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February 6, 2025

VIA CM/ECF & EMAIL

Hon. John P. Cronan
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *CFPB v. MoneyLion Technologies Inc., et al.*, No. 1:22-cv-08308-JPC

Dear Judge Cronan:

We write on behalf of the Defendants in the above-captioned case (collectively, "MoneyLion") pursuant to Rules 1.A and 6.A of Your Honor's Individual Rules And Practices In Civil Cases. We write to notify the Court of MoneyLion's intent to seek a stay of the case given recent directives from the newly-appointed Acting Director at the Consumer Financial Protection Bureau ("CFPB"), pausing agency activities, including enforcement actions. MoneyLion raised this proposed stay with the CFPB staff attorneys handling this case. They stated that "CFPB leadership"—without referencing the Acting Director—opposes a stay.

As the Court knows, the CFPB sued MoneyLion for alleged violations of the Military Lending Act and the Consumer Financial Protection Act. MoneyLion's Motion to Dismiss the First Amended Complaint remains pending. Dkt. 68. On January 13, 2025, the Court heard oral argument on the Motion to Dismiss.

In the past few days, President Trump removed the CFPB's (former) Director, Rohit Chopra, and named Secretary of the Treasury, Scott Bessent, as Acting Director.[1] It has been widely reported that all CFPB personnel and contractors cannot engage in many activities "unless expressly approved by the Acting Director or required by law." The directive expressly prohibits—unless approved by Acting Director Bessent—"mak[ing] or approv[ing] filings or appearances by the Bureau [CFPB] in any litigation, other than to seek a pause in proceedings."[2]

The reported directive is consistent with actions the CFPB took on February 3, 2025 before two oral arguments in the United States Court of Appeals for the Fifth Circuit. Specifically, in *Texas Bankers Association et al. v. CFPB*, No. 24-40705 (5th Cir.), the CFPB filed an "Emergency

[1] *See Statement on Designation of Treasury Secretary Scott Bessent as Acting Director of the Consumer Financial Protection Bureau*, https://www.consumerfinance.gov/about-us/newsroom/statement-on-designation-of-treasury-secretary-scott-bessent-as-acting-director-of-the-consumer-financial-protection-bureau/ (last visited on February 4, 2025).

[2] *See*, *e.g.*, Treasury's Bessent Takes CFPB Reins, Halts Agency Action, Law360, February 4, 2025, attached as **Exhibit A**.

Notice" that stated "Counsel for the CFPB has been instructed not to make any appearances in litigation except to seek a pause in proceedings. Accordingly, counsel for the CFPB will appear at today's hearing but will not present argument other than to respectfully request a pause in proceedings." *See* **Exhibit B**. The CFPB filed a substantially similar notice—using the same language—in *Chamber of Commerce v. CFPB*, No. 23-40650 (5th Cir.). *See* **Exhibit C**.

Thus, these public statements, along with the CFPB's internal directive, indicate the agency wants to temporarily freeze all enforcement actions, including active litigation, so the Acting Director can assess whether each action is consistent with the goals of the new Administration.

Given these directives, on February 3 and 5, MoneyLion's counsel contacted the CFPB's counsel to confirm whether Acting Director Bessent has authorized the continued prosecution of this lawsuit. MoneyLion's counsel also informed the CFPB's counsel that MoneyLion planned to file a pre-motion letter, seeking a stay of the case. CFPB's counsel responded that "CFPB leadership" opposes the stay because the Motion to Dismiss has been fully briefed and there is nothing for the parties to do. The CFPB attorney's response did not answer whether the Acting Director has approved the continued prosecution of this case. The response also ignores that the Court is likely preparing a decision on the Motion to Dismiss that may be moot if Acting Director Bessent—after considering the prior Director's novel claims and theories that exceed the plain language of the MLA, TILA, and the CFPA—declines to prosecute this case.

