

THE *Cannabis* COUNSELOR

WITH ALEECE BURGIO

Episode 7: “Banking in the Cannabis Industry”

Speakers: Aleece Burgio and guest Peter Su of Dime Bank

[Aleece] Hey, everyone, this is a Barclay Damon Live broadcast. You’re listening to The Cannabis Counselor, and I’m your host, Aleece Burgio. Let’s get into it!

[Aleece] What’s up, everybody? This is episode seven of The Cannabis Counselor. And we are here today with Peter Su, who is going to be talking with us about banking in the cannabis industry. Peter is the vice president of Dime Bank, which is out of New York City. He also is the chair of the entire Cannabis Division of Dime Bank, and in addition, he sits on the National Cannabis Industry Association (NCIA) banking committee, so welcome, Peter. Peter, how are you?

[Peter] Hey, Aleece, How’s it going today? How are you?

[Aleece] I’m doing great. I really want to talk about, and I think it’s so important in this industry is banking. You know, it’s so funny, because until I spoke with you a couple of weeks ago, I really didn’t know of any banks in New York that were taking marijuana clients on. How long have you been doing marijuana? And how long have you been with Dime?

[Peter] Oh, sure. So I’m actually relatively new with Dime, in fact very new with Dime, because, as you know, the Dime merger is fresh off the press. Right? So I work for BNB for about a year and a half. And then the Dime merger, as I said, just went through maybe two weeks ago, perhaps. Now my time here roughly coincides with us jumping into the cannabis space. I’ve been in banking about 22 years now. It’s one of those things you don’t realize it till you say it’s like, “oh, wow.”

[Aleece] Like, “Wow, 22 years.”

[Peter] 22 years...I’ve been in banking a long time, and I think one of the things that I saw was I felt like the people that I knew that were doing really well, they tend to specialize in something. So I started to kind of look around, and I was talking to some of the other banks. I had some other options, but I knew that BNB was kicking off their cannabis banking, and I honestly thought “that sounds really cool” and very wide open. And to your point, not a lot of...if you’re a banker and you go to, like, a networking event, there’s a million bankers there. But I’ve never met another this kind of a banker, right. And so when I came into the space, I didn’t know anybody. There was no other banks, like out there pushing a program, advertising...When I signed up for the NCIA, I was able to get on to the banking committee. And I’m the only banker on the NCIA Banking Committee.

[Aleece] I know, which is crazy, right? It’s like you’ve got accountants and banking attorneys, but you don’t have an actual person who works at a bank.



[Peter] That's right! Yeah. It was kind of a surprise, but no, it's been quite a ride. And we have a very pretty significant book in cannabis already. We are comfortable banking "seed to sale." We cover the entire cannabis industry. So, hemp, CBD, or I suppose any cannabinoids as well as legal marijuana.

[Aleece] So...what's interesting. I used to practice out in Oregon when I first started in 2015, and at that time, there was only one credit union that was accepting marijuana businesses, it's called Maps. I don't know if they're around.

[Peter] Yep. Yeah.

[Aleece] They had such an influx of business between 2015, 2016 because they would require people to show that they were either in the process of getting their license or have already obtained it, in order for them to have an account. How have you been kind of managing client bases now? Kind of being only really the only game in town in New York?

[Peter] Oh, sure. Honestly, it's no different than any clients sort of walking in the door. And what I mean by that is this due diligence process right now, it's kind of that process on steroids, meaning we are asking a lot more questions. We are drilling down much further on ownership. So certainly from a compliance perspective, it's heavily stratified. We do get down much deeper. So from that perspective, I think the lead time is much longer. And in some cases, that actually weeds out certain people. Not to get strange reporting. If they're in that much of a rush where they like they're being kicked out of a bank or whatever the case may be...in some scenarios. And I'm just being up front in those situations, like look... that's my process. If that's too much for you, that's okay. But that's the way it works.

[Aleece] Right. So how are you guys...Everyone knows that marijuana is still a schedule one substance at the federal level, obviously, New York right now, which will kind of dive into the absolute absurdity of New York.

[Peter] Why? (Laughs) What do you mean, did something happen...

[Aleece] Is something happening right now?! (Laughs) Just with state legislature and now getting approved for adult use, how does the bank kind of mitigate this idea that they're not laundering money through the bank with the schedule one substance...How do you guys get around that?

