BACKGROUND

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) into law. The Act, which culminated several years of contentious debate regarding the future of the nation's financial system, stretches 2,307 pages, and includes 16 different titles containing 1,601 sections. It is intended to overhaul the way in which financial services are offered and regulated, increase transparency, enhance consumer protection, and ensure that the nation will never again undergo a financial crisis of the magnitude recently seen.

Any measure as large and wide-ranging as Dodd-Frank will have multiple impacts, of different nature and different size, on different groups. In the months since the measure's enactment, numerous organizations have issued hundreds of summaries and white papers, each attempting to summarize the bill – or portions of the bill -- in ways that would be of greatest use to their constituencies. Yet, analysis of Dodd-Frank is complicated by the fact that the Act created four new regulatory entities, and required the preparation of 243 rulemakings and 67 studies. Creation of these entities, promulgation of these required rulemakings, and preparation of these required studies will take years, and will likely cause the impacts of Dodd-Frank to evolve over time. It is already clear that the sheer volume of regulations and studies required to be issued within relatively short time frames will cause several of the deadlines provided for in Dodd-Frank to be missed, and result in several sets of regulations and studies to be issued later than anticipated. The full extent of regulatory changes promulgated pursuant to Dodd-Frank may not be known for at least five years, and the measure's full impact may not be known for nearly a decade.

The sixteen titles included in Dodd-Frank are listed immediately below. A table of contents for the Act, which lists the contents of each of these the titles, is included in Appendix A. A summary of some of the major components of the Act is included in Appendix B.

- Title I: Financial Stability
- Title II: Orderly Liquidation Authority
- Title III: Transfer of Power to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve
- Title IV: Regulation of Advisers to Hedge Funds and Others
- Title V: Insurance
- Title VI: Improvements to Regulation of Bank and Savings Association Holding Companies and Depository Institutions
- Title VII: Wall Street Transparency and Accountability
- Title VIII: Payment, Clearing, and Settlement Supervision
- Title IX: Investor Protections and Improvements to the Regulation of Securities
- Title X: Bureau of Consumer Financial Protection
- Title XI: Federal Reserve System Provisions
- Title XII: Improving Access to Mainstream Financial Institutions
- Title XIII: Pay it Back Act
- Title XIV: Mortgage Reform and Anti-Predatory Lending Act
- Title XV: Miscellaneous Provisions

- Title XVI: Section 1256 Contracts

INTRODUCTION AND DESCRIPTION OF THE HEARING

On March 23, 2011, the Senate Banking and Financial Institutions Committee and Assembly Banking and Finance Committee will jointly hold an informational hearing to begin introducing their committee members to Dodd-Frank. It would be impossible to fully summarize Dodd-Frank in any single legislative hearing, and the March 23rd hearing does not attempt to do so. Instead, the hearing is designed to encourage a wide variety of interested parties, including state regulators, consumer advocates, and representatives of affected financial services industries, to address the committees regarding those aspects of Dodd-Frank that they believe will have the greatest impacts on Californians.

The hearing will be led off by Joe Gabai, an attorney who has written extensively about several of the components of Dodd-Frank, and who is one of the nation's experts on Title XIV (relating to mortgages) and on the pre-emption aspects of Title X (which creates the Bureau of Consumer Financial Protection). Mr. Gabai will provide the committees with an overview of the Act's provisions, to help provide the context into which the testimony of future witnesses can best be understood.

After Mr. Gabai's introduction to the Act, state regulators, including the Commissioners of the Department of Financial Institutions, Department of Corporations, and Department of Real Estate, and the Director of the Office of Real Estate Appraisers, will address the committees about the impact of the Act on their departments and those who they serve. The four invited state regulators have each been asked to answer the following questions:

- Which provisions of Dodd-Frank are most likely to impact your department, your licensees, and the consumers who obtain financial services from your licensees? What impacts do you expect, and over what time period do you expect to see them?

- Will you require more staff to accommodate any of the changes likely to result from enactment of Dodd-Frank and its implementing regulations?

- What changes, if any, do you recommend be made to California law as a result of Dodd-Frank and its implementing regulations? The regulators have been encouraged to answer this question, with an eye toward both existing California laws, which they may suggest should be repealed or amended as a result of Dodd-Frank, and toward new laws, which they may suggest should be enacted as a result of Dodd-Frank.

