

Members of the Fiscal Oversight Management Board are Subject to the Appointments Clause of the Constitution of the United States of America

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The United States Court of Appeals for the First Circuit issued an Opinion on February 15, 2019 reversing a decision by the Honorable Judge Laura Taylor Swain concerning the constitutionality of the appointment of the members of the Fiscal Oversight Management Board (the “FOMB”) created by virtue of the Puerto Rico Oversight Management and Economic Stability Act (“PROMESA”). The controversy revolves around the inquiry on whether the members of the FOMB are subject to the Appointments Clause of the Constitution of the United States of America. The First Circuit ruled in the affirmative and held that the FOMB members must be, and were not, appointed in compliance with the Appointments Clause.

The decision does not invalidate the FOMB’s prior actions nor did it dismiss the pending Title III cases. The decision’s mandate will not become effective for 90 days in order to allow the President and Congress to confirm FOMB members pursuant to the Appointments Clause. The FOMB can continue to operate as usual during this 90-day period.

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