‘ALL IN ALL, ANOTHER BRICK IN THE WALL?'*

CDD: Another obligation without a trade?

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The AML community (government and the regulated) constantly emphasizes both outreach and communication. It is safe to say that no one believes that efficient and effective regulation can occur unless we hear one another, understand challenges, and are willing to compromise. (Compromise is not surrender.) However, do we truly practice what we preach?

We have previously addressed the impact that FATF has on member jurisdictions if an evaluation concludes a weakness. FATF, you will note, is comprised of government representatives and while there have been attempts to solicit private sector involvement on special committees, the mission of the organization is driven by government.

Relevant to the last point , the Financial Crimes Enforcement Network (FinCEN) has released an advanced notice of proposed rulemaking (ANPR) to begin the process of collecting information in order to develop a proposed regulation on "Customer Due Diligence" (CDD). This ANPR was in direct reaction to recent FATF revisions and the perception held by some, that the financial industry in the US had deficiencies in this area, despite over 30 years of AML-related obligations, some in regulation, many by fiat, and all added to existing requirements.

Someone once called the U.S privacy regime a patchwork of laws and regulations--that characterization works in AML as well.

My point? Are new requirements necessary? Or should there first be a true review of all related laws and regulations?

As I prepare to see Rogers Waters in concert tonight, CDD without any reductions or modifications of existing responsibilities seems to be just another brick in the AML wall.

What can we do?

FinCEN is moving in a positive outreach direction. But it's up to the AML community to take advantage of that and to challenge the process when appropriate.

The Treasury bureau has just announced a public hearing on the ANPRM for July 31. The hearing asks for regulatory and law enforcement participation as well as from the private sector. Frankly, having all of those groups take on a full review of the AML regime should be our ultimate collective goal. But for now, don't let this opportunity pass.

If you wish to participate, you need to follow the instructions in the notice.

The notice describes the ANPRM process as designed to assist with a CDD rule that "would codify, clarify, consolidate, and strengthen existing CDD regulatory requirements and supervisory expectations, and establish a categorical requirement for financial institutions to identify the beneficial owner(s) of their customers, subject to risk-based verification."

So clearly, there is no reference to looking at existing requirements in order to reduce obligations. Should there be? Of course!

In fact, ABA made a very compelling case for this outcome in its comment letter:

"Before even considering moving forward, it is incumbent on FinCEN to demonstrate what weakness or gap in existing protocols must be addressed. Equally critical is to demonstrate how a new requirement complements and fits into the greater AML scheme."

For this message to resonate, it must be heard everywhere.

By the way, ABA also pushed some additional rather "radical" ideas such as asking FinCEN to describe what are the certain risks with legal entities (in response to the debate on beneficial ownership) as well as what appropriate steps should be taken to mitigate those risks.

I am a firm believer that the government should produce much more information and direction regarding risk.

Leaving the industry in the dark at best simply encourages second-guessing by the regulators or, worse--new obligations. The excuse that providing direction is too difficult or would have to be changed too frequently does not hold up and is in fact--an excuse.

You can read ABA's letter in its entirety here.

Wait--what?

Finally, the most compelling reason to file comments, and, when offered, to appear in person, is to disabuse the public of notions such as those in the comment letter filed by Sen. Carl Levin (D-Mich.) that any new requirements would not burden financial institutions.

The same comment letter expressed concern that the CDD proposal could actually reduce current requirements. If that is not true, affected institutions need to say so.

I would encourage all to read his comment letter.

Outreach is always welcome and FinCEN should be encouraged to continue these events. It is up to those attending to ensure that the time is well spent.

*Released in 1979 by Pink Floyd and written by Roger Waters

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 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 was also the first private sector recipient of the "Director's Medal for Exceptional Service" from t Treasury Department's Financial Crimes Enforcement Network (FinCEN). Byrne can be e-mailed jbyrne@acams.org.

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