

**In This Issue**[Latest News and Alerts](#)[Upcoming Events](#)[Honors](#)**Latest News and Alerts**

Venable attorneys produce periodic alerts and newsletters covering a variety of topics and practice areas. For your convenience, we have assembled below a collection of the latest alerts and newsletters from September 2013. To view the full text of an article, please click on the title of the piece.

**[NIST Holds Fourth Workshop on Cybersecurity Framework](#)**

On September 11-13, 2013, the National Institute of Standards and Technology held its fourth and – for now – final workshop on the preliminary Cybersecurity Framework. Discussion largely focused on how to promote executive engagement on issues relating to cybersecurity, implementation of the Framework, and what participation in the Department of Homeland Security voluntary program would look like.

**Authors:** [Michael J. Baader](#), [Jamie Barnett](#), [Rear Admiral \(Ret.\), Dismas Locaria](#), [Anthony J. Rosso](#), [Brian M. Zimmet](#), [Keir X. Bancroft](#), and [Jason R. Wool](#)

**[NIST Releases Draft Preliminary Cybersecurity Framework in Advance of Dallas Workshop](#)**

On August 28, 2013, the NIST released the first publically available draft of the preliminary Cybersecurity Framework, which is being developed at the direction of President Obama's February Executive Order on critical infrastructure cybersecurity.

**Authors:** [Michael J. Baader](#), [Jamie Barnett](#), [Rear Admiral \(Ret.\), Dismas Locaria](#), [Anthony J. Rosso](#), [Brian M. Zimmet](#), [Keir X. Bancroft](#), and [Jason R. Wool](#)

**[SEC Issues Risk Alert on Short Selling](#)**

The SEC's Office of Compliance Inspections and Examinations issued a risk alert related to Rule 105 of Regulation M (which governs short selling prior to the pricing of certain offerings) on the same day they announced enforcement actions against 23 firms for violations of the rule. In the risk alert, the staffs of OCIE and other SEC Divisions provide guidance to the securities industry on compliance with Rule 105 based on their observations from related SEC enforcement actions and examinations conducted through OCIE's National Exam Program.

**Authors:** [Michael J. Rivera](#) and [Parker B. Morrill](#)

**[SEC Proposes Rule Requiring Public Companies to Disclose Pay Ratios](#)**

On September 18, 2013, the SEC proposed rules requiring public companies to disclose the median of the annual total compensation of all employees, the annual total compensation of the CEO, and the ratio of the median to the annual total compensation of the CEO.

**Authors:** [Eric R. Smith](#), [Carmen M. Fonda](#), and [Parker B. Morrill](#)

**[Allowing User-Generated Content on Social Media: Steps for Minimizing Nonprofits' Legal Risks](#)**

Allowance of user-generated content on social media pages controlled or operated by a nonprofit can raise a number of potential legal risks and liability issues, which are due in large part to the fact that the nonprofit may not have complete control over what a third party posts or displays.

**Authors:** [Armand J. \(A.J.\) Zottola](#) and [Robert F. Parr](#)

**[Banking Committee Begins Housing Finance Reform](#)**

The U.S. Senate Committee on Banking, Housing and Urban Affairs began its consideration of housing finance reform with a hearing titled "Essential Elements of Housing Finance Reform." Chairman Tim Johnson (D-SD) indicated in that the Committee will be holding a series of hearings on housing finance reform this Fall and hoped that it would be able to reach agreement on a bill by the end of the year.

**Authors:** [Andrew Olmem](#) and [Hillary S. Profita](#)

**[Clearance: How the SCORE Act and Other Initiatives to Reform the Security Clearance Process May Affect Government Contractors](#)**

In the wake of recent leaks of top secret information and attacks on military installations, Congress and members of the Obama Administration are taking a closer look at the security clearance process. Notably, a bipartisan group of Senators have proposed the SCORE Act, which aims to increase transparency in the security clearance process and revamp applicable policies and guidelines within the government.

**Authors:** [William L. Walsh, Jr.](#), [Keir X. Bancroft](#), and [Christina K. Kube](#)

### **Federal Grant & Contract News for Nonprofits - September 2013**

Unfortunately, as the 2013 government fiscal year comes to a close, we again face severe federal financial uncertainty. As such, organizations that rely on federal funding and federal support must plan for another, perhaps prolonged, government shutdown. These FAQs provide guidance on how agencies should handle matters relating to existing and anticipated contracts and grants, including awards, oversight, payment, etc.

