
STATE YOUR PEACE: WE DON'T ALWAYS AGREE

Federal Currency Transaction Reports policy continues to frustrate, with no improvement in sight

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Before Darius Rucker went country, he was lead singer of David Letterman's favorite 90s band (and mine too), "Hootie and the Blowfish."

State Your Peace," one of their many songs, made me think about CTR studies (what can I say?) and how it brings out incomplete dialogue. I will "state my peace." Since I know when I have lost a battle, I will offer little in rebuttal to those that embrace the CTR process and condemn those that even contemplate a major review. I will simply suggest that a dispassionate review of the state of filings demands the interested party read all reports and surveys before reaching a conclusion.

For example, unfortunately, the solid recommendations (and congressionally passed directive) to have the Treasury Department publish a list of CTR-exempt entities has been ignored and never implemented; the response was that it would be too difficult for the government to maintain. (Note: apparently OFAC has been handling lists rather successfully for quite some time.)

Other proposals to raise reporting thresholds for corporate filings versus individual filings have been similarly defeated, so we are left with changes around the margins.

To be fair, several of the changes to the bureaucratic exemption process have been both successful and long overdue. Many will point out, however, that the reduction of filings for government agencies concerns filings that were never necessary.

So, granted FinCEN has made some inroads here, but when I saw the announcement of their review of the changes, I had to scratch my head. FinCEN Director James H. Freis, Jr., stated:

"This study, issued 18 months after the rule went into effect, offers substantial evidence that FinCEN's efforts to address CTR filing issues have been effective and the result being financial institutions continue to provide even more useful and targeted information to assist law enforcement." (Emphasis added. For more, [click here.](#))

Even MORE useful information? Really?

Read the report and reflect on your own institution's practices.

One more note: The American Bankers Association has been conducting a survey on how banks reacted to the changes instituted by FinCEN. Thus far almost 76% of the respondents say their CTRS have increased or stayed the same!
Respond yourself (ABA members only)

State Your Peace

While we are on the subject of CTRs and the Bank Secrecy Act, a former Assistant US Attorney from California wrote a very thoughtful law review article last year (it is possible) on the changing premise of BSA. He offers an interesting angle as to one of the many reasons that changes to the CTR filing process have been opposed by law enforcement.

Courtney Linn wrote in "Redefining the Bank Secrecy Act: Currency Reporting and the Crime of Structuring":

"If we discard the old rationale for the BSA, and accept the new one, a couple of things become clear. First, the government is less concerned with detecting large money flows through the review of such things as CTRs, and more concerned with detecting evasions of the CTR requirement.

"This new reality explains the law enforcement community's stubborn resistance to efforts to raise BSA reporting and record-keeping thresholds. From the government's perspective, reporting thresholds should remain relatively low, at around \$10,000, so that they create a firm and interlocking barrier to the entry of crime proceeds into the financial system. Second, this shift in rationale puts more pressure on the government to utilize anti-structuring, bulk cash smuggling, and related criminal laws, to punish those seeking to evade these barriers. Unless it does so, the justification for the new rationale collapses."

Read the entire article here (PDF-made available with author's permission from Santa Clara Law Review [50 Santa Clara Law Review 407 2010])

End of an Era: ABA's Ed Yingling Retires

Ed Yingling recently announced his retirement from the ABA, effective at the end of the year. For 20 years I had the privilege of working for Ed in the ABA's Government Relations area, covering such disparate issues as privacy and environmental lender liability. However, the most rewarding part of my work was assisting the industry through the 1980's to 2005 on money- laundering-related topics. From the drug-trafficking legislative proposals to the aftermath of 9/11, Ed allowed me to work on what I considered to be the most interesting and challenging areas of banking law. The opportunity to both enjoy your work and being involved with such important areas of the law does not come around often. I will always be grateful for having that opportunity. Thanks, Ed.

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- 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.

- FORMER LAUNDERER'S DUE DILIGENCE TIPS ON TAP: Banking lawyer-turned-launderer-turned-consultant Ken Rijock warns bankers never to reveal reasons when turning down prospective customers. Read his tips given at ABA's 2010 Regulatory Compliance Conference

- 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](#).