



The State of the Community

2018:

AML in Flux?

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For the

10th Anniversary of the

BSA Coalition

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Ladies and Gentlemen, thank you for your kind invitation to join this 10th anniversary of the BSA Coalition, an organization that is exactly the model for what I truly believe is essential for effective AML--that is collaboration between the private and public sector. I want to particularly thank Elaine Yancey of the Richmond Federal Reserve Board for her career-long support of the entire AML community.

We work in a unique investigatory and compliance area and our goals and shared mission cannot be overstated—what we do saves lives and protects society.

Today, we live in very interesting times to say the least, and when some of our law enforcement partners are told to move from pursuing white collar criminals to working on other disparate activities such as deportation, it is important that we take a reasoned look at the entirety of today's AML regime and where we stand.

I have called for a review of the BSA thirty year regime for quite a while now and am happy it finally seems to be happening. However, the focus needs to be on utility, efficiency and the mission----getting information in the hands of law enforcement, quickly and accurately.

Just last week, a Senate Banking Subcommittee looked at the BSA system and asked witnesses some important questions on what we can do with a regime developed over the past thirty years. It was an impressive effort and was clear that the staff supporting the members of the committee did an admirable job of briefing the members.

However, if changes are to occur, it can only occur with all stakeholders involved.

That has not happened-----yet.

I have approached my part in the AML community from the start as a partnership and have tried to express that vision no matter what the issue. Whether stressing the need for regulatory examiners to recognize why we have AML requirements (and it is not process over substance), or for the private sector to be rational in their recommendations or complaints (arguing for lessening regulations that only helps one size institutions is selfish and actually won't work), there can be no progress without communication.

Communication is not one side making demands or creating their own premise, it is a dialogue that is open, honest and factual.

In addition, the AML infrastructure only succeeds when there is cooperation. We have seen much evidence of cooperation in AML over the years, especially after 9/11 and dealing with such horrific crimes such as human trafficking. Over the years, many law enforcement groups have worked with the local or regional banking communities to share investigative themes, trends and typologies. Feedback and information sharing are crucial but anyone suggesting it is not occurring at all is simply wrong.

For example, the SAR Activity Review and related publications are feedback mechanisms and FinCEN deserves credit for creating and developing those publications.

I remain optimistic about our community when we see law enforcement working closely with the financial sector and both groups reaching out to other organizations such as the anti-trafficking NPO Polaris as they share information on actions that can be detected and reported along with public service announcements to a broad part of society.

As we begin to see interest in improving the BSA environment, it should be noted that changes to laws, regulations or guidance can also only occur with consensus by stakeholders. Consensus does not mean simply supporting what one side says will solve the problem, nor does it mean if a goal is too hard we move on. Consensus means rolling up our sleeves, being candid about the problem and being open to a result even if you do not agree.

All too often when we discuss change, we don't invite everyone to the table and this is occurring in BSA or AML reform. If some are left out, change is doomed to failure. So, the large financial institutions need to acknowledge the community banks; both bank groups need to note MSBs, FinTech companies and all other parts of the financial sector and this is clearly NOT happening in any uniformed fashion today. Also, our law enforcement partners must have a voice, but not the loudest or only view on items such as AML data. Likewise, the regulatory supervisors must be consulted, but not given extensive deference on what constitutes a properly run AML program.

All parts of the community must work together.

Issues to Ponder

There are a number of proposals under consideration, and several ongoing projects in the AML area in 2018, but it is unclear what has traction due to the uncertain (to say the least) environment that engulfs the US for so many reasons.

Obviously the CDD/Beneficial Ownership requirements are now final and time will tell how the examiners rate institutions on compliance with this new comprehensive requirement.

In addition, ACAMS and the World Bank are continuing to address the challenges faced by NPOs in retaining essential services.

Finally, possible legislation in AML could include changes to SARs, CTRs, technology and information sharing.

For the above three areas of focus, there is some room for improvement but also reasons to be optimistic if we ask all stakeholders for their input.

The House vehicle (H.R. 6068) seems to be the most likely to move (although the bill was pulled from consideration last week) or at least has most of the issues that are being discussed under the umbrella of AML reform.

What may appear ironic to some, is that I now oppose (or at least don't agree that the change will have the impact listed) increases in the CTR threshold contemplated in the bill. No one was more convinced than I in 2002-3 that \$10,000 CTRs were valueless and problematic for certain types of customers. However, it has been 15 years and systems have improved (for banks of all sizes) and dollar changes do not dramatically improve efficiency AND the real problem for filers is the inconsistent application of exemptions from our regulatory partners. Policy makers would be wise to ask ALL stakeholders before forcing change to this reporting regime. Law enforcement may say all data is useful and that is their prerogative, but for efficiency and consistency, the exemption process should be the focus.

Watching and participating in several hearings when SARs are discussed, it is clear to me that much more dialogue is necessary because there is so much erroneous information being presented as fact.

For example, a proposal to increase the SAR threshold attacks a faulty premise. Many financial institutions file SARs because they want their law enforcement partners to actually investigate a fraud or crime committed against the institution. This is not a burden, it is a call for help. When large trade associations push this proposal, they show their clear lack of understanding for community banks and shouldn't be speaking for all. I would also note that during one hearing a witness complained about drafting SAR narratives, a position that is contrary to many in our midst.

Also, there has been many complaints about feedback from law enforcement and while I agree that more should occur, let's make sure we credit the amount of feedback that already exists. The private sector needs to be more honest about what is happening.

The legislation also anticipates several studies which we should all embrace ONLY IF the private sector is included in these reports.

Let us support appropriate change.

For CDD, we have heard that the examiners will work closely with the banks to get things correct and we have already seen some changes to previous guidance after the government listened to a number of institutions and corrected some unforeseen problems.

The continued dialogue facilitated by the World Bank and ACAMS is moving forward but needs to advance more swiftly. There is broad consensus on ensuring that humanitarian groups can assist those in desperate need, but we need to cooperate by acknowledging when we are preventing improvement. I am confident that day will come and soon.

For the legislative process, I can say that working together is much more difficult but "success" is not insurmountable. Success to me means changes that retain the mission of AML (getting timely information to law enforcement) but by becoming more efficient, reasonable and logical.

There is no question that all stakeholders want to do the right thing. However, let us pursue AML success through transparency, honesty and admitting we do not have all the answers.

Thank you for your time today and more importantly, for all you do.