**Authors:** [Dismas Locaria](#), [Melanie Jones Totman](#), [Elizabeth A. Buehler](#), and [Jeffrey S. Tenenbaum](#)

### **Foreign NVOCCs Must Renew Registration with FMC by October 17**

The Federal Maritime Commission issued a new rule earlier this year that, effective July 19, registered, foreign-based NVOCCs may take advantage of Negotiated Rate Arrangements, in lieu of published rates in their tariffs.

**Authors:** [Ashley W. Craig](#), [Elizabeth K. Lowe](#), and [Amanda C. Blunt](#)

### **Going Green: California Adopts Groundbreaking Safer Consumer Products Regulations**

On August 28, 2013, California's Office of Administrative Law approved the Department of Toxic Substances Control's landmark Safer Consumer Products Regulations. These bold regulations are an integral part of the state's Green Chemistry Initiative to accelerate the use of safer products through a science-based process that evaluates chemicals of concern and identifies safer alternatives.

**Authors:** [Todd A. Harrison](#), [Claudia A. Lewis](#), [Gregory J. Sater](#), and [Erin E. Seder](#)

### **The Impact of IRS Recognition of All Legal Same-Sex Marriages on Employee Benefit Plans**

On August 29, 2013, the IRS issued Revenue Ruling 2013-17, which answers many questions raised by the Supreme Court's ruling in *United States v. Windsor* earlier this summer. In *Windsor*, the Court held that Section 3 of the Defense of Marriage Act was unconstitutional because it denied same-sex couples equal protection under the law.

**Authors:** [Harry I. Atlas](#), [Thora A. Johnson](#), [Lisa A. Tavares](#), and [Jennifer Spiegel Berman](#)

### **IP Buzz - September 2013**

Featuring articles on the U.S. Chapter on Global Guide to Free Speech and Fair Use in Trademarks; the Federal Circuit reiterating certain standards for determining invalidity of design patents; and the legal parameters of "puffery."

**Issue Editors:** [Martin L. Saad](#), [Meaghan Hemmings Kent](#), and [Elissa Brockbank Reese](#)

### **License Exception Strategic Trade Authorization: Understanding How It May Work for You**

As part of the ongoing Export Control Reform (ECR), certain "600 Series" items will now be eligible for export, reexport, and in-country transfer without a license under the revised License Exception Strategic Trade Authorization of the Export Administration Regulations.

**Authors:** [Lindsay B. Meyer](#), [Ashley W. Craig](#), [Carrie A. Kroll](#), [Rachel Miras Fiorill](#), and [Matthew R. Rabinowitz](#)

### **Mary Jo White Throws Down the Gauntlet: Vows to Wield the SEC's Full Enforcement Arsenal Against Corporate and Individual Wrongdoers**

During a speech delivered to the Council of Institutional Investors last week in Chicago, SEC Chairwoman Mary Jo White stated that the SEC would use its enforcement tools aggressively and creatively to ensure that its settlements "have teeth" and send a strong message of deterrence.

**Authors:** [Michael J. Rivera](#) and [Hillary S. Profita](#)

### **No Bar is Off-Limits: SEC Enforces 2004 Order Barring Accountant**

In a rare and aggressive move, the SEC recently sought a court order enforcing an almost decade-old suspension of an accountant and forcing the accountant to disgorge over half a million dollars of compensation earned for providing prohibited services (plus pre-judgment interest).

**Authors:** [Michael J. Rivera](#) and [Hillary S. Profita](#)

### **October 15th Export Control Reform Changes Are Around the Corner: Take Time Now to Understand the Impact on Your Existing Licenses & Authorizations**

The Final Rules transfer jurisdiction of many less-sensitive military items, which are currently controlled on the U.S. Munitions List and governed by the State Department's International Traffic in Arms

Regulations to the Commerce Control List that are governed by the Commerce Department's Export Administration Regulations.

**Authors:** [Lindsay B. Meyer](#), [Ashley W. Craig](#), [Rachel Miras Fiorill](#), [Carrie A. Kroll](#), and [Amanda C. Blunt](#)

### **[State Department Publishes Long-Awaited Interim Final Rule Amending ITAR Brokering Provisions](#)**

On August 26, 2013, the U.S. State Department's Directorate of Defense Trade Controls published an Interim Final Rule that makes significant changes to the current definitions of "broker" and "brokering activities" in Part 129 of the International Traffic in Arms Regulations.

**Authors:** [Lindsay B. Meyer](#), [Ashley W. Craig](#), [Rachel Miras Fiorill](#), [Carrie A. Kroll](#), and [Matthew R. Rabinowitz](#)

### **Advertising News & Analysis**

- **[September 5, 2013 Edition](#)**  
Featuring articles on "all natural" claims, new rules for running prize promotions on Facebook, and FTC settlements for deceptive advertising by automobile dealerships.
- **[September 12, 2013 Edition](#)**  
Featuring articles on using "puffery" in defense of advertising claims, the strong appeal of "Made in America" claims, and review site Yelp suing an attorney for posting fake reviews.
- **[September 19, 2013 Edition](#)**  
Featuring articles on the FTC's take on "native advertising," unveiling the redesigned All About Advertising Law blog, and what's next for the CFPB.

