

# PRETZEL LOGIC AND YOU BETTER THINK TWICE: SONGS TO START A YEAR ON

Random (but somehow connected) musings of 2011

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The close of 2011 seems more about what lies ahead for the AML community than what has transpired.

The road ahead for those of us in compliance, enforcement, or consulting will be long because of everything we have discussed all in this blog--expansion of AML obligations (sanctions, corruption, financial crime, etc.); heightened regulatory expectations, coverage of new products and entities; and the movement of criminal elements into many new areas of financial activity.

Advice--You Better Think Twice before making decisions on resources, training and product delivery.

### Pretzel Logic or Pizza Logic?

During a recent meeting of the ACAMS National Chapter, I had an interesting conversation with Steve Gurdak, a fellow member with me of the United States Running Streak Association and, more importantly, the Northern Virginia HIDTA (High Intensity Drug Trafficking Area). Steve was bemoaning the wholesale transition by investigators to heavy reliance on metrics, charts, and graphs and the loss of basic communication skills such as ... conversation.

Of course, if you add the technology that has given us texting, twittering, and e-mail, it is no wonder that investigators, like the rest of society, are losing an essential skill.

Steve drove home his point with an example of a pizza shop that was depositing cash just below the currency transaction reporting threshold and asking a roomful of agents if they would take the case. Getting an inadequate response from the room, Steve attributed the lack of interest to agents not being willing to simply ask the logical question: Is the pizza so good that high cash deposits would be reasonable?

He calls this "pizza logic." (\*Pretzel Logic is the title track of a 1974 Steely Dan album and Gurdak's use of the term was not coincidental. He appreciates good music too!)

### You Better Think Twice: Will legislation improve examinations?

We have all followed closely the increased tension between examiners and the regulated during the past several years. Reports of guidance being treated as regulation and recommendations becoming mandates are legion. (But then again so are examples of financial institutions missing basic BSA obligations.)

I, like many others, have emphasized the need for improved communications between parties--before, during, and after examinations. With that as a common goal, what else should be done? ABA is supporting a bipartisan proposal, the "Financial Institutions Examination Fairness and Reform Act," to address federal banking examinations.

As the ABA has reported:

"H.R. 3461 also would establish a new, independent inter-agency ombudsman within the Federal Financial Institutions Examination Council to ensure the consistency and quality of all exams, and it would create a timely, independent, and fair process for banks to appeal examination decisions without fear of reprisal."

The intent of this proposal is laudable.

The exam tension is very real and legislation appears necessary because many small and mid-size banks do not have the same opportunities to reconcile conflict as large banks with in-house regulators.

How smoothly things transition to a fairer system, that will be anyone's guess. There are questions that will have to be addressed going forward. For instance, how will a new ombudsman change the perception that using that process will harm existing relationships between the regulator and the regulated? And will a new process at least give pause to regulators prior to issuing a final exam report?

These and other questions need to be addressed by all sides. As you head down the road to new laws, the Poco song, "You Better Think Twice" resonates with me. An AML colleague and I had the pleasure of hearing Jim Messina play this great song on Monday.

While bank exams were the furthest thing from his mind, the title works here and with any decision that can have lasting repercussions.

Moving to 2012 and beyond: time for resolutions

The time for New Years' resolutions is rapidly approaching. Here are a few for all of us in the AML community:

1. Continue to share ideas, best practices, and guidance with each other--remember AML is not competitive.
2. Ask tough questions of your regulators.
3. Work with law enforcement on shared universal goals as attacking crimes, such as human trafficking.
4. Comment on regulatory proposals from your jurisdictions and recommendations from FATF.
5. Continue to expand your AML horizons with coverage of sanctions, ethics, cybersecurity, financial crime, and all forms of illegal activities with a financial component. We have long been doing this through groups such as ABA, ACFE, ACAMS and many others, so any statements to the contrary are just silly.
6. Work on improved communications, whether you are in the private or public sector--don't simply accept statements as

fact and look to resolve any disputes with old fashion communications!

And most importantly,

7. Have a Great and Safe Holiday Season!

Cheers!

- 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](mailto:jbyrne@acams.org).