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## 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 October 2013. To view the full text of an article, please click on the title of the piece.

### Corporate Finance & Securities

**Banking Committee Focuses on Private-Label Mortgage-Backed Securities Market**

The U.S. Senate Committee on Banking, Housing and Urban Affairs continued its examination of housing finance reform with a hearing to examine why private capital remains on the sidelines of the housing finance market and how to balance both the private and government sectors' roles in housing finance reform.

**Authors:** Andrew Olmem and Hillary S. Profita

**SEC Requests Public Comment on OFR Study of Risks in the Asset Management Industry**

The Securities and Exchange Commission requested comments from the public regarding a recently released study by the Treasury Department's **Office of Financial Research**. The study, **Asset Management and Financial Stability**, is an analysis of the \$53 trillion U.S. asset management industry.

**Authors:** Scott E. Gluck and Andrew Olmem

**Broken Windows and Broken Gates: SEC's White Vows to Repair and Clean Up the Securities Market**

SEC Chairwoman Mary Jo White and her senior Enforcement Division colleagues continued a now familiar drumbeat of aggressive enforcement. These officials reiterated recent warnings that the SEC will seek to deter misconduct by punishing companies, as well as individuals, for major and minor violations of the securities laws that occur across all corners of the securities market.

**Authors:** Michael J. Rivera and Hillary S. Profita

**Crowdfunding: The Real Thing Is Almost Here**

Part of the 2012 JOBS Act requires the SEC to adopt rules to exempt crowdfunding offerings from registration under the securities laws. On October 23rd, the SEC issued its long-awaited rule proposal on crowdfunding, bringing it one step closer to fruition.

**Authors:** Eric R. Smith and Parker B. Morrill

### Cybersecurity

**NIST Releases Preliminary Cybersecurity Framework**

On October 22, 2013, the National Institute of Standards and Technology **released** the **preliminary Cybersecurity Framework** in accordance with section 7(e) of President Obama's February **Executive Order** on critical infrastructure cybersecurity. The release date was delayed nearly two weeks because of the recent government shutdown.

**Authors:** Michael J. Baader, Jamie Barnett, Rear Admiral (Ret.), Dismas Locaria, Anthony J. Rosso,

## Technology Transactions & Outsourcing

### **Guidelines for Negotiating Online Advertising Arrangements**

Businesses with advertising needs have long looked to advertising agencies or other outside service providers to assist with their marketing and promotion efforts. This outsourcing model has not changed with the emergence of online, social media, or mobile advertising.

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

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## Advertising Law News & Analysis

### **October 3, 2013 Edition**

Featuring articles on responsibility for affiliate marketers; the New York Attorney General cracking down on fake online reviews; and a recent NAD decision on whole grain and fiber claims.

### **October 10, 2013 Edition**

Featuring articles on the FCC's new rules for autodialers; the murky future of disclaimers in advertising; the repeal of onerous co-venture laws in Maine; and CARU guidelines for appropriate advertising during child-directed programming.

### **October 17, 2013 Edition**

Featuring articles on Venable's new San Francisco office; a \$30 million settlement with buying club marketers; how the FTC and FCC will handle backlogged work after the shutdown; the legal landmines of sweepstakes and promotions; and the CFPB takes a look at credit card marketing.

### **October 24, 2013 Edition**

Featuring articles on the National Advertising Division's interest in native advertising; applying antitrust laws to false advertising cases; and the FTC enforcing standards for Made In USA claims.

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## Banking and Financial Services Regulation

### **Financial Services Subcommittee Examines Proposals to Promote Capital Formation for Small- and Mid-Size Businesses**

On October 23, the House Financial Services Committee's Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing titled "*Legislation to Further Reduce Impediments to Capital Formation*," to examine several legislative proposals aimed at promoting investment in small- and mid-size businesses.

