Negative: Cannabis / Marijuana Banking

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should substantially reform its banking, finance, and/or monetary policy***

Summary: Marijuana (also known as “cannabis”) is regulated at 2 different levels in the U.S. under our system of federalism. The federal government has a ban on buying and selling it. Until recently all the states did too, but that is rapidly changing. Some states have legalized it for medical purposes (with doctor’s prescription) and some states have legalized it for recreational use (subject to various regulations, age limits, locations of use, taxes, etc.). This mixed up situation gets even more confusing when a marijuana business that is legal under state law tries to open a bank account to deposit the proceeds of their sales and pay their rent, utilities etc. Since banking is regulated under both state and federal law, banks are afraid to accept marijuana businesses as customers because they don’t want to get prosecuted under federal law for aiding illegal drug dealers or money laundering illicit funds. State-legal marijuana businesses thus have to do everything in cash, which poses numerous problems. Plan would have the federal government authorize banks to do business with state-legal marijuana operations without the risk of federal prosecution.

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Negative: Cannabis / Marijuana Banking

INHERENCY

1. Already banking successfully in Status Quo

Marijuana companies are already banking successfully with 4 major US banks

Sean Williams 2019 (financial journalist) 29 Dec 2019 “Stop Dreaming: Cannabis Banking Reform Isn't Happening in 2020” <https://www.fool.com/investing/2019/12/29/stop-dreaming-cannabis-banking-reform-isnt-happeni.aspx>

Whether you realize it or not, some well-known banks are already providing financial services in legalized states. According to online journal American Banker, 34% of medical marijuana companies in Massachusetts were banking with one of the four major U.S. banks -- **Bank of America** ([NYSE:BAC](https://www.fool.com/quote/nyse/bank-of-america/bac/)), **Wells Fargo**, **JPMorgan Chase**, and **Citigroup** -- between June 2015 and September 2016. At the time, Bank of America was the most popular choice among medical marijuana operators in Massachusetts, with a little over half of all operator having an account with BofA.

SOLVENCY

1. Banking risk not solved

Substantial legal risks would remain

James Black and Marc-Alain Galeazzi 2020. (both are attorneys) 6 Feb 2020 “Cannabis Banking: Proceed with Caution” <https://www.americanbar.org/groups/business_law/publications/blt/2020/02/cannabis-banking/> (brackets added)

The SAFE Banking Act would represent an important milestone in the slow march toward the creation of a legal and regulated nation-wide marijuana market in the United States, but it would not be a panacea for banks or for their customers. Among other issues, since the bill would not decriminalize marijuana under the Controlled Substances Act, MRBs [Marijuana-Related Businesses] and their officers, directors, and employees could still face federal criminal prosecution for violating federal law. If this were to happen to an MRB served by a bank, it could adversely affect the viability and creditworthiness of the affected MRB; this, in turn, would result in heightened commercial risks for banks that elect to provide financial services to MRBs compared to customers in other industries. Moreover, banks would effectively be responsible for ensuring that their marijuana-industry customers are operating in compliance with all applicable state laws, as state-law compliance is a precondition for the legal protection afforded by the act. As a result, banks’ compliance costs would likely be significantly higher when serving such customers, and this, combined with the heightened commercial risks, may deter many banks from taking advantage of the opportunity that Congress is seeking to create.

SAFE Banking Act would not entirely eliminate risk of doing business with cannabis

Wilmer Cutler Pickering Hale and Dorr law firm 2019. (international law firm) 7 Oct 2019 “House Passes Historic SAFE Banking Act” <https://www.jdsupra.com/legalnews/house-passes-historic-safe-banking-act-50933/> (brackets added)

The SAFE Banking Act, however, would not entirely eliminate the risk of doing business with CRBs [cannabis related businesses]. Because the Act does not remove marijuana from Schedule I of the CSA, providing products or services that materially aid a CRB’s business could still expose the financial institution to risk of aiding and abetting a violation of federal narcotics law. Assessing the potential risk will require careful, fact-based analysis of the financial institution’s activities and those of the CRB.