### **Private Fund Update**

- **[September 9, 2013 Edition](#)**  
This update contains a summary of legislation relevant to private funds that has been introduced in the various Committees; a review of actions taken by the SEC during the August recess; links to relevant Congressional hearings taking place this week; and reports recently issued by Third Way, Privcap, Davis Polk and the PEGCC.
- **[September 16, 2013 Edition](#)**  
This update contains HFSC Chairman Hensarling's letter to SEC Chairwoman White regarding private equity fund registration; the SEC's announcement on enforcement priorities for hedge funds; the CFTC's concept release on risk controls for automated trading; last week's and this week's relevant Congressional hearings; materials released by the White House and Treasury marking the fifth anniversary of the financial crisis; and reports issued by Dallas Federal Reserve, SIFMA, and Third Way.
- **[September 23, 2013 Edition](#)**  
This update contains two noteworthy SEC enforcement actions against hedge funds; the SEC's new final rule on municipal advisors and proposed rule on pay ratio disclosures; CBO's long-term budget outlook for the U.S. (which is bleak); the Financial Stability Oversight Council's justification for designating Prudential Financial, Inc. as systemically important; summaries of relevant Congressional markups and hearings; and reports issued by Chamber of Commerce and SIFMA.
- **[September 30, 2013 Edition](#)**  
This update contains comments by ACG, PEGCC, IAA and others on the SEC's Proposed Rule on general solicitations; Chairman Gensler's update on timing for the CFTC's final margin rule; a change in policy by the CFTC's Division of Enforcement; Treasury Secretary Lew's letter to Congress stating when the government will hit the debt ceiling; summaries of relevant congressional markups and hearings; and reports issued by Redwood Capital and SIFMA.

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## **Upcoming Events**

**[Association-Sponsored Market Research Programs: Common Pitfalls, Antitrust Risks, and Opportunities](#)**

**Monday, October 7, 2013**

**12:00 p.m. - 2:00 p.m. ET**

Associations can provide a valuable member benefit by sponsoring their own market reports based on actual information provided by their members. These reports can be tailored to fit the needs of members and can provide additional information and accuracy beyond what is provided by industry consultants and publicly available data. As beneficial as this data is for association members, association leaders must be aware of the potential antitrust issues and risks associated with information exchanges, and know what practices to follow to avoid potential government or private scrutiny.

[Click here to register.](#)

### **CyberMaryland 2013**

**Wednesday, October 9, 2013**

**Mike Baader** will moderate the Track A panel, "Trends & Hot Issues in Mergers and Acquisitions," from 1:30 – 2:15 pm ET. **Dismas Locaria** will speak on the Track B panel, "Building an Effective Cyber Risk Culture: An Overview of Cybersecurity Insurance & Support Anti-Terrorism by Fostering Effective Technologies Act ('Safety Act')," from 1:30-2:15 pm ET.

[Click here to register.](#)

### **The IRS Final Report on Nonprofit Colleges and Universities: Lessons for All Tax-Exempt Organizations**

**Thursday, October 24, 2013**

**12:00 p.m. - 2:00 p.m. ET**

In October 2008, the Internal Revenue Service began work on the Nonprofit Colleges and Universities Compliance Project. Although the Project has focused specifically on colleges and universities, the key points raised in the Final Report are applicable to all tax-exempt organizations. The Director of the IRS Exempt Organizations Division stated that the issues discussed "may well be present elsewhere across the tax-exempt sector." In particular, she emphasized that "all exempt organizations need to be aware" of the Final Report's findings pertaining to unrelated business income and executive compensation.

[Click here to register.](#)

### **Opus Connect's New York Chapter October Event, "M&A Update: A Discussion of M&A Activity in 2013 and Thoughts on What Lies Ahead"**

**Thursday, October 24, 2013**

**12:00 p.m. - 2:00 p.m. ET**

Activity in the M&A marketplace was highly variable over the last twelve months. Our panel of experts will discuss their views on deal activity over the last year and share their thoughts on what to expect in the future. We will touch on a variety of topics in our discussion including deal sourcing, partnering, and the growing role of independent sponsors, financing options and terms, valuations and differentiating factors in the bid process, and fund raising.

[Click here to register.](#)

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## **Honors and Awards**

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