

FinReg Round-Up

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Here at FinReg Round-Up, we hope you have been enjoying a safe and fun summer—even if it didn't end up being as much of the “summer after COVID-19” as we had all hoped. Summer 2021 also brought the end of the OCC's “true lender” rule and the dismissal of litigation against the agency, FinCEN's efforts to comply with anti-



money laundering legislation by issuing its list of priorities and a report on the potential for adding a no-action letter program, and word that FINRA plans three regulatory sweeps focused on what it perceives to be factors contributing to recent market turmoil.

States Drop 'True Lender' Rule Suit Against OCC After Biden Voids Rule

Six states have voluntarily dismissed their lawsuit to set aside the Office of the Comptroller of the Currency's (OCC) “true lender” rule, which sought to regulate the lending relationships of banks and third parties. The dismissal follows President Joe Biden's signing of a joint congressional resolution of disapproval to void the rule issued under the Congressional Review Act.

The rule, issued in October 2020, establishes clear criteria for determining when a national bank or federal savings association is the true lender of a loan made in a partnership between the bank and a third party, an increasingly common scenario. (Read our summary of the

true lender rule in this [FinReg Round-Up](#). In the January 2021 suit, the attorneys general for the six states—New York, California, Colorado, Massachusetts, Minnesota, New Jersey and North Carolina as well as the District of Columbia—argued that the OCC had no authority to preempt state law in an area historically regulated by the states, in particular, consumer protection and state usury laws.

With the repeal of the true lender rule, the suit is moot. The parties filed a stipulation of voluntary dismissal without prejudice in a New York federal court in July.

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FinCEN Issues Priorities, Report to Comply With Anti-Money Laundering Act

The U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) has taken steps over the past few months to comply with anti-money laundering legislation by issuing a [list of priorities](#) to combat money laundering and the financing of terrorism and a report on adding a [no-action letter program](#) to its regulatory guidance and relief resources.

The Anti-Money Laundering (AML) Act of 2020 directed FinCEN to establish the first list of governmentwide priorities to fight money laundering and to counter the financing of terrorism. On June 30, FinCEN released the list of priorities, in no particular order: (1) corruption; (2) cybercrime, including relevant cybersecurity and virtual currency considerations; (3) foreign and domestic terrorist financing; (4) fraud; (5) transnational criminal organization activity; (6) drug trafficking organization activity; (7) human trafficking and human smuggling; and (8) proliferation financing.

FinCEN said it will issue regulations at a later date specifying how financial institutions should incorporate the priorities into their AML Act programs.

FinCEN's June 28 report concluded that it should establish a no-action letter process to supplement the existing forms of regulatory guidance and relief. An agency issues a no-action letter to indicate its intention not to take enforcement action against a party for specific conduct submitted to the agency. Generally, no-action letters address only prospective activity not yet undertaken by the submitting party, according to the report.

FinCEN stated that a no-action letter process would be most effective if it is limited to FinCEN's exercise of its own enforcement authority and does not address other regulators' enforcement authorities. However, FinCEN added it would likely need to consult with other relevant regulators, departments and agencies as appropriate during the process.

In concluding that it should initiate rulemaking to create a no-action letter process, FinCEN said the timing is subject to resource limitations and competing priorities.

FINRA Preparing to Conduct Regulatory Sweeps of SPACs, 'Finfluencers' and Option Accounts

The Financial Industry Regulatory Authority (FINRA) is planning to address three sources of recent market turmoil through regulatory sweeps, said FINRA president and CEO, Robert Cook, during the Securities Industry and Financial Markets Association's Compliance and Legal webcast in July.

Regulators use targeted exams, known as "sweeps," to gather information and conduct investigations to formulate a response to emerging issues.

Cook said areas of concern include member firms' potential conflicts of interest involving special-

purpose acquisition companies (SPACs), which are shell companies formed to raise capital through an initial public offering to be used later to merge with an existing company. The second issue is the supervision of "finfluencers," individuals who are paid to create finance-related content on social media, such as TikTok, Twitter and Instagram. Cook said ensuring compliance with FINRA's rules for options trading accounts, including the supervision, communications and due diligence surrounding these accounts, is the third area of concern. The agency released its targeted letter on the options accounts earlier in August.

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