Department of Financial Institutions Commissioner Bill Haraf will also address the committees about his unique role as a member of the Financial Stability Oversight Council (FSOC), one of the four regulatory entities created by Dodd-Frank. The FSOC, which is chaired by the Treasury Secretary and includes the heads of ten federal regulatory agencies among its members, was charged with the responsibility of identifying and advising federal regulators regarding sources of systemic risk to the financial system, identifying systemically important financial firms, and responding to emerging risks throughout the financial system. Commissioner Haraf is the sole state banking regulator on the FSOC, a position which affords him a front row seat to discussions that are likely to determine the future shape of nationwide financial regulation and the regulation of systemic risk.

Testimony will then shift to the changes made by Dodd-Frank to the enforcement powers of states Attorney General, and to the changes made by the Act to federal pre-emption rules. Several provisions of Dodd-Frank gave states Attorney General additional enforcement powers. For example, Section 1042 of the Act authorizes states Attorney General to enforce the provisions of Title X (relating to the Consumer Financial Protection Bureau) and regulations issued by the Consumer Financial Protection Bureau. The precise nature of the enforcement authority provided to the Attorneys General differs, depending on the party against whom an action is being brought and the nature of the violation. Section 1422 of the Act gave states Attorney General the authority to enforce significantly more portions of the Truth in Lending Act (TILA) than they previously had authority to enforce, including many portions of TILA that deal specifically with mortgage lending and brokering. Section 1044 of the Act clarified (some would say changed) state law pre-emption standards for national banks and their subsidiaries.

While there is no disagreement over the wording of the Act's language relating to Attorneys General powers and state law pre-emption standards, there is considerable difference of opinion regarding the meaning and impact of these changes on the regulatory and pre-emption landscapes.

Supervising Deputy Attorney General Kathrin Sears will address the committees about the extent to which Attorney General Harris believes that Dodd-Frank gave her office greater power to enforce state and federal consumer protection laws. The questions posed to Attorney General Harris, which Ms. Sears will be addressing, include the following:

- Do you believe that Dodd-Frank gives the Office of the California Attorney General greater power to *enforce state* consumer financial protection laws against federally-regulated financial institutions operating in California?

- Do you believe that Dodd-Frank gives the State Legislature greater flexibility to *enact* laws that regulate the activities of federally-chartered financial institutions?

- Do you believe that Dodd-Frank gives the Office of the California Attorney General greater power to *enforce federal* consumer financial protection laws in California?

- What will be Attorney General Harris' top enforcement priorities in the area of state consumer financial protection?

- Does the California Attorney General's Office have any plans to coordinate with the new Consumer Financial Protection Bureau on examination of state or federal institutions or enforcement of state or federal consumer financial protection laws?

- Are there any other aspects of Dodd-Frank that you believe will impact the consumer financial protection landscape in California?

Consumer group representatives will follow Ms. Sears, and are expected to focus on the duties and powers of the new Consumer Financial Protection Bureau, and on federal pre-emption issues. The key questions posed to those who will be participating on the consumer advocate panel include the following:

- Which provisions of Dodd-Frank do you expect to be of greatest significance to consumers? What impacts do you expect, and over what time period do you expect to see them?

- How, if at all, do you believe the pre-emption landscape has changed in California as a result of Dodd-Frank?

- Do you recommend any changes to California law as a result of enactment of Dodd-Frank and promulgation of federal regulations pursuant to Dodd-Frank?

The final invited panel will include representatives of several industries that were directly impacted by several provisions of Dodd-Frank, including securities issuers, investment advisers, and broker dealers; mortgage banks; mortgage brokers; and depository institutions of different sizes. Industry witnesses were asked to respond to the following questions:

- Which provisions of Dodd-Frank do you expect to have the greatest impacts on your industry? On your customers? What impacts do you expect, and over what time period do you expect them?

- How have Dodd-Frank and its implementing regulations changed the regulatory compliance landscape for your industry? Are the expectations of regulators and regulations clearer or less clear? More or less protective of the public? More or less burdensome?

- Do you recommend any changes to California law as a result of enactment of Dodd-Frank and its implementing regulations?

NEXT STEPS

Testimony offered during the hearing will be used by the committees to identify those issues that warrant further, more in-depth study; evaluate whether any of the state's financial services regulators will require more staff or other resources to implement and respond to changes resulting from Dodd-Frank; and assess the need for, and nature of, future legislation.