are generally either risk-neutral or risk-averse).

and banking regulators may be able to act in the interim to reduce current burdens on the industry.⁸⁶ A report published by the Congressional Research Service (“CRS”) concluded that the President cannot unilaterally deschedule cannabis via executive order.⁸⁷ It nonetheless went on to note that “[the President] might order executive agencies to consider either altering the scheduling of marijuana or changing their enforcement approach.”⁸⁸

Because the U.S. Department of the Treasury is a cabinet-level executive branch agency, I argue that this finding by CRS may be applied to the Treasury Department and, by extension, FinCEN. This means that the President may have the authority to enact an executive order that directs the Treasury Department and FinCEN to reduce reporting requirements and limit investigations of both cannabis companies and the banks that serve them. Such action by the President and federal banking regulators may serve a dual-purpose. First, it would signal to banks that the federal government is taking a more relaxed approach in cannabis business financial regulation, thus providing banks with the motivation they need to begin servicing the cannabis industry. Second, it may motivate Congress to act if the President makes it clear that the executive branch will not enforce provisions of the BSA with respect to cannabis businesses.

One major concern with this approach is that any action taken by President Biden (or subsequent Presidents) could be instantly undone by a future President. This problem of uncertainty may contribute to banks continued hesitancy to serve cannabis companies. Therefore, while action by the President, the Treasury Department, and FinCEN may be beneficial in the interim, it is likely an unstable, impermanent solution.

⁸⁶ Kyle Jaeger, *Biden Has the Power to Practically Legalize Marijuana Without Congress*, FILTER MAG. (Nov. 4, 2021), <https://filtermag.org/biden-legalize-marijuana/>.

⁸⁷ Joanna R. Lampe, *Does the President Have the Power to Legalize Marijuana?*, CONG. RSCH. SERV. (Nov. 4, 2021), <https://crsreports.congress.gov/product/pdf/LSB/LSB10655>.

⁸⁸ *Id.*

E. Potential Non-Governmental Solutions Until Federal Reform is Achieved

In the following subsections, I propose three potential solutions to the cannabis industry's banking problems that do not require direct government intervention. While these solutions are temporary at best, they may provide some guidance and assist cannabis companies in the short term. These solutions include the creative corporate structuring of cannabis companies, the establishment of a cannabis industry credit union, and the adoption of cryptocurrencies by cannabis companies.

1. Corporate Structuring for Cannabis Companies

Typically, cannabis companies have four options when it comes to basic corporate structure: (1) a C-Corporation; (2) an S-Corporation; (3) a Partnership, or; (4) an LLC.⁸⁹ Each of these structures comes with its own benefits and drawbacks. For example, C-Corporations are subject to double taxation because profits are taxed at both the corporate level and on the income paid to shareholders.⁹⁰ Alternatively, S-Corporations and LLCs are “pass-through” entities which are not subject to corporate tax and are, instead, taxed only at the level of income paid to shareholders (or “members” in the case of LLCs).⁹¹

At first glance, it appears that S-Corporations and LLCs would be favorable because they are only taxed once. Because of IRC Section 280E disallows cannabis businesses from deducting expenses, however, tax bills for cannabis companies can often be massive.⁹² Therefore, cannabis companies may prefer to opt for a C-Corporation structure, which confines the tax liability to the

⁸⁹ Cannabis Legal Group, *The Ultimate Cannabis Business Tax Guide: Choosing the Best Corporate Structure*, (2015), <https://michigan-marijuana-lawyer.com/corporate-structure-for-cannabis-business/>.

⁹⁰ U.S. SBA, *Choose a Business Structure*, <https://www.sba.gov/business-guide/launch-your-business/choose-business-structure>.

⁹¹ *Id.*

⁹² 26 U.S.C. § 280E.

business entity itself, thus preventing individual owners or shareholders from being stuck with large tax bills.

Another potential benefit to careful corporate structuring is the ability of cannabis companies to indirectly access bank accounts and other financial services. This could be achieved via either a holding company or a completely separate second entity which is not directly involved in the cannabis industry. This holding company or secondary entity could then theoretically obtain its own bank account and access to financial services because it does not deal in cannabis products itself. Cannabis business operators, however, should proceed with extreme caution when exercising this solution. If the sole purpose of this affiliate entity is to conduct the financial operations of the cannabis business, the federal government *will almost certainly view this as money laundering* because the affiliate entity was created to shield cannabis profits earned from BSA reporting requirements.⁹³ This could create even worse problems for the business and potentially subject the company and its owners to criminal prosecution. Thus, further investigation is required to determine if a cleverly designed corporate structure is truly a viable option for facilitating cannabis business access to financial services.

2. A Cannabis Industry Credit Union

Perhaps my most ambitious proposal for the cannabis industry can be summarized as, “if you can’t join them, *be them*” (a modification of the old proverb). As discussed throughout the paper, cannabis businesses are frequently rebuffed in their attempts to access financial services. Under current FinCEN regulations, however, the primary roadblock is less about regulators barring

⁹³ J.S. Held, *Current Trends in Banking for Cannabis-Related Businesses*, JD SUPRA (Mar. 3, 2022), <https://www.jdsupra.com/legalnews/current-trends-in-banking-for-cannabis-7894657/>.

cannabis companies from banking and more about banks themselves remaining cautious because of the illegal status of cannabis under the CSA.⁹⁴

Therefore, if a bank or credit union were willing to tolerate the associated risks and reporting requirements, cannabis companies could reliably access financial services. As a result, cannabis companies may be best served by solving this problem themselves by banding together to form state-level alliances and create their own credit unions instead of waiting for banks and the federal government. These credit unions, comprised of member cannabis companies, could serve to pool resources, provide depository accounts, and facilitate credit lending amongst the member companies. Additionally, because the credit union focuses explicitly on the cannabis industry, it would likely be able to achieve greater efficiency and proficiency in its handling of FinCEN reporting requirements. The success of these credit unions may prompt traditional banks and other financial institutions to realize that, with appropriate internal controls and risk management, providing financial services for cannabis companies is entirely viable.