[Peter] Well, you know, believe it or not, there's a set of guidelines from our primary regulator, FinCEN, and they publish an extensive set of guidelines to follow: "If you're going to bank in cannabis, do this." So the reality is any bank that doesn't do it...like it's not because they can't, they don't want to. So the question would be, why don't they want to?... And first of all, that list is onerous. I mean, there's a lot to do. And there are things in that's are hard to do. Like, how do you do it as a bank? And then the last thing is, as you know, it's still very cash heavy, right? And there's a lot of logistical issues. There's a lot more risk involved, right?

[Peter] If something as simple as credit cards came into play, you would see a sea change in the industry, lots of banks would jump in and say, okay, we're good now because there's just not the kind of crazy logistics and risk that they have to take the cash and everything like that. I mean, the same thing with money servicing businesses, right? They are perfectly legal, but what a nightmare to banks...



[Aleece] Right.

[Peter] ...and you see recently there's actions against, like, Capital One, for example, from the legacy MSB business that they took over from Norfolk. So there's a lot of inherent risk there and arguably not enough reward, Right. So I'm sorry, going back to your original question is, how do we get around it? Well, the truth is, this is a set of guidelines as long as we follow those and follow the state by state regime. So we are comfortable, let's say, banking in Jersey as well, for example. And so we do have to be careful of the difference in state laws.

[Aleece] And the FinCEN guidelines basically say, if there's anything suspicious reported, right... That's basically the overall plot, those guidelines. It's just like, hey, if something's off... Do you think that we're going to see an expansion on that? I mean, obviously, you guys were kind of working off that Cole Memorandum, which was rescinded during President Trump's administration with Jeff Sessions. Now, I think with going into President Biden's administration, I know that the proposed Attorney General Merrick Garland, is saying, "Hey, we're hands off..." Kind of similar to the Cole Memorandum..."We're hands off if you're utilized in the state, you guys operate the way that you want to operate. We're not going to appoint resources to criminalizing people who are operating within state laws." But do you foresee additional federal legislation? Do you think the Safe Banking Act is going to get passed this year? What are your thoughts on that?

[Peter] It's probably above my pay grade to prognosticate on what's going to happen with legislation or whatever. I would say, I'm not sure that something like Safe Banking is going to be the cause of sea change the way you and I are talking about it, right? And what I mean by that is, like I said, it's already guidelines, right? Like FinCEN is saying, do this. I think that those motivations for banks to stay out of the business unless those come off the table. Like I said, cash....sure, clear legislation, if some of these rules were crystallized further, sure, more will jump in. I don't know that it would, again, would be a sea change, like a credit card, for example.

[Aleece] Right.

[Peter] And maybe this is a contrarian view. I'm not convinced that some of these "band aids" are going to help. It's just more band aids on top of an already "band-aid situation." Really, nothing short of full legalization. Yeah, it's going to be the next big move. In fact, re-schedulization would almost be worse, perhaps, right? Because now you have a fully regulated...like if they went fully medical. Now, it's big pharma only, essentially. Right.

[Aleece] Right.

[Peter] So, yeah, unless they de-schedulize or federalize, I don't know that you can solve all those issues. Look, you only have to look as far as, like, hemp, CBD to see that that's true.

[Aleece] Yeah. No, you're totally right.

[Peter] It's fully legal. You don't see banks jumping in. Even CBD, which is derivative, there's still the same sort of banking issues, payment issues, insurance issues. Now, again, I say that without necessarily knowing what will be in, let's say the Safe Banking Act. So sure, if for some reason, that prompts Mastercard and Visa to come out and say, "Okay, go ahead." That would be a sea change. But if it doesn't, and it's just saying, like, Hey, please go ahead and provide banking for cannabis like that. I don't know that that's going to do much.



[Peter] Now. One of the issues is when you look at the way the guidelines are written and you mentioned this, it's essentially just a cut and paste from the Cole memo. Now, the Cole memo is applicable, perhaps for the state attorney generals, meaning, from a legal perspective, like, where are we dedicating resources? If you take that same language and you paste it on to banking regs, well, some of it doesn't really make a lot of sense, right? So how does a bank know, for example, whether you are or not...

[Aleece] ...money laundering! How do they know if you're money laundering?

