INTELLECTUAL PROPERTY: HOUSE JUDICIARY EXAMINES “PATENT TROLL” LEGISLATION

The House Judiciary Committee on October 29, 2013 held a hearing on H.R. 3309, the Innovation Act. The legislation is aimed at reforming the patent system to make it easier to invalidate low quality patents, to protect companies from frivolous lawsuits filed by so-called “patent trolls.” Patent troll entities often file lawsuits against companies to extract settlement payments for what are often common business methods. Recently, these entities have begun demanding payments from a much broader range of companies, including retailers, real estate agents, and others.

Specific provisions in H.R. 3309 to address the problem include:
- enhancing pleading requirements;
- shifting liability for attorney’s fees to the losing party;
- reining in discovery; and
- providing some alternatives for those users sued for patent infringement who are unable to effectively defend themselves.

Witnesses at the hearing were: Mr. Krish Gupta, Senior Vice President and Deputy General Counsel, EMC Corporation; Mr. Kevin Kramer, Vice President and Deputy General Counsel for Intellectual Property, Yahoo! Inc.; Mr. David J. Kappos, Former Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; and Mr. Robert A. Armitage, Former General Counsel, Eli Lilly & Co.

All of the witnesses were supportive of the efforts to reform current law to rein in patent trolls. Among other provisions it supported, Mr. Gupta of EMC testified that of particular importance is making the payment of attorney’s fees by the losing party the default rule, stating that the provision “embodies the simplest way to discourage the filing of frivolous and abusive suits by imposing financial accountability in the patent system.” Mr. Kramer of Yahoo! also strongly supported the fee-shifting provision, calling it “the most beneficial thing Congress can do to bring balance to the system.”

Mr. Kappos, however, while noting the improvements proposed in H.R. 3309, cautioned that “light touch adjustments” are needed, and a “careful and deliberative process is needed to avoid major negative unintended and unanticipated consequences of over-correction – consequences more harmful than the problems the legislation is intended to address.”
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The witnesses also generally supported the provisions in H.R. 3309 to establish limits on discovery, require heightened pleading, provide more transparency regarding the real-parties-in-interest and join those parties to any litigation, and limit discovery pending claim construction.

For the testimony of the witnesses, go to:
http://judiciary.house.gov/hearings/113th/hear_10292013.html

R&D: HOUSE SCIENCE TAKES UP DOE SCIENCE MISSION

On October 30, 2013, the House Science, Space and Technology Subcommittee on Energy held a hearing entitled "Providing the Tools for Scientific Discovery and Basic Energy Research: The Department of Energy Science Mission," to examine draft legislation titled "Enabling Innovation for Science, Technology, and Energy in America Act" or the EINSTEIN America Act. "The EINSTEIN America Act prioritizes science activities within the Department and provides for an almost two percent increase above current spending levels and a one percent increase above the House passed appropriations level for Fiscal Year 2014," noted Chairman Lamar Smith (TX), "The discussion draft requires the Department of Energy to coordinate with other Federal Agencies to streamline workplace regulations. This reduces burdensome red tape and provides the National Labs flexibility to more effectively and efficiently execute the Department's mission." Witnesses were asked to discuss the role of the Department of Energy in funding basic research at universities, administering world-class National Laboratories, and making unique National Scientific User Facilities available for groundbreaking research. They were also asked to comment on the draft legislation in light of its intended goal of supporting a vibrant scientific ecosystem which fosters innovation and discovery while being mindful of a constrained budget.

Witnesses included: Dr. Horst Simon, Deputy Director, Lawrence Berkeley National Lab; Dr. John Hemminger, Chairman, Basic Energy Sciences Advisory Committee, Department of Energy; Dr. Pat Dehmer, Deputy Director for Science Programs, Office of Science, Department of Energy.

