
STUCK IN THE MIDDLE

Three resolutions to take for a better AML/BSA year in 2011

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I saw an obituary this week of Scottish singer, Gerry Rafferty, who penned "Stuck in the Middle with You," an early 70's hit for Stealers Wheel. (Some of you may also remember the song from a 1990's Quentin Tarantino movie, "Reservoir Dogs.") The refrain "clowns to the left of me, jokers to the right," may be how AML professionals feel in the workplace.

Whether it is senior managers who do not appreciate the importance of a strong (and sometimes expensive) compliance program, or line of business executives who belittle regulatory officials as obstacles to product sales, AML professionals need to keep their heads while those around them are losing their and pointing fingers (a 21st Century update to Kipling).

Toward a strategy for the AML community in 2011, here are some recommendations:

1. Keep management informed (but wisely!)

I have mentioned before the need to produce reports and memos for your organization on emerging trends, risks, and enforcement actions. However, show relevance to your company.

A simple recitation (or forwarded e-mail or link) of the issue will not be enough to enact policy or procedural change. Put it into practical perspective.

For example, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) recently issued a report showing an increase in mortgage fraud suspicious activity reports and, among other things found:

"References to bankruptcy in SARs have steadily increased, rising to 7 percent of MLF SAR filings in 2010, compared to 1 percent in 2006 and 2007.

"SAR reports referencing 'short sale' and 'broker price opinion' appeared 827 times and 41 times in SARs respectively during the first quarter of 2010. Short sales and broker price opinions mentioned in SARs are sometimes associated with a particular type of flipping scheme known as 'flopping.' Flopping occurs when a foreclosed property is sold at an artificially low price to a straw buyer, who quickly sells the property at a higher price and pockets the difference."

The information above may be interesting.

But it's not of tremendous value if the compliance professional does not explain how the institution handles or should handle potential mortgage fraud. It may also be time to review training to determine if the institution (if appropriate) understands "flopping."

2. Assess your training

All too often AML training can be seen as an afterthought, at least to those who do not have money laundering prevention as their primary duty (although it is everybody's responsibility).

Compliance professionals and trainers need to determine if their AML training is targeted, relevant, and up to date. Stay informed about how new products can be vulnerable to AML or financial crime and get creative on how to make staff aware of methods of responding to those vulnerabilities.

Don't rely on stale AML/BSA tests to assess employee awareness. AML professionals do not consider training to be a competitive issue and are very willing to share ideas about effective training methods.

Talk to a peer!

3. Communicate with peers, regulators, and law enforcement

A prevailing theme for me while writing this blog is the need for active and strong communication. This goal has never been as necessary as it will be in 2011. With the change in congressional representation and the potentially shifting legislative focus, staying engaged with your regulator, sharing best practices with peer institutions, and assessing where financial institutions fit in this new dynamic will demand constant engagement.

Early stories about the potential oversight by Republicans in the House include: looking into the homeland security issues; the causes of the 2008 financial meltdown; the Department of Justice; and terrorism-related topics. What does this mean for compliance?

There is no clear way to predict public reaction to any financial missteps in the AML area in 2011, so avoidance is (and always will be) the best policy.

One congressional expert opined that oversight and investigations may not lead to new laws but the public record that occurs can change Administration policies.

If you are dealing with the unknown, it is best to be with other similarly situated individuals who can work together. If you are, you will have company, so it won't be so bad to be "stuck in the middle."

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