Numerous risks to financial institutions would remain even after SAFE Banking

Prat Vallabhaneni, Jeremy Kuester, Margaux Curie and Christen B. Hayes 2019. ( Vallabhenani - attorney. Kuester - attorney. Curie - attorney. Hayes - Financial Regulatory Analyst working with the Financial Institutions Advisory group in Washington ) 11 Oct 2019 “White & Case Discusses Cannabis Banking Bill’s Implications for Financial Services” <https://clsbluesky.law.columbia.edu/2019/10/11/white-case-discusses-cannabis-banking-bills-implications-for-financial-services/>

As important as these relief measures are, they do not fully address all the legal risks financial institutions face when providing services to CRBs. Under the SAFE Banking Act, cannabis would remain a Schedule I controlled substance and its production, sale, or distribution would still warrant a significant criminal offense. While federal prosecutors would no longer be able to charge a bank with money laundering for providing banking services to CRBs, aiding and abetting charges, however, remain options. The SAFE Banking Act also maintains the Suspicious Activity Report (“SAR”) requirement for cannabis-related transactions. Even if the US Treasury revises the 2014 FinCEN guidance on filing SARs related to cannabis-related transactions, one can expect FinCEN to maintain its requirements to file a SAR for every transaction related to an actual or suspected violation of any law or regulation. As a result, the anti-money laundering compliance obligation on a bank that provides services to a CRB would still be significant.

DISADVANTAGES

1. Potent and toxic drugs pushed on kids

Link: More study needed to resolve dangerous threats. We have to finish evaluating the public health & safety risks before we do the SAFE Banking Act

Garth Van Meter 2019 (Vice President of Government Affairs for Smart Approaches to Marijuana, a non-partisan, non-profit organization dedicated to a public health approach to addiction and recovery) 23 July 2019 Testimony to the Senate Banking, Housing, and Urban Affairs Committee Challenges for Cannabis and Banking: Outside Perspective <https://www.banking.senate.gov/imo/media/doc/Van%20Meter%20Testimony%207-23-19.pdf>

The fundamental question before us today is whether we want to promote and increase drug use during an addiction crisis or discourage drug use and help people find recovery and healing. By skipping ahead to a technicality over banking rules, the marijuana industry is hoping to gain many of the benefits of federal legalization without a debate over the public health effects. But make no mistake, a policy change around banking would have massive public policy and public health ramifications, so we are shirking our duties if we do not consider the full question. The SAFE Banking Act will allow the expansion of an industry pushing new, exponentially more powerful forms of marijuana before any of its health or other societal impacts are fully understood.

Impact: Kids die. Promoting marijuana banking will mean more kids dying.

Richard Law 2019 (journalist with Long Island Herald) 7 Nov 2019 “RVC residents oppose SAFE Banking Act” <https://www.liherald.com/stories/rvc-residents-oppose-safe-banking-act,119782?>

“As a parent, I am gravely concerned that our leadership in Congress could even begin to think now is the time to reward the marijuana industry with such a large handout,” Melissa Robbins, of Philadelphia, a parent concerned with the youth vaping epidemic and subsequent health crisis, said. “Every day I turn on the news, another death, another round of reports of illness caused by pot vaping. How many more families must suffer before our government gets the message?” Speakers at the news conference highlighted the litany of concerns they have with allowing the marijuana industry banking access. According to the Centers for Disease Control and Prevention, vaping is responsible for more than 1,400 cases of debilitating illness and at least 33 deaths nationwide. “Banking access for the marijuana industry will put pedal to the metal on Big Marijuana exploiting communities of color and low income,” said Abu Edwards, director of state affairs for Smart Approaches to Marijuana (SAM) Action. “Additionally, with such a hazy understanding of the health effects of high potency marijuana and potentially fatal products on the market, any expansion and promotion of increased marijuana use is misguided.”