[Peter] Well, that is always the issue, right? Cannabis or otherwise, we're always worried about money laundering, right? Maybe it's heightened and sure because the cash now—we have a real problem. How do we get all that cash? Right. But, yeah, I think when you look at the Cole memo, you look at something like, Okay, make sure the store is not selling to minors. Right. So that makes sense maybe for an attorney general, how does the bank know, right? How do we know if you're selling to a minor?

[Aleece] So what's the operating of it all, right? You guys are taking a deep dive. What's interesting. And just to kind of touch base on this. When I was out in Oregon, I was working for this law firm called Green Light Law Group, where it was small. It was just the three of us, it was me and these two partners, they were East Coast guys. We were right in the thick of things, right. We're doing all the applications. And so...

[Peter] The early days of Oregon...

[Aleece] The early days! Yeah, I know. It was really exciting. We got booted from four banks while I worked there. Yeah, they were like, 'cause I would come in... I'm like, you know, like the first year associate, I'm coming in with 15k that reeks of weed, cash....my purse, like walking up like, I hope nobody smells what I'm about to do. I would go to the bank, and they'd be like, Okay... And I'm like, I work for a law firm. I am a lawyer, but it didn't matter. And they were like, well, all of your...basically what their point was of why they eliminated us was your profits are generated from a business that's schedule one.

[Peter] Yes.

[Aleece] And so it didn't matter because we were a full service cannabis firm. What we were finding was smaller banks, either very local banks who would take us, or, like, one guy in a large bank who was just like, screw it, we're going to go in...And it's really nice to see it. What's funny now, is that, you know people ask me this all the time. I don't think East Coast is going to have the banking issues that the West Coast did at the onset of marijuana legislation, because we just have very strong banking relations over here and not even just from a Dime perspective where you guys are actually taking clients. But just in a...when Massachusetts launched their program, I was asking attorneys in that area, like, Hey, how are you guys handling banking? And they're like, Oh, we're not having any issues. And I was like, Oh, that's crazy.



[Peter] Well, I think it's hard, right? So the view is like, Well, for you, it's different because you, you saw both sides of it. But I think sometimes it's hard to think about all the infrastructure that go into situations like that. But you can see how the states that put some thought into that. Michigan, right. They're doing really well because they did have some foresight to look into and say, "Well, let's think about the banking. Let's think about the insurance things like that." And so to your point, we've seen some of the other States struggle. And sure, banking was one of those things. And let's be honest, that's why someone like BNB or Dime...Now we say, Oh, you know, there's a business opportunity—because we saw that it created a gap in other states where, like, we can address that right. It's a business for us, right...It's meant to be profitable. So I think when you look at the states that are putting more thought into, like, what else needs to happen, we can't just say, Oh, go ahead, put seeds in the ground, right. We need to think about what else will they need and maybe meet with the business leaders in the community. So to your point, yeah. I think out here where it feels like the politicians are much more willing to sit down with "the front line," if you will, and say, okay, give me some feedback here, right? Birenbaum's office has been very receptive to us, reaching out and talking to them.

[Aleece] That's great. And I think that transitions us perfectly into what's happening right now, which is...

[Peter] (Laughs) Really, why, what's going on??

[Aleece] Well, this is going to air in a week, but I know we're recording this right now on March 29, it's anticipated that the bill is going to get passed on March 30 through vote. And the legalization process, I have to say, is one of the most progressive in the country in terms of what we're talking about for social equity, home-grow...I think the license structure; having on site consumption lounges right off the bat. We are really in a new era and New York is taking a really nice first step and saying, "Hey, we're not going to wait and see how this pans out. We're going to do it right off the bat because if we wait too long, we may never do it." It's actually very refreshing. I think the MRTA was a very well thought-out bill with, you know, when it first was introduced in 2013, it seemed so rogue, right? Having 50% of use of revenue going back to disadvantaged communities just seemed so in the distance because it really wasn't in any other type of legislation up to that.

[Peter] Right.

[Aleece] But now New York is setting a standard. I think that it's really a cool situation. Have you guys had a chance to, let me ask you this, since all this hype in the last week, right? Have you guys been just getting flooded with inquiries or what's going on?

[Peter] Yes. The short answer is "yes." It doesn't trickle down as much to us, I think. Obviously cannabis as an industry, now, your first stop will be a law firm—it would be someone like yourself. So it makes sense. So you guys are bearing the brunt of it and probably the next step then is okay, now you need a bank account, right?