This proposal does face a number of challenges. First, it may prove difficult to encourage cooperation between a group of businesses that compete with each other. Second, larger cannabis businesses may develop a hegemonic role within the credit union, limiting the opportunities for the smaller members. Third, the costs of establishing the credit union and maintaining compliance with federal banking regulations may prove too costly for the member companies to maintain. Lastly, the process of getting such a credit union up and running may simply take too long; there

⁹⁴ FinCEN, *BSA Expectations Regarding Marijuana-Related Businesses* (Feb. 14, 2014), <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>.

are several promising bills pending in Congress that would invalidate the need for these experiments altogether.

3. Alternatives to Cash – Enter Cryptocurrency

Could cannabis and cryptocurrency, two of the hottest new industries in America, be a match made in heaven? Possibly. As discussed above, one of the primary consequences of the cannabis industry's inability to access banking is that cannabis companies are often forced to carry large quantities of cash. One attractive solution to this problem avoids the banking industry altogether via adoption of cryptocurrency by the cannabis industry. Currently, the vast majority of cryptocurrencies and the companies that offer crypto-banking and crypto-services are unregulated.⁹⁵ While this is problematic for a number of reasons, it presents an intriguing opportunity to cannabis companies. This is because by switching from cash to cryptocurrency, cannabis companies would remove the main reason that they are targets of robberies—all of the physical cash they carry. Although likely not as safe as a traditional bank account, holding their assets in a cryptocurrency wallet or online platform would eliminate the need for cannabis businesses to hold large quantities of physical cash.

This solution is also limited. FinCEN recently issued guidance declaring that any business engaged in transactions involving virtual currencies are still subject to the requirements of the BSA.⁹⁶ Therefore, even though cryptocurrency companies are subject to a limited (if any) regulatory regime, FinCEN has made it clear that crypto-banks and service providers must comply

⁹⁵ Alex Gailey, *Why Cryptocurrency Regulation is Actually 'A Good Thing' for Investors, According to These Experts*, TIME (Mar. 7, 2022), <https://time.com/nextadvisor/investing/cryptocurrency/why-crypto-regulation-is-good-for-investors/>.

⁹⁶ Olga Torres, *FinCEN Crypto & Ransomware Guidance: Will 2022 Bring More Changes?*, JD SUPRA (Jan. 26, 2022), <https://www.jdsupra.com/legalnews/fincen-crypto-ransomware-guidance-will-2556933/>.

with the BSA. Thus, these cryptocurrency service providers may exhibit the same hesitancy as traditional banks when accepting cash or cryptocurrency from cannabis companies.

Another problem with this solution revolves around the nature of cryptocurrency as an asset class. Specifically, cryptocurrencies are often extremely volatile. Therefore, if a cannabis company holds a majority of its assets in the form of cryptocurrency, an unexpected downturn in the cryptocurrency markets may wipe out the business overnight. Cryptocurrency also remains less liquid than cash in almost all contexts for now. Many vendors, customers, and suppliers may not be willing to transact with a cannabis company that deals exclusively in cryptocurrency. That stated, a cannabis business still may be able to alleviate some the problems associated with physical cash by holding some of their assets in cryptocurrency, while maintaining enough cash to pay vendors and other business partners. Finally, both cryptocurrency and cannabis are currently closely watched by the federal government. Consequently, a cannabis company that seeks to intermingle these two industries may draw particular focus from the federal government, and subject itself to a worse situation than it began in.

IV. Concluding Remarks and Evaluating the Solutions

While the cannabis industry boomed in its first decade of recreational legalization in the United States, it still has a long way to go to resolve its financial challenges. The classification of cannabis as a Schedule I controlled substance under the federal CSA presents the biggest hurdle to widespread acceptance of cannabis within the banking community. Strict reporting requirements and regulations imposed by FinCEN under the BSA on cannabis companies and their banks present an additional challenge. These issues have created a number of problems for the cannabis industry, including the inability to access financial services, an overreliance on physical cash, and taxation difficulties.

The MORE Act, the SAFE Banking Act, and the STATES Act each represent a potential federal solution to these challenges. Of these three, the SAFE Banking Act seems to be the most politically feasible at the moment, and may alleviate bank hesitancy to transact with cannabis companies. Alternatively, the MORE Act presents the most comprehensive, long-term solution to the cannabis banking problem because it completely deschedules cannabis from the CSA. Lastly, the STATES Act has neither gained traction in Congress, nor does it explicitly address the banking industry. Therefore, either the SAFE Banking Act or the MORE Act appear to be cannabis industry's most attractive options available at the federal level.

Several options outside of Congressional action also remain available. These include executive action by the President and the U.S. Department of the Treasury, creative corporate structuring, creation of a cannabis industry credit union, or the adoption of cryptocurrency by the industry. Unfortunately, each of these solutions is short-term in nature, and tend to only alleviate some subset (but not all) of the cannabis industry's financial challenges.

Ultimately, greater coordination is needed between the federal government, banks, and the cannabis companies themselves in order to achieve a sensible regulatory regime that benefits all parties involved.