

## AGAINST THE WIND\*

Revised FATF recommendations offer yet another opportunity for the private sector to improve public policy

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The following are my thoughts (and mine alone) regarding current legislative and regulatory debate (a point that should be obvious but I will state it anyway). Things are just not the same as they were years ago. Hardly a bulletin, I know.

Some can write that comment off as me being a curmudgeon, railing that things "were better in our day." (I've been called worse, by the way.) But the fact remains that, at least in the anti-money laundering area, regulators, industry, law enforcement, and policymakers were often able to rationally discuss proposed changes with minimal politics. (There's always some politics.) Party affiliation was irrelevant. All of us were striving for the same goal--tracking and reporting illicit monies in the legitimate financial sector.

The banking industry was able to successfully push for certain safe harbors, the creation of a private-public sector information sharing forum, and some reductions in regulatory reporting, in exchange for comprehensive criminal statutes and some targeted compliance obligations.

Cause to work together again

All of this was possible during the height of the drug war and the aftermath of 9/11 because both sides rationally discussed goals as well as practical or legal challenges. While there are still a few in government that actively seek private sector input and a few in the affected industries that do more than simply oppose changes, they are few and far between.

On the positive side, we have seen some return to those principled times with the private-public efforts on combating human trafficking. But yesterday's announced revisions of the Financial Action Task Force 40 recommendations made me think that Bob Seger's hit\*, while descriptive of how hard it is not to simply oppose government policies, should encourage us to work together again. We all share the mission of tackling money laundering, terrorist financing, and related crimes, so let's prove it by addressing things together.

FATF, in revising its 40 recommendations stressed that, among other things, the group is recommending an enhanced "risk-based approach" so that countries and financial institutions can "apply their resources more efficiently" on the higher risk areas.

How will that focus occur?

FATF can only make recommendations and the participating governments must implement. So, it is incumbent upon the private sector to quickly contact their regulators, law enforcement partners, and other FATF participants to ask for meetings and constructive dialogue on the FATF changes.

I am not convinced that the private sector did all it could during the period leading up to these changes, but it is not too late. It is in the interest of the public sector to hear from the AML community so that there is no question as to how putting any FATF recommendation into U.S. law or regulation affects day-to-day banking, customers, and compliance obligations.

Don't wait to get your points across.

Priorities for you to look at

There are a number of changes that must be addressed.

FATF, for the first time in its recommendations, indicated that financial institutions should be required to take "reasonable measures" to determine whether a customer or "beneficial owner" is a domestic PEP (politically exposed person). This is a dramatic change, since previously only foreign PEPs were the focus of such requirements.

It had always been ironic (to say the least) that financial institutions were not required to search and perform due diligence on domestic PEPs. Many banks do perform such reviews. But now there needs to be consensus on how this should be accomplished. The topic of beneficial ownership is equally challenging, and with proposed legislation and direction from FATF to implement these standards, we need to "get in the game" and offer practical input.

Dialogue is essential and demands open and candid conversation. Something that today seems like, "Against the Wind."

Take the time to read through the other recommendations as well, since there are other changes such as:

- &bull; Making tax crimes a money-laundering predicate offense.
- &bull; Adding some new language on complying with sanctions.
- &bull; Moving most references to terrorist financing within the recommendations--a change that could be more procedural and not necessarily substantive.

FATF is publically trumpeting that they have previously received input from the private sector. Let's make sure that occurs during the potential implementation phase.

"We're older now but still running against the wind."

- About John Byrne, CAMS

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