[Aleece] Yeah.

[Peter] Yeah. You're probably still feeling the crest of that first wave..

[Aleece] My cell phone is ringing off the hook. I have it on airplane mode right now. We're going to get off of this, and it's going to be like 20 missed calls.



[Peter] Yeah. I mean, one of the things that we see a lot of is the funds, the debt funds, private equity, hedge funds, family offices, etc...SPACs...We're getting a lot of those types of inquiries...and it's amazing. There's so much money sort of flooding into the space. I mean, maybe arguably too much money because a lot of money makes people do dumb things, right?

[Aleece] Just topple on that, right. The tough part about marijuana. And that's what we've seen with these large companies... like MedMen. The valuation of your business is kind of difficult to determine because you're quantifying a lot of times like a license ...an operated business, which I think is what happened with a lot of these multi-state operators, when they had to refinance was because of the fact that they were valuating themselves at such a high level. They were having all this influx of money. But they were just gathering license after license in each state without actually having an operating business. And then what are your continued cash flow... right? And so we're seeing those problem areas. I think now people are kind of recognizing that's an issue, but people are very interested in getting to the cannabis space. Definitely investors, which I think is a very good sign in terms of moving forward with a de-schedulization or legalization at the federal level, the more normalized it is, the better it becomes.

[Peter] Yeah. I think the valuation question is one that comes up a lot where, let's say, in a commercial real estate scenario, you have a person with a grow operation, let's say, and they say, "Oh, this is worth \$20 million"—is it really though?

[Aleece] Probably not worth \$20 million...

[Peter] If you look at it from the bank's perspective, we had this "fire sale concern," meaning if we had to foreclose and we had to quickly turn that property around, well, view from that lens, that's a warehouse. It's a warehouse with lots of specialized equipment, which is almost worse, because who else are we going to sell it to, you know? We need to find another indoor grow operation that wants to buy it. Can they even? Meaning the licensing, the zoning. So if anything, that lowers the value, you've got a single use, special use, single tenant, not a creditworthy tenant. And I don't mean that, but I mean, it's probably a new company. It may not be cash flowing. Things like that. Take the word cannabis out of it. That's an impossible feat to do.

[Aleece] Totally. Let me ask you this, a lot of landlords have this issue, right, is whether or not the bank's going to come calling at your mortgage. If you're leasing to a tenant, who's a cannabis tenant?

[Peter] Yeah.

[Aleece] Can you tell just like our viewers a little bit about what... is that happening? Should that be a concern for landlords?

[Peter] Yeah, it's a real problem. So it's multi-layer. I think the first thing to consider is, again, the obvious here is that it's federally illegal. Right? So if you've got a federally chartered bank, regardless of what FinCEN says or what are the guidelines are, it's federally illegal. If your bank is federally chartered, you're just going to be like, I'm just not going to deal with it, right? There are some federally chartered banks that are banking in the industry, but they're being really hush-hush about it. I actually I know a bank that makes their clients sign NDAs—kind of funny if you think about it. So you're familiar with this concept that you can't build a contract on a ground of an illegal act...



[Aleece] Yeah, right.

[Peter] Okay. So cannabis is illegal—is federally illegal. So in any situation where you’re concerned about crossing into federal court and you have that concern that all of a sudden, your recourse may not be available to you. Right? That’s the concern essentially, if I lend on...Yeah. If I lend on something, that’s a contract, that’s it. That’s the only thing that holds me up is a piece of paper or multiple pieces of paper...

[Aleece] And are you in violation of that contract?

[Peter] Can it be nullified? And at least you’ve probably seen that there are precedents where those were nullified, right?

[Aleece] Right.

[Peter] They were just voided because it was built around an illegal act. Now, no banks yet, right? But who wants to be the test case, right? Who wants to be the first?

[Aleece] Exactly. Yeah, well, Peter, thank you so much for joining us today. For all the viewers out there that are new businesses that need cannabis banking, Peter is your guy. We are looking at Dime Banking. Feel free to reach out, and we will have his contact information in our podcast link below. Thank you so much, Peter. You were absolutely amazing.

[Peter] Thank you so much, thanks, Aleece.

[Aleece] The Cannabis Counselor Podcast, available on YouTube, LinkedIn, Apple Podcast, Spotify, and Google Play, LIKE, FOLLOW, SHARE! and continue to listen. Thanks.

