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To: Clients and Friends of the Firm

From: Polunsky Beitel Green, LLP

Date: June 29, 2020

Re: The United States Supreme Court Holds that the President May Remove CFPB Director at Will

Today, the U.S. Supreme Court held that the President has the authority to remove the Director of the Consumer Financial Protection Bureau at will, but that the CFPB may otherwise continue operating. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act established the CFPB and set forth that it would be headed by a single director for a five-year term who may only be removed for “inefficiency, neglect of duty, or malfeasance in office.”

This single-director structure has been criticized by both the business community and legal scholars as an unconstitutional concentration of power in an individual who was not subject to sufficient oversight and control by the President.

The Court agreed with this criticism, holding that a single Director who was removable only “for cause” was an unconstitutional violation of the separation of powers. Chief Justice Roberts, writing for a 5-4 majority, found that “the CFPB’s single-Director structure is incompatible with our constitutional structure” which, aside from the President, “scrupulously avoids concentrating power in the hands of any single individual.”

However, the Court found that “the only constitutional defect we have identified in the CFPB’s structure is the Director’s insulation from removal.” Therefore, the Court went on to hold that the statutes protecting the Director from removal without cause could be “severed” from the Dodd-Frank Act, leaving the remainder of the Act, and thus the CFPB’s structure and duties, operative.

Roberts writing for a different 7-2 majority, held that “the provisions of the Dodd-Frank Act bearing on the CFPB’s structure and duties remain fully operative without the offending tenure restriction. Those provisions are capable of functioning independently, and there is nothing in the text or history of the Dodd-Frank Act that

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demonstrates Congress would have preferred *no* CFPB to a CFPB supervised by the President.”

The result is that the CFPB may continue operating, but with the Director now able to be removed at will by the President.

The case is [Seila Law LLC v. Consumer Financial Protection Bureau](#), 591 U.S. ____ (2020).

If you have questions regarding the contents of this alert, please let us know.

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