LET'S NOT PARTY LIKE IT'S 1999!

Mortgage fraud, Madoff, tax evasion, beneficial ownership, and more make it clear that 2010 won't be a cakewalk

The end of any year always brings with it a review of both high points and low points and some ideas about potential challenges in the next calendar year. The end of a decade simply amplifies that process.

2009 certainly holds a rather unique place in banking, at least in the past several decades, save for the dramatic changes in anti-money-laundering/anti-terrorist financing obligations post 9/11. The economic turmoil, change in administrations, and the various legislative proposals to alter the regulatory landscape, seemingly placed financial crime issues as second-tier priorities.

In 1999, we worried about Y2K problems (how did that work out, by the way?) and whether the Bank Secrecy Act should actually be scaled back after the Know Your Customer fiasco.

Now, while many regulators suggest that bank AML processes are mature and fairly robust, there is no suggestion that there needs to be a lessening of compliance obligations.

In fact, 2009 issues such as mortgage fraud, Madoff, tax evasion, beneficial ownership, and the Obama Administration's continuation of the Bush approach to Iranian sanctions, all point to AML/financial crime remaining an important component of financial institution compliance in 2010. (ABA Banking Journal recently completed a three-issue series exploring the AML/fraud convergence. Check it out in the digital magazine, available in the left-hand column of the home page.)

What's on the 2010 do list?

So, what should be our focus in 2010? It is hard to know exactly, especially if there are changes in regulatory structures and oversight. However, the following are my suggestions to stay ahead of any upcoming AML related debates:

Expand your training sessions beyond AML to cover fraud, sanctions and emerging risks

Increase your communications with examiners and regional regulators to better understand their priorities and share information on trends

• Seek out peers and share information on best practices

• Invite law enforcement (state, local, and federal) to meetings and training to stay current with all AML/financial crime challenges

• Strengthen partnerships between the government and the private sector

• Be prepared to provide advice to your senior management on how proposed regulatory changes will impact the AML area

• Finally, stay engaged in national, local, and international AML issues through trade groups, peer organizations, and the variety of internet related resources that clearly distinguishes 2009 from 1999.

An anniversary of sorts

At the time of this writing, we are 11 years since the unveiling of the infamous "Know Your Customer" proposal. I have already referred to this groundbreaking debate in an earlier posting about the primary author Rick Small (who, it should be noted, reminded me last week of the anniversary) and the vicious attacks he received on a proposal that actually included many common practices within the industry. I have also previously mentioned that the PATRIOT Act response to Sept. 11, 2001, may not have been necessary had a modified version of the KYC regulations been implemented in 1999.

However, what the KYC debate should really be known for is the first dramatic use by the public of electronic comments and, in my opinion, the lack of thoughtful debate (sound familiar?) on a complicated issue. While the banking industry did oppose elements of the proposal, the general public received most of its information from those who did not understand what was already required. The banking agencies quickly moved to withdraw the proposal after the public's response.

As the OCC announced in its statement on withdrawal of the proposal:

"The OCC received over 16,000 comments during the comment period, ...[and the] overwhelming majority of commenters were individual, private citizens who voiced very strong opposition to the proposal as an invasion of personal privacy. Other issues raised by these commenters included that the Agencies lack the authority to issue the proposal; the cost of any Know Your Customer program would be passed on to customers; and the regulation would be ineffective in preventing money laundering and other illicit financial activities."

I leave to others how this statement holds up 10 years later.

To ensure that the industry continue its efforts in this area, the OCC added that while "the OCC believes that banks should adopt their own policies and procedures to determine the identities of their customers, and should have systems

and controls that will allow them to identify suspected illegal conduct, the large majority of national banks already have policies and processes in place to accomplish these objectives."

Finally, all of the banking regulators signed on to the following statement:

"The Agencies' withdrawal of the proposed rule does not diminish in any manner our long-standing support for the anti-money laundering provisions of the Bank Secrecy Act. Over the past 15 years, banking organizations and law enforcement authorities have forged a vital partnership to fight financial crime. This partnership will continue, and will evolve as technology and other factors intensify the challenges we face."

For 2010, perhaps we can have a period of true partnership and informed debate. There are certainly enough issues to address.

Happy 2010!

Please send me your thoughts and comments, or post them below.

About John Byrne, CAMS

Byrne leads Condor Consulting LLC, a Washington, D.C., area financial services consulting firm specializing in regulatory management, AML, privacy, and a vast array of financial institution compliance related issues. He has written extensively on AML issues for 25 years and has appeared on television and testified before many congressional committees on AML-related policy issues. Prior to the creation of his firm, John was the Global Regulatory Relations Executive at Bank of America. Previously, he worked for the American Bankers Association for 22 years and was responsible for ABA's lobbying, regulatory, and educational efforts on money laundering, and other compliance issues. He received the ABA's Distinguished Services Award and was also the first private sector recipient of the “Director's Medal for Exceptional Service” from the Treasury Department's Financial Crimes Enforcement Network (FinCEN). Byrne can be e-mailed at jbyrne@thecondorconsultingllc.com. His web page can be found at www.thecondorconsultingllc.com

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