Impact: Best Case Scenario is the SAFE Banking Act will bring in hundreds of billions of dollars to poison kids

Garth Van Meter 2019 (Vice President of Government Affairs for Smart Approaches to Marijuana, a non-partisan, non-profit organization dedicated to a public health approach to addiction and recovery) 23 July 2019 Testimony to the Senate Banking, Housing, and Urban Affairs Committee Challenges for Cannabis and Banking: Outside Perspective <https://www.banking.senate.gov/imo/media/doc/Van%20Meter%20Testimony%207-23-19.pdf> (ellipses in original)

The first is the best-case scenario, and the intended effect of the bill: let’s say only state licensed marijuana producers and stores participate in the federal banking system. For expert testimony on the purpose of the SAFE Banking Act, I refer you to former Speaker John Boehner's marijuana investing seminari , in which you find these statements, "With traditional investments, only seventeen-and-a-half percent of the money comes from little fish like you and me. The other eighty-two-and-a-half percent is from the big players, the major investment firms, hedge funds, pension funds, established corporations. Banking restrictions are preventing almost all of those investment firms and funds from diving head first into cannabis. Well, they're dying to get in. I'm helping some of these bigger fish get ready to invest. There are hundreds of billions of dollars sitting on the sidelines." The SAFE Banking Act could have been drafted to narrowly address point-of-sale transactions. Instead, the bill is written specifically to allow those "hundreds of billions of dollars sitting on sidelines" to invest. Does anyone think that public health is going to be the driving force behind these multinational corporations who have to report quarterly earnings? For a preview, we need only to look to Canada, where the CEO of a major marijuana corporation was ousted for a single quarter of poor sales, and Altria (formerly Philip Morris) has made a multibillion-dollar investment into the marijuana industry. We should also note that the former CEO of Purdue Pharma—who oversaw all of Oxycontin’s deceptive marketing practices—saw his next big business opportunity in leading a marijuana company.  
 The Influx of Potent Products into the Market   
It's also important that we not deal with this question in the abstract. When you see marijuana on TV, you see fields or warehouses of what everyone assumes is a harmless plant. It looks very innocuous. What they don't show you are the concentrates and extraction systems, because industrial scale extraction looks like something straight out of the television show Breaking Bad. Yet, concentrates are what they are heavily promoting on social media. For those who have never seen concentrates, I refer you to Appendix A of my testimony, where you can see examples. Marijuana is not just a plant any more. It has been highly processed into something that cannot be found in nature and has a devastating impact on the brain in terms of addiction and mental health. In particular, I refer you to the first page, where you can see a 3 marijuana concentrate called ‘shatter’ from Acreage Holdings, which is former Speaker Boehner's new gig. Notice the name of the marijuana strain: "Thin Mint Girl Scout Cookies." This is a screen shot of their webpage from two weeks ago, but it mysteriously vanished when we submitted this picture as a part of written testimony to the House Judiciary Committee. I also want to address kid-friendly edibles. Under state regulations, the pot gummies on page 2 of Appendix A are not considered kid-friendly. You see, under the marijuana industry's logic, kids are only attracted to gummies in the shape of animals or cartoon characters, not to brightly colored, sugar-coated gummies in the shape of vegetables, geometric shapes, or pot leaves. Washington State got so frustrated with the number of children ending up in emergency rooms from accidental ingestion of pot candies that they were going to ban them completely… but it only lasted a week, and the marijuana industry released their new plan to self-regulate with brightly colored geometric shapes and pot leaves only. So, that is the best-case scenario, if everything goes according to plan.

2. Illegal cartels with hard drugs beyond just marijuana

Link: Plan would not only bring marijuana money into banks, it would also bring money from cartels selling heroin or methamphetamine

Garth Van Meter 2019 (Vice President of Government Affairs for Smart Approaches to Marijuana, a non-partisan, non-profit organization dedicated to a public health approach to addiction and recovery) 23 July 2019 Testimony to the Senate Banking, Housing, and Urban Affairs Committee Challenges for Cannabis and Banking: Outside Perspective <https://www.banking.senate.gov/imo/media/doc/Van%20Meter%20Testimony%207-23-19.pdf> (ellipses in original)

