



Cannabis and lending - by Lindsay Mesh Lotito

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Would there be a better business landscape today for the cannabis industry had Thomas Jefferson's concept for the U.S. banking system prevailed in 1791?

At the inception of our country, there was a bitter rivalry between those that favored states' rights and those that supported a strong central government. Alexander Hamilton, the first secretary of the treasury, believed a strong central bank, controlled by the federal government, was necessary to promote commerce and ensure economic stability. Jefferson, on the other hand, was a states' rights advocate. He argued that any powers not explicitly stated in the Constitution were reserved for the states. Ironically, one of Jefferson's cash crops grown at Monticello was hemp, a member of the cannabis family.

Hamilton convinced George Washington, over Jefferson's objections, to sign into law the bill that created the First Bank of the United States. This established our dual banking system, where national banks are chartered and regulated under federal law and state banks are chartered and regulated under state law. However, as part of a compromise, the Bill creating the first bank contained a sunset provision; in 1811, Congress failed to renew its charter and the first bank of the United States expired. After fifty years of the Free Banking Era, Congress passed the National Banking Act, which set up a system of federally chartered banks and a uniform national currency. In response to the Panic of 1907, President Woodrow Wilson signed the 1913 Federal Reserve Act into law, thereby creating the Federal Reserve System, introducing our Central Bank ("The Fed"), designed to establish economic stability and oversee monetary policy. To further strengthen the federal banking system, after the Great Depression of 1929, Congress approved the Banking Act of 1933, which established the Federal Deposit Insurance Corporation ("FDIC"), the U.S. Securities and Exchange Commission ("SEC") and the Federal Credit Union Act.

The overlap of the dual banking system became inevitable. State chartered banks that receive FDIC insurance and benefit from using The Fed are now subject to both state and federal regulation and oversight. Therefore, most state and nationally chartered banks will not lend to, or provide traditional bank services to, cannabis companies for fear of losing their Central Bank privileges, FDIC insurance or violating the Bank Secrecy Act and Suspicious Activity Reporting requirements.

Cannabis companies in New York have been given permission by the state to legally engage in commerce, however, few banks will do business with them due to the fact that cannabis is considered an illegal controlled substance under Federal Law. Without the ability to get loans, cannabis companies have a hard time getting the necessary funds to get their business off the ground. The companies that are open for business run into an issue with their ability to establish bank accounts. The potential consequences and penalties for banks engaging in cannabis lending and deposit relationships imposed by the Federal Government and Central Bank has severely stunted the growth of the cannabis industry.

Currently, there is a bill before the U.S. Senate that would assuage some of the state bank fears. The Secure and Fair Enforcement Banking Act of 2023, or the SAFE Banking Act of 2023, would

prevent federal regulators from punishing state banks for providing services such as a loan, mortgages, or other financing to state-sanctioned marijuana businesses.

Whereas normally banks that handle proceeds from an unlawful activity are subject to the anti-money laundering laws, provided the cannabis company is state-sanctioned, the proceeds from that company would not be considered unlawful. Under the SAFE Banking Act, federal regulators could not prohibit depository relationships with sanctioned cannabis companies, nor would banks be held liable or subject to forfeiture under federal law for providing financing to state-sanctioned marijuana businesses. The Senate is set to vote on the bill soon. Meanwhile, New York State has approved a Cannabis Social Equity Fund, providing up to \$150 million over three years, to help recreational dispensaries secure funding to open their stores.

Although Hamilton was correct - that the financial stability of the U.S. economy depends on a strong Central Bank, had Jefferson's philosophy favoring states' rights prevailed in our present day banking system, the hurdles cannabis companies currently face in securing financing and establishing depository relationships probably would not be an issue.

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