On behalf of the DOE’s Office of Science, Dr. Dehmer discussed its role in providing tools for scientific discovery and basic energy research. As the federal agency funding the largest fraction of basic research in the physical sciences, he said, DOE has "led the world in high performance computing and simulation; we have helped drive the transition from observing natural phenomena to the science of control and directed design at the nanoscale; the Office of Science has played an important role in initiating the modern biotechnology revolution through the initiation of the Human Genome Project; and the Office of Science has built and operated the large-scale scientific facilities that collectively form a major pillar of the current U.S. scientific enterprise." The Office of Science is also responsible for 10 of DOE's 17 national laboratories, including the Lawrence Berkeley National Laboratory (LBNL). National Laboratories play a critical role in the "innovation ecosystem" whereby research and development can be applied to industrial and other entrepreneurial endeavors.

Outlining the groundbreaking work of the LBNL as well as other national laboratories, Dr. Simon described what national laboratories are, why they are important and how they serve a
fundamental and foundational role in the nation's innovation ecosystem. He emphasized how national labs are unique in their ability to form large, multi-disciplinary teams of scientists to achieve major scientific goals with societal benefits, build and maintain cutting edge facilities with the tools needed to conduct research, and serve as unparalleled on-the-job training for undergraduates, graduates, and post doctoral students, as well as faculty and other scientists. He highlighted the symbiotic relationship between LBNL and the University of California as well as local industry to provide tremendous learning opportunities for students inside a veritable petri dish of discovery and innovation. "From unraveling the mysteries of the universe – space, time, mass and energy – and leading the world in the development of high performance computing, to creating new materials and biological processes that advance transformational energy solutions and aid in environmental cleanup, the national laboratories and the Office of Science are an irreplaceable part of the nation's innovation ecosystem," he testified.

As a professor at the University of California, Irvine, as well as chair of the Basic Energy Sciences Advisory Committee, Dr. Hemminger discussed what he termed the "innovation deficit" caused, he argued, by the cuts to federal investment in research and higher education at a time when other countries, having learned from the unprecedented success of U.S. technological innovation since World War II, have dramatically increased their spending on such projects. He noted several recommendations on the draft legislation, including ones that would allow for long term planning of projects based on long term authorization, and relieve potentially burdensome reporting requirements, among others. This ensures, he argued, that American taxpayer dollars are better utilized and enables labs to do more with less.

"Fundamental science and basic research activities provide the underpinnings of America's long-term economic competitiveness and result in scientific discoveries which change the way we look at the natural world. This scientific research has led to 113 Nobel Prize winners affiliated with DOE or its predecessor agencies. We must continue to pursue this standard of international excellence," concluded Subcommittee Chairman, Rep. Cynthia Lummis (WY).

For more information, please visit:
http://science.house.gov/hearing/subcommittee-energy-hearing-providing-tools-scientific-discovery-and-basic-energy-research

**RESOURCES: HOUSE RESOURCES SUBCOMMITTEE EXAMINES WATER STORAGE**

On October 29, 2013 the House Natural Resources Subcommittee on Water and Power held a hearing entitled "A Roadmap for Increasing our Water and Hydropower Supplies: The Need for New or Expanded Multi-Purpose Surface Storage Facilities." Witnesses testified about the limitations of a "conservation only" approach to addressing the growing water shortage crisis in the West; they emphasized that improving the nation's aging water infrastructure is the key to increasing the supply of vital water resources for urban, residential, municipal, industrial agriculture, and environmental purposes. Chairman Tom McClintock (Thousand Oaks) pointed out many of the dire consequences of water shortages in California and elsewhere, and cited the fact that "California's water system was built for 22 million people, but is now struggling to serve 38 million people. The last major federal, multi-purpose water project in California was the New Melones Dam in 1979." Witnesses outlined the myriad benefits of increased water storage facilities, including arguments that infrastructure development could actually be in consonance with, rather than in direct opposition to, environmental protection efforts. They also highlighted the challenges in pursuing these projects due, they argued, to cost-prohibitive federal regulations.

