

THE TIMES THEY ARE A-CHANGIN'

An open letter to the next FinCEN Director

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As you all know by now, there will be a new Director of the Financial Crimes Enforcement Network (FinCEN) in the near future.

Having been fortunate to have worked with all of the directors since the very beginning in 1990, I want to take this opportunity to offer suggestions for the next occupant of this important post. While some of what I list is clearly already underway, and other ideas will be met with dismissive comments by lawyers who will point to reasons why certain things cannot work (for example, the counterintuitive position of demanding enterprise AML risk management but limiting SAR sharing within the same organization), everything I'll say is based on the premise that FinCEN is essential to a successful U.S. and global AML strategy.

A new beginning makes Bob Dylan's 1964 theme of change* resonate. As he writes, "and don't criticize what you can't understand." These comments come from experience and certainly are not offered as criticism.

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To the Director:

Welcome to FinCEN.

As only the seventh Director of this Treasury bureau, you are following a group of individuals who were all dedicated public servants but possessed different skill sets and strategic focuses, either due to their personalities or the times in which they served or both. All of us in the AML community want you to succeed and the following recommendations are offered in that spirit.

First, as you begin this challenge, the two concepts to keep in mind are "communication and relationships."

The FinCEN Director must ensure that guidance, regulations, and all policies be communicated clearly to all affected parties. This is not an easy task.

And it is not sufficient that you communicate. Your staff must be charged with the same messaging. I don't mean controlling the message but understanding and being able to convey the message. For example, responses to rulemakings that are dismissive of points made in comment letters will simply lead the regulated to believe that their views are not taken seriously, no matter if they are or not.

Whether it is to the Congress, the regulated or the media, FinCEN must be approachable, understandable and committed to clarity.

In terms of relationships, the FinCEN Director has many constituencies.

Law enforcement, the regulators, peer financial intelligence units, Congress, the broad AML community, and the media. Now all of these groups obviously demand different approaches but all need to connect with you if you are ever to be successful. Clearly you will have battles with some or all of these groups but if you are approachable, you can gain their respect.

Suggestion--meet with key members of all the groups one-on-one in your first few months and hear them out. Don't make promises. Simply listen. It will go a long way to developing strong relationships.

All of the previous directors believed in some form of "outreach" but each had a variation of that theme.

Outreach is not simply going to a conference, reading a prepared statement, taking no questions and leaving. Work on your presentation skills, encourage questions from the audience, and use technology to reach those you can't meet in person. (Note: You will not know everything so bring trusted staff with you to assist with questions.)

Suggestion: Since you cannot accept all speaking engagements (and frankly you should not and instead send qualified staff whenever possible), start an "Ask the Director" quarterly webinar where you speak briefly and then take questions for 60-90 minutes. It will be off the charts in terms of an audience and will add to the notion of an approachable Director.

Outreach is also relevant to the regulatory and law enforcement communities. FinCEN already has assigned staff from

various law enforcement agencies but the addition of standing meetings with your counterparts is essential to constructive dialogue. While some of this already occurs, give yourself some publicity on these discussions, not the particulars but your commitment to partnership.

As for the regulators, this is an area that can help both groups. Make sure that the agencies know they have access to your staff on questions regarding all Bank Secrecy Act (BSA) and related interpretations.

Suggestion: Create a formal BSA examination working group so that the agencies and FinCEN staff can share exam deficiencies and communications to the AML community. FinCEN will not run this group, but will simply provide information to the examiners to improve their processes.

Finally, the Bank Secrecy Act Advisory Group (BSAAG) was created by legislation offered by the financial industry, so there remains strong support for the concept of having the private sector work with the government on the shared goal of preventing, detecting, and reporting money laundering. Recent years have seen the addition of subcommittees and, of course, the creation of the SAR Activity Review. (I am proud to have been the first co-chair of that important publication.) But the goal of BSAAG needs to be reestablished. It is a forum for active discussion and not simply for reviewing reports from subcommittees or FinCEN staff.

Suggestion: Let's return to the original concept and it will provide real value.

As you grapple with all the challenges of taking the reins of FinCEN, know that the AML community wants you to succeed. And that we will have many more suggestions going. But you can count on us if you reach out to us.

Don't go it alone.

Sincerely,

The AML Community

- "Keep your eyes wide, the chance won't come again," from "The Times They Are A-changin'."

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(Released in January 1964 by Columbia Records)

Disclaimer: John Byrne's views do not necessarily reflect those of the American Bankers Association.

- 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

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