RUNNIN' DOWN A DREAM

Private-sector/public sector cooperation and sharing continues to elude AML/BSA team

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Tom Petty didn't have information sharing and private-public partnerships in mind when he penned that great song, but it is an appropriate title for an anti-money-laundering goal that still eludes us in 2010. The good news is no one opposes the concept, and the goal is international. But how to accomplish it is another matter.

Hope for cooperation straddles borders

I spent a week in Taiwan in January, participating in several training programs on enhancing your anti-money-laundering and counter terrorist financing programs. It is interesting that participants wanted more assistance from the government to improve their intelligence gathering.

In fact, the CEO of a large Taiwan bank asked me why the government insists in having private financial institutions perform "law enforcement" duties. Of course, I responded that this has been a debated point for 30 years, and that the private sector does recognize a substantial obligation to protect shareholders, customers, and the community. The "debate" revolves around access to information to improve our due diligence, a point in which he readily agreed.

Other speakers drove home the need for AML professionals to expand their expertise to include monitoring for sanctions and public corruption, the latter issue particularly a challenge in Asia and the subject of recent hearings in Washington. An excellent phrase, coined by Peter Hazlewood of DBS Bank in Singapore, was to "watch the skies" for emerging risks.

An admirable goal, only fully realized when our government colleagues share useful information.

Cooperation begins-or should-at home

Back in the states, Bill Fox, former FinCEN Director and now Global AML Executive at Bank of America, told the Senate Permanent Investigations Subcommittee on February 4, that the only practical way to move forward on [addressing corruption issues] "is to encourage a more robust implementation of the public-private partnership envisioned by Title III of the USA PATRIOT Act." Fox correctly added that "section 314(a) of that Act contemplates a new paradigm and approach to address the problems of money laundering, terrorist financing and other financial crime."

As someone who was in the government when this important statute was created, he has extreme credibility when he points out that the "timely, non-public sharing of sensitive information in the government's possession with financial institutions could do as much to prevent access by kleptocratic officials and their associates to the U.S. financial system as almost any other action the government could take."

Unfortunately, there is not the type of information sharing that could add value to the challenges the financial industry has now or with some new obligations being considered.

For example, during the same hearing, Sen. Carl Levin (D.-Mich.) outlined some needed changes to address the problem of corruption. His ideas are sound. They include requiring banks to use reliable databases to screen clients for PEPs; requiring beneficial ownership forms for all accounts so hidden PEPs are exposed; and conducting annual reviews

of PEP accounts to detect suspicious activity. However, all will be inadequate without government assistance.

It should be noted that Senator Levin also stressed the need for another measure, one to require persons setting up U.S. shell companies to identify the beneficial owners to the states handling the incorporations. This last proposal must include strong penalties for failure to comply (which it does) but cannot be separated from the other requirements.

The increased obligations on the financial sector, without a simultaneous requirement on those that benefit from inadequate government oversight on registering corporations, is doomed to fail. Of course, you would know that, if you had strong mechanism for private-public information sharing.

FinCEN and information sharing

As someone who worked on the legislation authorizing the Bank Secrecy Act Advisory Group and an original member that strongly supported the feedback created with, among other things, the SAR Activity Review, I cannot help but be disappointed that we have not fully utilized the information-sharing concepts envisioned by section 314 (a).

In the recent final rule from FinCEN, expanding 314 to allow more government entities access to financial information, FinCEN was asked to "develop mechanisms, in addition to its bi-annual SAR Activity Review publication, that will help share information with financial institutions."

Unfortunately, the Treasury bureau's response was incomplete. FinCEN argues that this final rule supports the policy directive of the Patriot Act.

I respectfully disagree. FinCEN does acknowledge "the importance of providing financial institutions information to assist them in identifying and reporting suspected terrorist activity and money laundering" and does correctly point to "sample case feedback" and the trends mentioned in the SAR Activity Review. However, the industry was hoping for something more than that acknowledgement, and the agency's comment that "the final rule does not preclude law enforcement, when submitting a list of suspects to FinCEN, from providing additional information relating to suspicious trends and patterns."

The last line of that section of the final rule does give us hope-" FinCEN specifically will encourage law enforcement to share such information with the financial community."

I, for one, am anxiously waiting for that encouragement and will continue "runnin' down a dream."

Announcement of a new role

Starting Feb. 1, I have taken the position of Executive Vice-President of the Association of Certified Anti-Money Laundering Specialists (ACAMS). This is an exciting opportunity for me to lead an organization whose mission is to represent both the private and public sectors. I hope to continue this blog and my AML-related thoughts for as long as you are interested in reading them. My new group's website, www.acams.org

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

About John Byrne, CAMS

Until recently, Byrne ran 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@acams.org.