Witnesses included: Robert Shibatani, CEO & Principal Hydrologist, The Shibatani Group, Inc., Sacramento, California; Tom Barcellos, Dairy Farmer, Porterville, California; Derek Sandison,
Director, Office of Columbia River, Washington State Department of Ecology, Yakima, Washington; and Laura S. Ziemer, Senior Counsel and Water Policy Advisor, Trout Unlimited, Bozeman, Montana.

As a hydrologist specializing in new water storage and water supply development, Mr. Shibatani extolled the benefits of high elevation storage, particularly those of smaller on-stream dams and reservoir sites above existing or terminal reservoirs. Using the California Central Valley as an example, he testified to the advantages of high elevation storage relative to their historic counterparts. Among those benefits are: minimal population displacement, better flood protection, additional operational flexibility for water resource managers, generation of a natural and highly reliable energy source, improved control for environmental protections such as increased habitat flows and fish attraction flows, and mitigation of a major stressor that has contributed to the threatened state of certain endangered species. In California, about 60% of annual precipitation is either unavailable or lost for beneficial use. While much of that loss is unavoidable, a significant amount is being lost as outflow to the Pacific; high elevation storage would capture more of this water before it is lost. This, he argues, would also help close the gap between flood control and water supply during droughts.

Offering a strong agricultural perspective, Mr. Barcellos explained the challenges of farming and ranching in California, especially in the Central Valley, when faced with the uncertainty of declining water allocation. "Severe water shortages caused by the combination of federal fisheries restrictions and drought on water supplies to the western side of the Valley forced hundreds of thousands of farmland [acres] to be fallowed in 2009. University of California experts estimate that the combined effects of these restrictions on the water supply have cost Central Valley agriculture nearly $1 billion in lost income and more than 20,000 lost jobs," he testified. A project by the Family Farm Alliance as well as a report by the Bureau of Reclamation have shown that plans for environmentally-safe and cost-effective projects exist, but face significant implementation hurdles. Citing a report developed by the Center for Irrigation Technology (CIT) at Fresno State, "Agricultural Water Use in California: A 2011 Update," he posits that the only large potential for moving water from agriculture to other uses will come from fallowing large swaths of farmland. "Western irrigated agriculture is a strategic national resource, and the role of the federal government in the 21st Century should be to protect and enhance that resource. Federal agencies have a role to play in infrastructure development, but interference with or duplication of state authorities must be minimized."

For more information, please visit http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=355991

**TRADE: SENATE FINANCE HOLDS HEARING ON TRADE AGREEMENT**

The Senate Finance Committee on October 30, 2013 held a hearing entitled: “The Transatlantic Trade and Investment Partnership: Achieving the Potential. Witnesses were: Michael L. Ducker, Executive Vice President and Chief Operating Officer, FedEx, Memphis, TN; Ryan McCormick, President, Montana Grain Growers Association, Great Falls, MT; Dave Ricks, Senior Vice President, Eli Lilly and Company and President, Lilly Bio-Medicines, Indianapolis, IN; and William Roenigk, Senior Vice President, National Chicken Council, Washington, DC.

In his opening statement, Chairman Max Baucus (MT) lauded the TTIP as a great opportunity to boost the economy and create jobs. He noted that the U.S. and European Union countries trade $2.7 billion in goods and services daily, and have invested nearly $4 trillion in each other’s economies. Transatlantic trade supports 13 million U.S. jobs already, he noted, but the new agreement could boost exports to the EU by a third and add more than one hundred billion dollars annually to U.S. GDP, supporting hundreds of thousands of new high-paying jobs in the U.S. in the United States.
Ranking Member Sen. Orrin Hatch (UT) also supported the TTIP negotiations. He cited a letter that he and the Chairman sent to the Administration laying out the following principles they wanted to see contained in the final agreement. They are: strong market access for U.S. agricultural products, including the elimination of unjustified sanitary and phyto-sanitary standards; a comprehensive agreement that does not exclude any product or sector from the negotiations; and an agreement that reflects the highest standards of intellectual property rights and does not jeopardize the ability to reach high levels of intellectual property protection in other negotiations or in other markets. Senator Hatch went on to state that “For me to support a final agreement, it is absolutely essential that TTIP reflect the highest standard of intellectual property rights protection of any prior agreement.” He also stressed that there are several barriers to digital trade that need to be addressed in the final agreement.

