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March 19, 2025

Re: LD 859, Resolve, Directing the Treasurer of State to Review and Develop Options for Meeting the Banking Needs of the Cannabis Industry

Senator Hickman, Representative Supica, Members of the Joint Standing Committee on Veterans and Legal Affairs:

The Office of Cannabis Policy (OCP) respectfully submits the following comments neither for nor against LD 859 to inform this committee's consideration of matters related to cannabis banking in Maine and across the country. OCP strongly supports access to banking for cannabis businesses, and the Office is clear eyed about the real and substantive challenges facing banks and credit unions. Financial institutions are subject to stringent federal regulations rooted in cannabis' federal prohibition under Schedule I.

While the vast majority of states have some form of a regulated cannabis market, federal law prohibits the cultivation, manufacture, sale or possession of cannabis. Despite this prohibition, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued guidance to financial institutions providing banking services to cannabis businesses regarding the minimum due diligence necessary to comply with provisions of the Bank Secrecy Act aimed at preventing money laundering.¹ Specifically, that guidance provides:

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate

¹ See e.g. Financial Crimes Enforcement Network (FinCEN). BSA Expectations Regarding Marijuana-Related Businesses. February 14, 2014. <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>

with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

Beyond the FinCEN guidance, federal bank and credit union examiners are regularly updating their due diligence, record keeping, and administrative requirements as they related to the provision of financial products to cannabis related businesses. These changing expectations often require banks and credit unions to implement their own changes in order to come into compliance with federal regulations and guidance.

In the absence of Congressional action on legislation like the SAFER Banking Act (S. 2860, 118th Congress) to improve access to banking for cannabis and cannabis-related businesses, this FinCEN and other regulatory guidance require financial institutions to implement and update due diligence requirements.² Furthermore, it is important to note that those financial institutions, like any fiduciary, must take action to mitigate risks to their shareholders' and members' assets such as higher fees on deposit accounts for cannabis businesses.³ Taken together, these conditions leave little room for the kind of creative, collaborative problem-solving this resolve contemplates.

That is not to say this Legislature is powerless to improve access to banking for Maine cannabis businesses. For years, a handful of Maine banks and credit unions have made available to cannabis businesses deposit accounts and more recently those same financial institutions have made available some interest bearing financial products while working to expand the availability of services like payroll processing and business and personal lending.

These financial institutions rely heavily on records collected through the regulated cannabis programs administered by the Office to ensure that the companies and individuals with whom they do business are lawfully operating in Maine's cannabis programs. We have heard repeatedly from financial institutions, as we expect you will hear today, that data provided from the state's inventory tracking system dramatically decreases the time and resources necessary for those financial institutions to conduct due diligence. For adult use cannabis businesses, these records are fairly straightforward and include inventory tracking system records and state-issued licenses. For medical cannabis businesses whose inventory is not tracked and traced through a statewide inventory tracking system, the trip tickets, business records, and other accounting information provided often requires the time- and labor-intensive production of supporting documentation to verify those primary sources in order to satisfy the FinCEN due diligence standards. The Office has also heard from several financial institutions that the denial of accounts to cannabis businesses often occurs because of a lack of sufficient and complete business records—a scenario that would lead to the denial of products to any business in cannabis or any other industry.

² S.2860 - 118th Congress (2023-2024): SAFER Banking Act, S.2860, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/2860> (accessed March 12, 2025).

³ Maine Credit Union League. "While Maine's cannabis industry has grown exponentially, the options for safe banking have not." Community Outreach – Maine Credit Union League. <https://mainecul.org/community-outreach/crb-banking-in-maine/>

Thus, while there are real limits to what this Legislature, the State Treasurer or the Administration can affirmatively do to expand access to banking in the absence of Congressional action, there are certainly policy proposals before this body that would further exacerbate existing challenges. Specifically, any effort to rollback, make voluntary or otherwise eliminate inventory tracking for the adult use cannabis program will disrupt the already limited availability of banking options for those cannabis businesses. Similarly, continued opposition to the implementation of a statewide inventory tracking system in the medical cannabis program makes securing and maintaining access to banking more difficult for businesses operating in that program. Finally, it must be acknowledged that the health and viability of Maine's regulated cannabis economy will be directly impacted by some proposals before this committee that undermine the statutory and regulatory distinctions between the legal and illicit cannabis markets in this state.

The Office of Cannabis Policy remains committed to working with our program participants, financial institutions, stakeholders and this Legislature to promote access to banking for lawful cannabis businesses operating in our state. We thank the committee for its consideration and we would be happy to answer any questions you have at the work session.