

DON'T COME AROUND HERE NO MORE*

What John Byrne heard in the halls at a recent meeting—and what it means for the industry

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AML Conference Hallway Conversation and a Proposal Everyone Opposes

At a recent conference, I was looking for the talk of the hallways. What I wanted to know was what was on everyone's mind as they were challenged by new products, resource limitations, politics, and the 21st century syndrome—people with the attention span of Homer Simpson.

The occasion: the 16th Annual International Anti-Money Laundering Conference (part of the AGM organization for which ACAMS belongs). The conference featured many opportunities for AML professionals to share information, try to discover new best practices, and to leave with new compliance or regulatory oversight tools.

Two overall, and conflicting, observations from all the "chatter" I heard:

First, and encouraging, is the clear commitment of both industry and government officials to the mutually shared goal of not just containing but crippling criminals and terrorists in their use of the financial system.

But second, and what should be a cause of concern, is that both sides seem not to be listening to one another.

Think of a cocktail party where you are in conversation with someone who is looking around the room for other people, and you'll get the analogy. What both sides need to do is actually listen.

Heard in the Hall #1: Risk assessment fracas

For example, one clear theme of folks I spoke with was risk assessment for transaction monitoring.

Both sides agree that a proper risk assessment is necessary to determine where resources for mitigation should be placed and what thresholds for monitoring should be created. However, that's where the agreement ends.

Bankers told me that they were baffled why examiners would question their transaction monitoring thresholds (e.g., setting a \$30,000 amount) because "you have to start somewhere."

On the other hand, regulators that I spoke with countered that it is not the number they quibble with, but the lack of follow-up by the banks after establishing that number. Examiners argue that banks leave the threshold for too long a time and that defeats the purpose of the monitoring.

Others told me that they were frustrated that examiners seem to follow the Federal Financial Institutions Examination

Council manual as their "bible," with no room for flexibility.

The bankers said so. But consultants told me that this was overblown and that bankers were actually making some basic mistakes in BSA compliance, hard to imagine in 2011. (Note: It would be easy to say that consultants were merely expressing that opinion in the hopes that they would be needed but these conversations were not on panels but offered in private.)

Heard in the Hall #2: Regulatory overreach

As I continued to press both sides, there were also many examples, in my opinion, of regulatory overreach.

Examiners demanding changes in policy or procedure without any clear reference as to why it was needed-that was the common complaint. I do believe that the Washington regulatory supervisors do instruct their field examiners to be fair and reasonable, but that message is not always heeded.

Several community bankers I spoke with are being bombarded with the potential compliance pressures of the Dodd-Frank law. While not an AML issue, these professionals need resources, expertise, and senior management support and they worry about attaining all three. They do not expect leeway from the regulators in setting priorities but hold out hope for fair and reasonable regulatory oversight.

What has to happen here?

It will be a surprise to you that I remain a firm believer in the sincerity of both sides, but let's actually listen to the person standing in front of us and not look around the room-it is rude and is actually not listening.

Give it up-Stop!

With that line, Tom Petty could have been writing about the recent FinCEN/Treasury Department budget proposal that, if enacted as is, will severely hamper the ability of state law enforcement and banking departments to access BSA data for money laundering investigations and examination.

Conference attendees were unanimous in their opposition to this proposal (90% opposed in an ACAMS website survey) and Manhattan District Attorney Cyrus Vance Jr., called the \$1.3 million budget cut, "penny wise and pound foolish."

Briefly, FinCEN's "Project Gateway" currently provides state agencies with direct access to Suspicious Activity Reports, Currency Transaction Reports, and other BSA data. The budget proposal would reduce funding, which some predict would end the program.

Specifically, if the funds were eliminated, a number of access agreements (estimates of over 140) would no longer exist, forcing states to enact duplicative and costly state requirements for financial institutions to send CTRs, SARs, and other reports to the states as well as the federal government. Regulators at the conference bemoaned this turn of events as well.

It is rare to see both sides of the AML community so strongly united for or against a proposal.

I find this rather odd: Why is this the place where FinCEN choose to cut? And why are they telling the states, "Don't come around here no more."

* "Don't Come Around Here No More" is the third track on Tom Petty and the Heartbreakers' 1985 album Southern Accents.

- 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.

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