All of the witnesses supported the TTIP agreement, although Mr. Roenigk of the National Chicken Council questioned whether it would result in changing the EU’s intransigence to allowing chicken imports.

Mr. Ricks testified that “Lilly and the biopharmaceutical industry believe that TTIP represents a unique opportunity to promote the highest standards of intellectual property protection, market access and regulation in particular for the IP driven sectors in which the EU and U.S. enjoy a global advantage.” However, he also laid out several provisions that should be included in the final agreement, including:
- Eliminating virtually all consumer, industrial, and agricultural tariffs upon entry into force, and for those that remain, specify phase-out periods that reflect scheduled tariff elimination under other U.S. and EU trade agreements.
- In the case of services, liberalize all modes of delivery and apply them to all sectors, including financial services.
- Facilitate the flow of goods in the supply chain by adopting common customs electronic data filing systems, minimizing inefficiencies in our security regimes and modernizing our customs and other government agencies’ border clearance processes.
- Include disciplines on technical barriers to trade (TBTs) to ensure the least trade restrictive approaches to the regulation of goods.

For further information, go to: http://www.finance.senate.gov/hearings/hearing/?id=07eb1774-5056-a032-520a-6c95d7852780

**TECHNOLOGY: SENATE SUBCOMMITTEE HOLDS HEARING ON BROADBAND**

The Senate Committee on Commerce, Science, and Transportation’s Subcommittee on Communications, Technology, and the Internet held a hearing on October 29, 2013, entitled, “Broadband Adoption: The Next Mile.” The Subcommittee examined how to increase broadband adoption in the United States, explored challenges to broadband adoption among various demographic groups and regions, and strategies to overcome those barriers. While 70% of American households have access to high speed internet in their homes, older adults, people with low levels of educational attainment, and low-income households have disproportionally low rates of broadband internet adoption. Of the 30% of households that lack broadband internet, about half are people who do not use the internet at all and are typically unfamiliar with computer usage, while the other half are people who do use the internet outside of their home but typically face financial hurdles in maintaining internet access at home. Growing the percentage of households with sufficient internet access in their homes is key to equalizing access to healthcare, education, and vocational opportunities, Subcommittee members argued.
Witnesses were: Ms. Sunne Wright McPeak, President and CEO, California Emerging Technology Fund; Mr. Aaron Smith, Senior Researcher, Pew Research Center, Pew Internet & American Life Project, Mr. David L. Cohen, Executive Vice President, Comcast Corporation, Ms. Bernadine Joselyn, Director of Public Policy and Engagement, Blandin Foundation; and The Honorable John Sununu, Honorary Co-Chair, Broadband for America.

In California, nine million people do not have regular access to broadband internet. Those who live in very rural areas, on tribal lands, or in poor urban neighborhoods, and those with disabilities are even more disadvantaged without personal computing devices and internet access. As the President and CEO of the California Emerging Technology Fund (CETF), Ms. Wright McPeak argued that closing this “digital divide” is an imperative for economic prosperity, quality of life, and family self-sufficiency. She outlined the evidence that supports specific strategies for deploying ubiquitous use of broadband internet based on the successes of CETF since 2007 and suggested a variety of ways that the federal government can continue to play a role in leading broadband adoption.

