

STROOCK SPECIAL BULLETIN

CORDRAY ANNOUNCES NOVEMBER DEPARTURE FROM CFPB

November 15, 2017

Richard Cordray today announced his departure from the position of Director of the Consumer Financial Protection Bureau (CFPB) by the end of November 2017, well in advance of the natural expiration of his term in July 2018. Below is the text of his letter to CFPB staff announcing his departure.

Dear Colleagues,

I wanted to share with each of you directly what I have told the senior leadership in the past few days, which is that I expect to step down from my position here before the end of the month.

As I have said many times, but feel just as much today as I ever have, it has been a joy of my life to have the opportunity to serve our country as the first director of the Consumer Bureau by working alongside all of you here. Together we have made a real and lasting difference that has improved people's lives, notably: \$12 billion in relief recovered for nearly 30 million consumers; stronger safeguards against irresponsible mortgage practices that caused the financial crisis and hurt millions of Americans; giving people a voice by handling over 1.3 million complaints that led to problems getting fixed for vast numbers of individuals, and creating new ways to bring financial education to the public so

that people can take more control over their economic lives. None of this could have happened without all of us being dedicated to pull together in supporting and protecting people and making every consumer count. I will always be immensely proud of you and what you have done.

At the same time, there is always more work that lies ahead. That would be true at any point, of course, and one thing I have tried to reinforce this year is that the Consumer Bureau is far more than its director. I am confident that you will continue to move forward, nurture this institution we have built together, and maintain its essential value to the American public. And I trust that new leadership will see that value also and work to preserve it – perhaps in different ways than before, but desiring, as I have done, to serve in ways that benefit and strengthen our economy and our country.

My gratitude and appreciation for what you mean to me and to our nation is deep and lasting, and I will be taking the opportunity to make that clear to you in person over the days ahead.

Thank you!

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Cordray's announcement ended nearly a year of speculation following the presidential election and abortive efforts by Congressional Republicans to secure his forcible removal. Rumors of Cordray's intent to enter the race for governor of Ohio have been rampant for even longer. The official deadline for Cordray to declare his candidacy is February 2018. But November 2017 represents the practical deadline for Cordray to mount a successful race, giving him barely enough time to secure his base of support and accept campaign contributions before year end. Waiting until 2018 to announce his gubernatorial run could risk the loss of crucial endorsements, as well as limiting his war chest to the annual campaign contribution limits applicable for 2018.

The leadership of the CFPB is now in full play. The nomination and confirmation of a new Director will be long in coming. Continuing political upheaval has delayed other Trump appointments, and the controversy that will accompany the confirmation hearings of any candidate for the position of CFPB Director will complicate the process still more.

President Trump is likely to invoke the 1998 Federal Vacancies Reform Act to appoint an Acting Director. When an Executive Branch position covered by the Vacancies Reform Act becomes vacant, it may be filled in one of three ways: (1) the first assistant automatically assumes the functions and duties of the office; (2) the President directs an officer who has been confirmed by the Senate for another position to perform that role; or (3) the President selects an officer or employee in the same agency who holds a senior rank and has been with the agency for at least 90 of the preceding 365 days. The President has little reason to choose a current CFPB employee to fill the Acting Director role. We expect that he will choose a previously Senate-confirmed official from another agency – most likely Treasury Secretary Steve Mnuchin, who in turn would delegate a member of his staff to handle the CFPB's day-to-day operations. The Dodd-Frank Act alternatively authorizes CFPB Acting Deputy Director David

Silberman to move into the Acting Director position "in the absence or unavailability of the Director." Some might contend that this specific Dodd-Frank provision for succession at the CFPB would override the Vacancy Act's general provisions for the President to fill vacant positions. Others would argue that the resignation of the Director is not precisely equivalent to his "absence or unavailability," and that the Vacancy Act authorizes the President to appoint a different Acting Director in any case. Any action taken by David Silberman as Acting Director likely would trigger legal challenges to his authority to act in such capacity.

The attorneys of Stroock's Financial Services Litigation, Regulation and Enforcement Group are well-positioned to answer any questions you may have about developments at the CFPB, consumer finance rulemaking, supervision and enforcement activities as well as related matters.

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