

“HELPLESS” OR “LONG MAY YOU RUN”?

Byrne takes two numbers from the Neil Young playlist to make three key points on BSA/AML compliance

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The other night I went to a Neil Young concert (with another AML professional-are we wild or what?) and, of course, thought about a connection to an AML theme.

The concert, while billed as "acoustic," had the hall of fame singer-songwriter playing various types of electric guitars and performing a number of new songs. A reviewer, in the paper on the next day, pointed out that Young constantly moves forward despite his legacy and that that both delights and frustrates his fans.

The AML professional cannot rest either, and must move forward, while still returning to areas that have proven successful.

Exam Council manual updates-still important

Last week, ABA and ACAMS jointly presented a telephone briefing highlighting changes made in the 2010 edition of the Federal Financial Institutions Examination Council AML/BSA Examination Manual. We have been through this exercise before-hearing from the regulators about how the examination manual is utilized in the oversight of financial institutions, but how it is not a rule or a regulation.

All of that is true, but there are certainly examples where banks feel that what is meant as direction to their staff becomes a "mandate" for banks to follow.

So, are we "helpless"? Hardly.

Here is an example where continuing to engage in dialogue with both the examiners and the lead agency officials in Washington is both useful, as well as productive.

I remain convinced that communication is key. In fact, it is clear that these changes to the manual came from ongoing conversations between the industry and examiners. The manual has improved in response to that private-public BSA dialogue.

There are a number of substantive changes to be noted, including a section emphasizing the importance of having current procedures on bulk currency shipments and remote deposit capture and a revision of the focus on trade finance. The agencies also discussed areas of weakness found in recent exams and cautioned the industry to improve enhanced due diligence, transaction monitoring, and outsourced independent testing.

All in all, a solid update that should continue every year there is a change in the direction given AML examiners.

Internet gambling: Why do we have to do this?

On May 20, another obligation was added to the AML professional's sphere of influence. The Federal Reserve and the Treasury Departments have issued a rule that implements the 2006 "Unlawful Internet Gambling Enforcement Act of 2006" (UIGEA):

According to the joint announcement:

"The rule requires certain participants in the designated payment systems to establish policies and procedures that are reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. A 'participant' is defined as 'an operator of a designated payment system, a financial transaction provider that is a member of, or has contracted for financial transaction services with, or is otherwise participating in, a designated payment system, or a third-party processor.' The term 'participant' does not include a participant's customer unless the customer is also a financial transaction provider participating on its own behalf in the designated payment system."

Why should we care about this issue? you may be asking.

It is clear, based on the due diligence required for compliance, that the technology and staffing required to deal with this task will be housed in the AML/BSA/Sanctions area of a financial institution.

And if that does not convince you, here is what the Federal Reserve Board says in its guidance:

"Relationship to Bank Secrecy Act/Anti-Money Laundering Compliance.

"The preamble to the rule notes that participants may implement due diligence procedures by incorporating them into existing account-opening due diligence procedures, for example, under Bank Secrecy Act/anti-money laundering (BSA/AML) compliance processes. However, regardless of how and where within its compliance function or management structure a financial institution chooses to place responsibility for UIGEA compliance, UIGEA compliance is separate and independent from the legal scope of BSA/AML requirements, the BSA/AML program rule, and examination mandates for BSA/AML compliance programs. Compliance with UIGEA does not fulfill any other compliance requirements, including, for example, requirements to file Suspicious Activity Reports (SARs)."

And the clincher:

"If any depository institution suspects that a customer is processing illegal transactions, including restricted transactions, through the depository institution's facilities, the depository institution should file a SAR with the appropriate authorities."

More obligations but "Don't Let it Bring You Down." Another opportunity to show management your ability to handle non-but related-AML duties.

And finally...

I moderated a program in Washington, D.C., this week, where the former Director of the IRS Fraud/BSA Unit described a number of current "watch" areas for the AML professional.

In the course of her speech, she added that her former agency was engaged in BSA examinations and information sharing with other federal agencies to help stem the increase in money laundering in non-banks. She volunteered that fraud is an important component of AML detection, and that prevention and merging the two areas, at least with respect to communicating on a regular basis within an institution, was essential.

Yet another expert, in a position to know, urging collaboration between fraud and AML.

Certainly I agree and to the AML professional, as Neil Young would say, "Long may you run."

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

About John Byrne, CAMS

Byrne is Executive Vice-President of the Association of Certified Anti-Money Laundering Specialists (ACAMS). 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 joining ACAMS, John was the Global Regulatory Relations Executive at Bank of America. Previous to that, 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.

HELPFUL LINKS: 2010 American Bankers Association/American Bar Association Money Laundering Enforcement Conference: This longtime favorite of the compliance fraternity returns in 2010 with a new, up-to-the-minute program, live, in the nation's capital. The conference is set for Oct. 17-19 at the Washington Marriot Wardman Park Hotel, Washington, D.C. For further information, [click here](#).