CETF was established by the California Public Utilities Commission in 2005, and the organization became operational in 2007. Funded in part by AT&T and Verizon, the nonprofit organization works closely with state and local officials as well as community-based organizations to implement a strategic plan to increase the number of Californians who have access to the internet, are digitally literate, and recognize the value of adopting broadband in their homes. With arguably some of the most challenging terrain in the nation for broadband deployment and the largest populations of disadvantaged residents as priority communities for broadband adoption, California has already made significant progress in increasing broadband adoption based on statewide efforts. In 2008, California's statewide adoption rate for Internet use was 70%, with 55% having broadband use at home—the same as the national average. Today, 86% of Californians use the Internet and 75% access the Internet at home with a high speed connection. This includes significant increases in broadband adoption among the priority underserved consumer populations: 20% more low-income households, 18% more Latino households, and 20% more people with disabilities. However, despite this progress, that still leaves 47% of low-income households, 48% of Latino households, and 44% of people with disabilities who have not yet adopted broadband.

“California’s progress in closing the Digital Divide has been significantly advanced by the leadership of the California Congressional Delegation and strategic investments by the federal government,” Ms. Wright McPeak stated. Funding from, and partnerships with, the Federal Communications Commission and the National Telecommunications and Information Agency have yielded results that exceeded program goals. She detailed the results of programs like Access to Careers in Technology and Broadband Awareness and Adoption, and urged Congress to strengthen these effective programs by setting national goals and performance metrics for broadband deployment and adoption, and to integrate broadband and information technologies into all federal policies and programs. She posited that minimal public funding could be leveraged in significant ways to promote public-private partnerships. “There is no substitute for the innovation and efficiency of the private sector when engaged as sincere partners motivated to achieve explicit goals,” yielding a higher return on investment for taxpayers and ratepayers. Through these methods, California can continue to foster state-federal relations that serve as a national model, she testified.

For more information, please visit http://www.commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=6e1aa0a5-f079-477c-b493-e0a58cef1b19&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a
HOUSING: SENATE BANKING CONSIDERS HOUSING FINANCE REFORM

In an ongoing series of hearings about housing finance reform, the Senate Banking, Housing, and Urban Affairs Committee convened on October 29 and 31, 2013 for hearings entitled “Essentials of a Functioning Housing Finance System for Consumers” and “Essential Elements of a Government Guarantee for Mortgage-Backed Securities.” The hearings sought input on the bipartisan legislation “Housing Finance Reform and Taxpayer Protection Act of 2013.”

The witnesses for the “Consumers” hearing were: Mr. Eric Stein, Senior Vice President, Center for Responsible Lending; Mr. Rohit Gupta, President, Genworth Financial, USMI; Mr. Gary Thomas, President, National Association of Realtors; Mr. Laurence E. Platt, Partner, K & L Gates LLP; and Ms. Alys Cohen, Staff Attorney, National Consumer Law Center; and Mr. Lautaro Diaz, Vice President, Housing and Community Development, National Council of La Raza.

“Access to credit continues to be tight as lenders remain leery of taking on risk,” remarks Mr. Thomas of the National Association of Realtors as he outlined numerous obstacles that he said are inhibiting lending, “There is already turbulence in the regulatory environment for mortgage lending. In January 2014, many changes stemming from the Dodd-Frank Act will go into effect, including the “ability-to-repay” requirements…NAR is also very concerned with the impact that growing student loan debt will have on the ability of consumers to access mortgage credit, particularly impacting first time homebuyers.” He advocated for a reform of the secondary mortgage market that ensures there is mortgage capital in all markets at all times and under all economic conditions, through an explicit government guarantee that safeguards the availability of long-term, fixed-rate mortgage products such as the 30 year fixed-rate mortgage.

Witnesses focused on the proposed loss mitigation mechanisms in the bill that are aimed at protecting homeowners facing foreclosure and the investors in those loans. Ms. Cohen points out that previously, mortgage servicers had more of an incentive to allow for foreclosure than an imperative to pursue loss mitigation; she argued that housing reform should seek to align the interests of the mortgage servicer and the homeowner.


Witnesses for the “Mortgage-Backed Securities” hearing were: Mr. Joseph Tracy, Executive Vice President and Senior Advisor to the President, Federal Reserve Bank of New York; The Honorable Phillip L. Swagel, Professor of International Economic Policy, University of Maryland School of Public Policy; Mr. Michael S. Canter, Director of Securitized Assets, Alliance Bernstein on behalf of the Securities Industry and Financial Markets Association; and The Honorable David H. Stevens, President and CEO, Mortgage Bankers Association.

