

# CITY BAR CENTER FOR CLE

## CONSUMER FINANCIAL PROTECTION AFTER DODD-FRANK: THE NEW LEGISLATION'S ENHANCED ENFORCEMENT STRUCTURE

Thursday, March 8, 2012 / 9:00 a.m. to 12:30 p.m.

The relation between federal and state law, and related preemption rules, form the underlying architecture of our consumer financial protection regime. Dodd-Frank not only created the Consumer Financial Protection Bureau, it also shifted the balance between federal and state law to create an enhanced enforcement framework. Panels of experts will explore the basis for federal preemption, application of the new rules to depository institutions, and the enforcement roles of the CFPB and the states.

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## AGENDA

9:00-9:50

### Introduction and Background

- The Dual Banking System
- Non-banks and "Shadow Banking"
- History and theoretical basis for federal preemption
- Expansion of preemption in response to prior financial crises

9:50-10:45

### What Went Wrong with the Preemption Regulatory Framework?

- Regulatory "capture" at the federal banking agencies
- OCC and OTS preemption rules
- Pre-crisis effects of preemption on state enforcement efforts and consumer financial protection

10:45-11:00

### Break

11:00-12:30

### The Post-Dodd-Frank Roadmap for Preemption and Consumer Financial Protection

- The roles of the CFPB and the states
- Definition of "Federal consumer financial laws"
- Authority of the states to adopt laws providing additional protection
- Supplemental lawmaking role of the states -- section 1041(c)
- Authority of state attorneys general to enforce Title X or the CFPB's regulations
- Cooperation, competition and innovation by the CFPB and state officials
- Avoiding regulatory capture
- The new preemption standards for federally chartered depository institutions
- Amendments to the National Bank Act and Home Owners' Loan Act
- Court review of preemption determinations under *Skidmore* deference standard
- Treatment of subsidiaries, affiliates and agents of national banks and federal thrifts
- Dodd-Frank statutory limitations on the OCC's authority to preempt state consumer financial laws and the degree to which the OCC's new preemption rules conform to those limitations
- Coordination by the CFPB and the states on investigations, enforcement actions and settlements

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