

**SCHWARTZ & BALLEN LLP**

1990 M STREET, N.W. • SUITE 500

WASHINGTON, DC 20036-3465

[WWW.SCHWARTZANDBALLEN.COM](http://WWW.SCHWARTZANDBALLEN.COM)

TELEPHONE  
(202) 776-0700

FACSIMILE  
(202) 776-0700

**MEMORANDUM**

January 31, 2018

To Our Clients and Friends

Re: Court of Appeals Upholds Constitutionality of CFPB

The U.S. Court of Appeals for the D.C. Circuit has upheld the constitutionality of the structure of the Consumer Financial Protection Bureau. The court stated that existing precedent at the D.C. Circuit and the Supreme Court supports the conclusion that the head of an independent financial regulator can be protected from Presidential action to put new leadership in place. Three judges dissented from the court's ruling.

The *en banc* decision in *PHH v. CFPB* (No. 15-1177) reverses a prior 2016 ruling of a panel of the court that had held the CFPB's single-director structure and restriction allowing the President to fire the director only for cause was unconstitutional. The prior decision determined that the constitutional issue could be resolved by permitting the President to fire the CFPB's director without cause.

It is of interest to note that in this proceeding, the Justice Department argued that the CFPB's structure was unconstitutional. This was a reversal of the position the Department had taken in the prior proceeding. Accordingly, it is uncertain who would represent the CFPB if the case is appealed to the Supreme Court.

A copy of the court's decision is available on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Magda Gathani at (202) 776-0700.