Prof. Swagel testified on the importance of taking a careful tact to reforming the status quo of mortgage-backed securities. He stated, “It is extraordinary for any private financial activity, asset, or firm to have a government guarantee. Any such guarantee should be strictly limited…I see housing finance as an instance in which having an explicit government guarantee is a better policy than the alternative of not having one…It would be better to formalize the government guarantee and have it priced so that taxpayers are compensated for providing a backstop in housing finance rather than allowing the government guarantee to remain implicit and unpriced…A housing finance reform in which the government ostensibly does not guarantee housing would inadvertently recreate the implicit guarantee that was one of the worst aspects of the previous failed system. The implicit guarantee made it possible for private shareholders and management to receive the upside when Fannie Mae and
California Capitol Hill Bulletin, October 31, 2013

Freddie Mac did well, but left taxpayers with the bailout when the firms faced collapse in 2008.” Other witnesses also testified to the need for some form of government guarantee for mortgage-backed securities, and offered various proposals for ensuring that these guarantees serve the purpose of maintaining a healthy housing market without placing undue risk on taxpayers.

For more detailed explanations of these proposals, please visit: http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=bd23728b-0951-4af0-b803-96449e2aa354

EDUCATION: SENATE HELP CONTINUES HEARINGS ON HIGHER EDUCATION

In the second hearing in a series dedicated to examining critical issues in postsecondary education, the Senate Health, Education, Labor & Pensions Committee convened on October 31, 2013 to hear testimony from institutional and state system leaders regarding innovations in higher education that are not only focused on college affordability, but on those that are increasing student success in attaining a quality degree. While expanding access to college has been an important issue for policy makers, a growing consensus of educators are seeing the concurrent need to measure student success rates once students are enrolled. Witnesses urged Congress to ensure that the reauthorization of the Higher Education Act includes provisions that not only remove barriers but also incentivize innovative strategies that support student success.

Witnesses included: Mr. Richard Kazis, Senior Vice President, Jobs for the Future, Boston, MA; Dr. William E. Kirwan, Chancellor & Chief Executive Officer, University System of Maryland, Adelphi, MD; Dr. R. Scott Ralls, President, North Carolina Community College System, Raleigh, NC; Mr. Timothy L. Hall, President, Austin Peay State University, Clarksville, TN; and Dr. Paul J. LeBlanc, President, Southern New Hampshire University, Manchester, NH.

Representing a variety of institution models, including a state university system, a state community college system, a private nonprofit university, and a large public university, the witnesses each gave compelling accounts of the work being done at their respective institutions to ensure student success. They offered specific insights about the challenges faced by their institutions in implementing programs aimed at meeting the needs of a diverse student body, especially those who are underprepared for college level courses. Mr. Kazis pointed to the need to reinstate year round Pell grants, so that students can take summer school courses, and Ability to Benefit provisions that allow for students to co-enroll in adult education and postsecondary courses. Additionally, making financial aid available for modular, condensed, or competency-based courses designed to accelerate remediation can also help students be prepared for college courses in a timely manner – a key to ensuring that students remain motivated and enrolled, he said.

Other proposals for improving the Higher Education Act included ones that redefined metrics used to determine student success levels at various institutions. Dr. Ralls pointed out that some students who either transferred to a four-year university or completed industry certifications and found employment before completing a two year degree at the community college were treated as "non completers." Expanding the definition of student success, he argued, could lead to a more meaningful analysis of how academic institutions are meeting not only the needs of students, but subsequently are meeting the needs of the modern economy.