But there is a much darker possibility, and it doesn’t require a stretch of the imagination because it is already happening. International cartels have infiltrated legalized states and have used the cover of legalization to conduct massive grow operations, often in upscale, suburban neighborhoods. The SAFE Banking Act provides a scalable new avenue for these cartels to infiltrate the banking system in a much more systematic way. For example, I refer you to a letter dated July 19, 2019 from former DEA Administrators and ONDCP Directors who describe a threat that parallels the multibillion-dollar Black Market Peso Exchange, and testimony from Colorado law officer Ernest Martinez that lays out an example of how this would work. These documents can be found in Appendix B of my testimony. To quote from the letter: “Because cash made from the sale of marijuana looks the same regardless of what it was used to pay for, it will be extremely difficult for banks to know whether large bundles of cash presented for deposit were made from the sale of marijuana rather than from the sale of heroin, fentanyl, or methamphetamine. “In short, the SAFE Banking Act could inadvertently allow cartels to bring into banks duffel bags of cash made from the sale of those illicit drugs that are killing tens of thousands of Americans every year.”

Link: Law enforcement experts agree: SAFE Banking Act will open the system to illegal drug cartels and money laundering

Richard Law 2019 (journalist with Long Island Herald) 7 Nov 2019 “RVC residents oppose SAFE Banking Act” <https://www.liherald.com/stories/rvc-residents-oppose-safe-banking-act,119782?>

Several former Drug Enforcement Agency administrators and a half-dozen former directors of the Office of National Drug Control Policy have spoken up in opposition to the bill citing concerns that it will have unintended consequences, noting that criminal gangs and foreign cartels are extremely active in states that have legalized the production and use of marijuana, using the state-legal status as cover for massive trafficking operations. In a letter sent to the U.S. Senate Committee on Banking, Housing and Urban Affairs, they said that if Congress allows the marijuana industry access to the financial system, these drug traffickers would have unprecedented access to money laundering opportunities.  “As a former director of the Westchester Intelligence Center, I know firsthand the strength and the intelligence of drug traffickers,” said William Hayes, former Bedford Police Chief and former executive director of the Office of the Westchester County District Attorney. “Make no mistake, banking access would be a boon for cartels and other criminal organizations seeking to launder money through the industry.”

Impact: Drug cartel money laundering has multiple massive bad impacts on society

Scott Ehlers and Bruce Zagaris 2005 (Zagaris is a partner with the law firm of Berliner, Corcoran & Rowe, a founder and editor of International Enforcement Law Reporter. Ehlers is the director of research with the Campaign for New Drug Policies ) 6 Oct 2005 “Drug Trafficking & Money Laundering” <https://ips-dc.org/drug_trafficking_money_laundering/>

The illicit drug trade funds powerful criminal organizations, resulting in widespread corruption, violence, and an undermining of the rule of law. This, in turn, impedes the prosecution of these organizations, weakens the judicial system, and prevents the effective implementation of anti-money laundering controls in the banking system. Weak legal structures and social instability also thwart legal commercial development. The allocation of enforcement resources to combat international drug money laundering and drug trafficking is disproportionate to the harm from the trade and restricts the ability of law enforcement bodies to focus on violent forms of crime, such as terrorism, weapons trafficking, and trafficking in human beings.

3. Addiction

Link: Now is the time to curb the drug abuse epidemic by opposing the SAFE Banking Act

Richard Law 2019 (journalist with Long Island Herald) 7 Nov 2019 “RVC residents oppose SAFE Banking Act” <https://www.liherald.com/stories/rvc-residents-oppose-safe-banking-act,119782?>

As health concerns over vaping and marijuana usage grow, members of the Rockville Centre community are taking action to curb the epidemic before it gets worse. Last week, a group of concerned parents, substance abuse professionals, and law enforcement members held a news conference on Front Street in Rockville Centre urging Senators Kristen Gillibrand and Chuck Schumer to oppose efforts to extend banking access to the marijuana industry.  “We are in the midst of a five-alarm fire health crisis,” Ruthanne McCormack, project coordinator for the Rockville Centre Coalition for Youth, said. “People are getting sick and dying from marijuana vapes, the opioid epidemic continues to rattle our country to its core, and the Surgeon General is doing everything he can to warn our young people to the health dangers of marijuana, while our lawmakers rush to promote the commercial industry. Now is not the time to reward the peddlers of addiction.”