Because the Acting Director's freeze creates uncertainty about whether the CFPB will continue this lawsuit, MoneyLion believes a stay is appropriate. Acting Director Bessent and the new Administration should be afforded a meaningful opportunity to consider the complex issues relating to the Administrative Procedure Act ("APA") and the MLA rule raised in the Motion to Dismiss, which have broader policy consequences beyond the immediate parties. For example, the Court is considering whether the MLA rule contravenes the MLA and the APA, with the Court's decision potentially setting precedent regarding the applicability and interpretation of the MLA. The new Administration needs time to consider these important issues. A stay is also the most efficient approach, because the Court can save time and resources by pausing its consideration of the Motion to Dismiss while the Acting Director determines whether continuing this lawsuit is consistent with the goals of the new Administration. In sum, the pending Motion to Dismiss increases the need for a stay. Before the Court decides the Motion to Dismiss, the Acting Director should be given sufficient time to assess whether litigating the defects in the First Amended Complaint is consistent with the new Administration's goals.

For these reasons, MoneyLion respectfully seeks leave to move for a stay.

Respectfully submitted,

/s/ James Kim

James Kim
Dave Gettings
Misha Tseytlin

cc: Max Peltz, David Dudley, Mark Ladov, Miriam Lederer, Ryan Cooper (via CM/ECF)

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Treasury's Bessent Takes CFPB Reins, Halts Agency Actions

By **Jon Hill**

Law360 (February 3, 2025, 11:12 AM EST) -- President Donald Trump has handed the reins of the Consumer Financial Protection Bureau to U.S. Department of the Treasury Secretary Scott Bessent, who moved Monday to halt rulemaking and other activities at the agency after the ouster of its director, Rohit Chopra.

Bessent, a billionaire hedge fund manager who took over as Trump's Treasury secretary last week, was designated the CFPB's acting director as of Friday, according to a Monday statement from the CFPB.

The announcement comes after the White House **fired Chopra**, a President Joe Biden appointee, on Friday night but did not publicly designate an interim replacement to lead the CFPB, which would otherwise have been helmed by Chopra's deputy director, Zixta Martinez.

"I look forward to working with the CFPB to advance President Trump's agenda to lower costs for the American people and accelerate economic growth," Bessent said in the statement.

Soon afterward, Bessent ordered a full stop to much of the CFPB's work to "promote consistency with the goals of the administration," according to a Monday morning all-hands email obtained by Law360.

"As acting director, Secretary Bessent is committed to appropriately stewarding the agency pending new leadership," the unsigned email said.

The email instructed CFPB staff to pause new rulemaking, enforcement investigations, public communications, litigation and certain other work "effective immediately." The only stated exceptions were for activities that are "expressly approved" by Bessent or are "required by law."

Law360 has learned that CFPB political appointees from Chopra's tenure are also clearing out amid the shakeup, with his Chief of Staff Jan Singelmann and Chief Technologist Erie Meyer among the so-called Schedule C workers making exits Monday.

But other senior CFPB officials — including Seth Frotman, its general counsel; Eric Halperin, its enforcement director; and Lorelei Salas, its supervision director — had not left or been reassigned as of Monday, according to a source familiar with the matter.

Pencils Down

Bessent's stop-work order was broad in scope, covering most key areas of the CFPB's regulatory activities.

Among its directives, staff members were told not to issue any new guidance or publish any new proposed or final rules. They were further told to "suspend the effective dates" of all final rules that haven't yet gone into effect.

That directive will, for now, indefinitely delay recent CFPB rules like its **$5 overdraft fee cap** and the agency's ban on **including medical debt** in credit reports. Both rules were finished in the final weeks of Chopra's tenure and have been met with industry lawsuits.

Monday's email also called for a freeze on CFPB enforcement, instructing staff members not to "commence, take additional investigative activities related to, or settle enforcement actions."

Staff must additionally not "issue public communications of any type," nor can they hire new personnel — they are not to "approve or execute any material agreements, including related to employee matters or contractors," the email said.

The pause includes ongoing CFPB lawsuits, too. According to the email, attorneys for the agency can ask courts to put proceedings on hold, but beyond that they are "not to make or approve filings or appearances by the bureau in any litigation."

The email did not specifically address how the pause applies, if at all, to CFPB supervision, such as whether scheduled examinations of financial firms can move forward. CFPB spokespeople did not immediately respond to a request for comment Monday.

