UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Joseph J. Simons, Chairman** **Noah Joshua Phillips** **Rohit Chopra** **Rebecca Kelly Slaughter** **Christine S. Wilson**

In the Matter of **CIVIL INVESTIGATIVE DEMAND TO BEAM FINANCIAL, INC. DATED MAY 21, 2020**	)	**File No. 182-3177** **REDACTED PUBLIC VERSION**

ORDER DENYING IN PART AND GRANTING IN PART PETITION TO QUASH OR MODIFY CIVIL INVESTIGATIVE DEMAND

By PHILLIPS, Commissioner:

Beam Financial, Inc. ("Beam") petitions to quash or modify a civil investigative demand issued on May 21, 2020, in connection with the Commission's investigation into Beam's business practices. Specifically, Beam seeks to quash the CID on the grounds that the Commission's leadership structure is unconstitutional. Alternatively, claiming undue burden, Beam asks us to quash the CID to the extent it is duplicative of a Commission request for information two years ago and to extend the CID return date until four months from now.

For the reasons stated below, the Commission denies the petition with respect to Beam's arguments that the CID should be quashed in whole or in part. With respect to Beam's requested time extension, the Commission grants the petition in part and will modify the CID return date accordingly.

I. Background

Beam is a San Francisco-based company that offers mobile, high-interest, FDIC-insured bank accounts. Petition ("Pet.") at 1. Beam launched a mobile banking app to the public in September 2019. Prior to the official launch of its app, Beam had released a "beta" version of the app.

On July 6, 2018, Commission staff sent Beam a letter (the "access letter") requesting voluntary production of information and documents in connection with the beta version of the app. Pet. Exhibit ("Exh.") B. The focus of that inquiry was whether consumers were receiving the advertised interest rate returns on their deposits. The access letter sought production by August 3, 2018, but staff and Beam subsequently agreed to a rolling production, which Beam

Beam's counsel claimed that the COVID-19 pandemic has created substantial logistical difficulties for the company, [redacted], impeding Beam's ability to comply with the CID. *See* Pet. Exh. C. Beam proposed to resubmit the material that it previously produced in response to the 2018 access letter and, by August 1, to respond in part to three interrogatories addressing a topic that staff identified as a particular concern: that consumers have reportedly been unable to withdraw, or easily to withdraw, their funds deposited with Beam. Beam proposed that all other responses to the CID specifications be deferred until December 15, 2020. *Id*. Staff found unacceptable an almost six-month deferral of substantive responses on thirty three of the thirty six specifications in the CID. But staff offered to modify the production schedule to address Beam's claims of hardship, proposing that the parties develop a schedule for a rolling production. Staff also asked the effects of the COVID-19 pandemic on Beam and its 2018 productions. We address each of these arguments in turn.

A. The Supreme Court Has Not Overturned Its Precedent Upholding the FTC's Constitutionality.

Beam claims that the FTC lacks authority to issue or enforce the CID because the agency's leadership structure—specifically, the for-cause removal protections afforded FTC Commissioners[3]—is unconstitutional. Pet. at 4-6. The Supreme Court upheld the constitutionality of the FTC's for-cause removal provisions in *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Beam argues, however, that under the Court's recent decision in *Seila Law*, any agency that exercises "quintessentially executive power" (like the present-day FTC, Beam says) must be directly accountable to the President, making for-cause limitations on the President's removal power constitutionally impermissible.

The Court's holding in *Seila Law*, however, is narrower than Beam asserts. *Seila Law* involved a challenge to the for-cause removal protections for the Director of the Consumer Financial Protection Bureau ("CFPB"), which, unlike the multi-member Federal Trade Commission, is led by a single official. The Court described the question it faced as whether Congress could restrict the President's power to remove the head of "an independent agency that wields significant executive power *and is run by a single individual*." *Seila Law*, 140 S. Ct. at 2192 (emphasis added). The Court held that the CFPB's single-director structure violated constitutional principles of separation of powers; Congress could not restrict the President's authority to remove the Director of the agency at will. *Id*.

In *Seila Law*, the Court expressly declined the petitioner's invitation to overturn *Humphrey's Executor*, its precedent sustaining the constitutionality of the FTC's for-cause removal provisions. *Id*.[4] It also declined to extend that precedent "to the novel context of an independent agency led by a single Director." *Id*.; *see id*. at 2211 ("While we have previously upheld limits on the President's removal authority in certain contexts, we decline to do so when it comes to principal officers who, acting alone, wield significant executive power."). The Court distinguished *Humphrey's Executor* in substantial part on the ground that the CFPB is a single-director agency, whereas the FTC is a bipartisan, multimember body. The Court found that the CFPB's single-director structure "forecloses certain indirect methods of Presidential control." *Id*. at 2204. A single agency head with a five-year term means some Presidents "may *never* appoint" a CFPB Director, nor will the President "have the opportunity to appoint any other leaders . . . who can serve as a check on the Director's authority and help bring the agency in line with the President's preferred policies." *Id*. And because the CFPB's budget is supplied by the Federal Reserve Board, rather than through the appropriations process, "no . . . opportunity exists for the

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[3] *See* 15 U.S.C. § 41 (Commissioners "shall be appointed for terms of seven years," which expire on a staggered basis, and "may be removed by the President" only "for inefficiency, neglect of duty, or malfeasance in office").

[4] *See* Brief for the Petitioner at 31-34, *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (No. 19-7), available at

President to influence the CFPB Director," by "recommend[ing] or veto[ing] spending bills that affect the operation of" the agency. *Id*

[redacted]

[redacted]

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The standard for assessing the burden imposed by agency investigative process is well established. Agency process is not unduly burdensome unless compliance "threatens to unduly

[redacted]

[redacted]

[redacted]

III. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** Beam Financial, Inc.'s Petition to Quash or Modify Civil Investigative Demand be, and hereby is, **DENIED IN PART AND GRANTED IN PART**.

IT IS FURTHER ORDERED THAT Beam Financial, Inc., shall comply in full with the Commission's Civil Investigative Demand no later than 15 days from the date of this order, subject to any modifications as to scope or timing that Commission staff may determine.

By the Commission, Commissioner Slaughter and Commissioner Wilson not participating.