For more details about the innovative strategies being implemented at these institutions or for more information about the witnesses proposals in regards to the Higher Education Act, please visit: http://www.help.senate.gov/hearings/hearing/?id=2c4b91c0-5056-a032-52a0-dba8f1e26e47
ECONOMY: SENATE BANKING ASSESSES JOBS ACT

The Senate Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment convened on October 30, 2013 to conduct a hearing on "The JOBS Act at a Year and a Half: Assessing Progress and Unmet Opportunities." The Jumpstarting Our Business Startups Act requires the SEC to write rules and issue studies on capital formation, disclosure and registration requirements. The goal of the law is to allow for the cost-effective access to capital for companies of all sizes which plays a critical role in our national economy, while alleviating the burden of regulations on companies seeking access to capital.

The witness on Panel I was: Mr. Keith Higgins, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission. The witnesses on Panel II were: Mr. Alan Lewis, Director of Special Projects, Natural Grocers by Vitamin Cottage, Incorporated; Mr. Robert Kaplan, Jr., Managing Partner, Kaplan Voekler Cunningham & Frank PLC; Mr. Rick Fleming, Deputy General Counsel, North American Securities Administrators Association, Incorporated; and Mr. Sherwood Neiss, Principal, Crowdfund Capital Advisors, LLC.

On behalf of the Securities and Exchange Commission (SEC), the agency charged with implementing the JOBS Act as enacted into law last year, Mr. Higgins provided the Subcommittee with an outline of the changes in federal securities law. These changes included: changing the initial public offering process for a new category of issuer, called an "emerging growth company"; requiring the Commission to modify the prohibition against general solicitation and general advertising in Rule 506 of Regulation D and Rule 144A under the Securities Act of 1933 (Securities Act); requiring the Commission to implement exemptions under the Securities Act for crowdfunding offerings and for unregistered public offerings of up to $50 million; and increasing the number of holders of record that triggers public reporting under Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act) and increasing the number of holders that permits deregistration and suspension of reporting under the Exchange Act for banks and bank holding companies. The legislation required a host of new rulemaking, and the agency is still largely in the process of drafting those rules.

Securities regulation is a complementary regime of both state and federal securities laws. As such, Mr. Fleming spoke on behalf of the North American Securities Administrators Association, an organization dedicated to working closely with the Securities and Exchange Commission (SEC) to affect greater uniformity in Federal-State securities matters. NASAA has been working to update applicable statements of policy and coordinate a new multi-state review program for "Regulation A+ offerings" as created under the JOBS Act, as well as other provisions of the law, according to Mr. Fleming.

Title III of the JOBS Act provided a new exemption from Section 5 of the Securities Act for offers and sales of securities through crowdfunding, an evolving method to raise capital using the Internet, typically from relatively small, individual contributions from a large number of people. Crowdfunding using donation-based or reward-based models has been used by small and start-up businesses to raise capital to start a business or develop a product and by individuals or entities seeking financial contributions to support artistic and charitable projects or causes. Silicon Valley, for example, may become a hotbed for this type of financing as crowdfunding is particularly suited to entrepreneurial endeavors such as small tech start ups. As a proponent of the Title III provision in the JOBS Act, Mr. Neiss cited a finding from the Program for Innovation in Entrepreneurial and Social Finance, a crowdfunding think tank at the University of California, Berkeley, that estimates that within its first few years, the crowdfunding investor market could be as high as $4 billion. With the global financial crisis the funding void for small businesses and startups got bigger; crowdfunding may serve as a unique alternative to traditional financing models that historically have shut out women and minorities, left real estate values in certain communities depressed, and have failed to dynamically serve high growth/technology businesses. He outlined the positive and negative aspects of the various proposed rules under Title III that would regulate crowdfunding, in line with keeping the spirit of the law intact.
A brief on the status of crowdfunding in California can be found here:
http://www.dbo.ca.gov/Consumers/Corner/pdf/Crowdfunding_0313_Update-FINAL.pdf

A white paper on crowdfunding published by the University of California, Berkeley Program for Innovation in Entrepreneurial and Social Finance can be found here:

For the full testimony of the witnesses, please visit:
http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=e2fe9f9a-0e5e-4b44-a566-4a8cef26c06e