Wait and See

The halt is already having effects in the courtroom. Counsel for the CFPB flagged Bessent's orders for the Fifth Circuit in emergency filings on Monday, hours before they were scheduled to present oral argument in two cases challenging policymaking under Chopra.

The first of those cases, U.S. Chamber of Commerce v. CFPB, focuses on a 2022 policy broadening how the CFPB examines firms for discrimination. Chopra had highlighted this policy in recent weeks as a potential antidote to GOP concerns about debanking.

At the Fifth Circuit, the CFPB has been appealing its loss against banking industry groups that sued successfully in Texas federal court to vacate the policy. But when a three-judge panel convened Monday for oral argument, CFPB attorney Justin Sandberg had to beg off.

"As a result of the change in leadership, just this morning, I found out that we've been instructed that, at appearances, we're just supposed to ask for a pause in litigation to allow the new leadership to evaluate the litigation," Sandberg said.

The panel agreed to table the matter, sending the CFPB and its industry opponents away to discuss next steps and report back.

A second panel, meanwhile, went ahead Monday with the other case, Texas Bankers Association v. CFPB, in which some of the same industry groups are appealing their loss in a suit challenging the agency's 2023 small-business loan data reporting rule.

Citing Bessent's order, the CFPB's attorney Lauren Gorodetsky declined to participate in oral arguments, instead asking for a continuance. She also said the CFPB was dropping its opposition to an industry request for a stay of the rule's compliance deadlines.

That left Robert Loeb of Orrick Herrington & Sutcliffe LLP, counsel for the industry plaintiffs, to argue unopposed. Although he acknowledged the CFPB's leadership change, he urged the panel to press on and strike down some or all of the rule instead of waiting potentially weeks or more for the agency's new management to decide what it wants to do.

"This is an important issue, and we need resolution of it," Loeb said. "If they're withdrawing the regulation, it would certainly give us the relief that we want, but it's something that can't just be waved away. There's a process for removing a regulation, and we have to know that they're entering that process."

"Very Much in Play"

The CFPB has a slew of other pending lawsuits that Bessent's Monday order stands to halt, including several additional challenges to Chopra-issued rules and a series of high-profile enforcement actions brought shortly before Trump took office.

Those enforcement actions target big names like Walmart, Rocket Mortgage and Experian, as well as major banks like JPMorgan, Bank of America, Wells Fargo and Capital One.

The freeze on enforcement investigations could also implicate an untold number of matters in the pipeline at the CFPB. Meta Platforms Inc., whose founder and CEO Mark Zuckerberg has sought to ingratiate himself with Trump since the election, notably disclosed last fall that it was under CFPB investigation and could be sued "in the near-term."

To be sure, it's not uncommon for new agency leaders to take time to review past legal positions and reconsider their predecessors' policies when they first arrive.

It's even happened before at the CFPB, as Joann Needleman, leader of Clark Hill PLC's financial services and compliance practice, told Law360. In Trump's first term, when Mick Mulvaney took over temporarily at the CFPB from former Director Richard Cordray, he also paused activities like rulemaking, Needleman said.

Bessent and his team will "definitely be taking a fresh look," Needleman told Law360. "I think they're going to want to clean out a lot of stuff."

That could mean, for one, closing investigations and dropping open enforcement actions or settling them for lesser amounts than Chopra would have required. Either way, enforcement "is going to come to a halt, at least in the short term," Needleman said.

"There's also going to be a real discussion about the cases that industry has brought against the CFPB, and how much the CFPB is going to defend them," she added, referring to the array of litigation facing the agency over its rules and other policy actions. "That is still very, very much in play."

Sharply Divided Reaction

Democrats and consumer advocates immediately slammed Bessent's appointment to the CFPB on Monday, assailing the sweeping scope of his stop-work order as a de facto shutdown.

"Secretary Bessent just sent a signal to giant corporations and big banks that it is open season to cheat, trick, and trap hard-working American families," Sen. Elizabeth Warren, D-Mass., said in a statement.