Link: Business model promoted by the AFF plan is based on addiction to high-potency drugs

Garth Van Meter 2019 (Vice President of Government Affairs for Smart Approaches to Marijuana, a non-partisan, non-profit organization dedicated to a public health approach to addiction and recovery) 23 July 2019 Testimony to the Senate Banking, Housing, and Urban Affairs Committee Challenges for Cannabis and Banking: Outside Perspective <https://www.banking.senate.gov/imo/media/doc/Van%20Meter%20Testimony%207-23-19.pdf>

Today's modern marijuana industry is structured around catering to heavy users. Daily and near daily users consume 87% of the marijuana in the state of Colorado. If you want to be successful in the marijuana business, that's who you have to sell to, and those users have built up a high tolerance and high dependence. LivWell and other businesses have to meet the demand they have created if they want to stay in business versus their competitors. If they don't aggressively market the highest potency products available, someone else will and they will lose market share. Therefore, the business model becomes the highest potency for the cheapest price, and no state has successfully implemented a potency cap. Advancing a business model of creating new instances of substance use disorder during an addiction crisis is grossly irresponsible as a matter of public policy.

Link: Marijuana links to higher rates of opioid addiction

Garth Van Meter 2019 (Vice President of Government Affairs for Smart Approaches to Marijuana, a non-partisan, non-profit organization dedicated to a public health approach to addiction and recovery) 23 July 2019 Testimony to the Senate Banking, Housing, and Urban Affairs Committee Challenges for Cannabis and Banking: Outside Perspective <https://www.banking.senate.gov/imo/media/doc/Van%20Meter%20Testimony%207-23-19.pdf> (brackets added)

We at SAM [Smart Approaches to Marijuana] deal every day with families who have lost loved ones to addiction, and marijuana is a major part if not the defining feature of all of their stories. Contrary to the claims of the marijuana industry and legalization advocates, legalization is not resulting in a reduction in opioid deaths. These claims have been thoroughly debunked in recent studies in the Proceedings of the National Academies of Sciences. Instead, in a study of 34,000 individuals, marijuana users were discovered to be more than two times as likely to abuse prescription opioids or initiate non-prescription use of opioids.

Impact: Opioid abuse harms families, hurts the economy, increases crime and spreads disease

[Lara Moody](https://www.ncbi.nlm.nih.gov/pubmed/?term=Moody%20L%5BAuthor%5D&cauthor=true&cauthor_uid=29057030),[Emily Satterwhite](https://www.ncbi.nlm.nih.gov/pubmed/?term=Satterwhite%20E%5BAuthor%5D&cauthor=true&cauthor_uid=29057030), and [Warren K. Bickel](https://www.ncbi.nlm.nih.gov/pubmed/?term=Bickel%20WK%5BAuthor%5D&cauthor=true&cauthor_uid=29057030) 2017 (Moody – Virginia Tech. Univ. Dept of Psychology. Satterwhite – Virginia Tech Univ., Appalachian Studies Program. Bickel Virginia Tech. Univ. Carilion Research Center) RURAL MENTAL HEALTH Apr 2017 “ Substance Use in Rural Central Appalachia: Current Status and Treatment Considerations” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5648074/>

Nonmedical prescription drug use has increased over the past two decades in Central Appalachia ([CDC, 2011](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5648074/#R15); [Havens et al., 2007](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5648074/#R32)) and prescription opioid abuse has come to the forefront as a public health concern. The burden of nonmedical opioid abuse in rural Appalachia extends beyond the individual drug users as it tears away at traditionally close-knit families, reduces the viable workforce, increases crime, overloads the justice system, and spreads disease through the region.