Warren, the top Democrat on the Senate Banking Committee, helped create the CFPB and is one of its most ardent defenders. The senator has been sharply critical of Bessent's place in the Trump administration, casting him as a Wall Street crony capitalist out to help other billionaires.

Warren argued Monday that Bessent's move to freeze CFPB enforcement activity will shortchange consumers who would be in line to receive monetary relief.

The statement also noted Bessent's reported role late last week in allowing Elon Musk's Department of Government Efficiency to access sensitive government payments systems that could be used to block spending and defund programs unilaterally.

Musk, a billionaire who is one of Trump's closest allies, has also previously floated the idea of abolishing the CFPB.

"Secretary Bessent must reverse course, and if he doesn't, I will use every tool at my disposal in the Banking Committee to hold him accountable — along with any company that lines its pockets at the expense of American taxpayers," Warren said in her statement.

But longtime Republican and industry critics of the CFPB greeted Bessent on Monday with open arms, viewing him as a friendly figure capable of putting a leash on the watchdog agency.

Chopra's "removal is a critical step in restoring Americans' faith in our financial regulators," House Financial Services Committee Chairman French Hill, R-Ark., said in a statement, adding that he plans to work with Bessent to "finally rein in this unaccountable agency" by restructuring it.

The head of the American Bankers Association likewise applauded Bessent's selection, saying the CFPB took many actions under Chopra that "exceeded its statutory authority, harmed our economy and imposed significant costs on American consumers."

"We urge Secretary Bessent to begin reversing the damage caused by these misguided regulatory actions and stand ready to support his efforts to chart a better course for the Bureau," ABA President and CEO Rob Nichols said in a statement.

The Online Lenders Alliance's CEO Andrew Duke similarly welcomed Bessent as bringing a "new mindset and direction" to the CFPB, and the Financial Technology Association's President and CEO Penny Lee offered a wish list of specific rules for reversal.

"As Sec. Bessent takes on this role, we urge him to prioritize withdrawing harmful, overreaching rules that impede innovation, including rules governing digital payments, buy now pay later, and earned wage access products," Lee said in a statement.

"Reversing these deeply flawed rules is a first step toward embracing innovation and charting a path forward that harnesses the benefits of digital financial services for all Americans," Lee said.

--Editing by Robert Rudinger and Brian Baresch.

Update: This story has been updated with additional details, background information and outside comment.

No. 24-40705

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Texas Bankers Association; Rio Bank, McAllen, Texas; American Bankers Association; Texas First Bank; Independent Bankers Association of Texas; Independent Community Bankers of America,
Plaintiffs-Appellants

v.

Consumer Financial Protection Bureau, et al.,
Defendants-Appellees

v.

Texas Farm Credit; Farm Credit Council; Capital Farm Credit,
Intervenor Plaintiffs-Appellants

v.

XL Funding, L.L.C.; Equipment Leasing and Finance Association; Rally Credit Union; Credit Union National Association; Cornerstone Credit Union League
Intervenors-Appellants

On Appeal from the United States District Court
for the Southern District of Texas, Case No. 7:23-cv-144

EMERGENCY NOTICE

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EMERGENCY NOTICE

Defendants-Appellees the Consumer Financial Protection Bureau, *et al.*, (CFPB) respectfully submit this emergency Notice to inform the Court of developments relevant to today's hearing. The President removed the prior Director of the CFPB from his position. Counsel for the CFPB has been instructed not to make any appearances in litigation except to seek a pause in proceedings. Accordingly, counsel for the CFPB will appear at today's hearing but will not present argument other than to respectfully request a pause in proceedings. Counsel for the CFPB will meet and confer with counsel for Appellants and provide a further update to the Court as soon as practicable.

Dated: February 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on February 3, 2025, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

Dated: February 3, 2025

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Chamber of Commerce of the United States of America, Longview Chamber of Commerce, American Bankers Association, Consumer Bankers Association, Independent Bankers Association of Texas, Texas Association of Business, and Texas Bankers Association, Plaintiffs-Appellees, v. Consumer Financial Protection Bureau, *et al.*, Defendants-Appellants.	No. 23-40650

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DATED: February 3, 2025

Respectfully Submitted,
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I hereby certify on February 3, 2025, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

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