**Authors:** [Andrew Olmem](#) and [Joanna P. Breslow Boyd](#)

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## Government Contracts

### **New SBA Regulations Address Multiple Award Contracts**

Any contractor performing under a multiple award contract (MAC), including an IDIQ, a GSA Schedule Contract, a GWAC, or a multiple award task or delivery order contract, should be aware that small business regulation of such contracts will change drastically because of a recent rule by the Small Business Administration (SBA). These changes will go into effect on December 31, 2013.

**Authors:** [Paul A. Debolt](#), [Keir X. Bancroft](#), and [Nathaniel S. Canfield](#)

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## Intellectual Property

**IP Buzz - October 2013**

Featuring articles on the challenges streaming media services face regarding DMCA, a victory against online counterfeiting, the FTC taking a look at native advertising, and a recent decision on affiliate marketing.

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

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## International Trade

### **Closing Time: The Government Shutdown's Impact on Key Trade Agencies**

As of October 1, 2013 at 12:01 AM, the Federal Government is officially shut down. While the length of the shutdown still remains uncertain, there will certainly be impacts on trade operations for importers, exporters, transport providers, logistics companies, port authorities – essentially, all involved in facilitating global commerce.

**Authors:** [Ashley W. Craig](#), [Todd A. Harrison](#), [Claudia A. Lewis](#), [Michelle C. Jackson](#), [Carrie A. Kroll](#), [Rachel Miras Fiorill](#), [Amanda C. Blunt](#), and [Matthew R. Rabinowitz](#)

### **Rolling Out a New Export Control Regime During a Government Shutdown**

The first of the President's Export Control Reform (ECR) initiatives took effect on October 15, 2013. As noted in [Part II of this series](#), the Final Rules are the first to transfer jurisdiction of certain less-sensitive military items to the Commerce Control List under the Commerce Department's Export Administration Regulations. Because of the shutdown, it is unclear how the significant number of new licenses for "600 Series" items under the jurisdiction of the Department of Commerce Bureau of Industry and Security (BIS) will be handled.

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

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## Litigation

### **Contractual Mutual Assent in an Email World**

Lawyers and parties involved in negotiations of any stripe must be aware of recent and rapid changes to the law governing contract formation. With increasing frequency, courts are enforcing contracts created by the exchange of emails that are surprisingly informal and bear little indicia of having been signed or "subscribed."

**Author:** [Matthew T. McLaughlin](#)

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## Nonprofit

### **Removing Requirements for Commercial Co-Ventures: Maine Repeals Registration Requirements for Promotions with Charitable Appeal**

Earlier this summer, the Maine legislature passed the [Act to Streamline the Charitable Solicitations Act](#), which, among other things, repealed all requirements for commercial co-ventures to register in Maine. The Act is effective October 9, 2013.

**Authors:** [Kristalyn J. Loson](#), [Melissa Landau Steinman](#), and [Jeffrey S. Tenenbaum](#)

### **The 15 Most Common Nonprofit Bylaw Pitfalls: How to Avoid the Traps**

When nonprofits need to consult their bylaws, they are often surprised to find that the bylaws are outdated, do not conform to the law, or do not reflect the organization's current practices. Regular bylaw reviews are key to ensure both that the organization is compliant with the state of the law and that the bylaws reflect enough flexibility to accommodate the manner in which the organization's operates today.

**Authors:** [Kristalyn J. Loson](#) and [Jeffrey S. Tenenbaum](#)

### **The Evolving Schedule K to IRS Form 990: Supplemental Information on Tax-Exempt Bonds**

A 501 (c)(3) organization with outstanding tax-exempt debt generally is required to file Schedule K "Supplemental Information on Tax-Exempt Bonds" with its annual IRS Form 990. This article will provide explanations on tricky topics and suggest best practices for topics that most frequently raise questions or concerns.

**Authors:** [Walter R. Calvert](#) and [Tammara F. Langlieb](#)

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## Private Fund Update

### October 7, 2013 Edition

This update contains a Treasury Department report on how the asset management industry contributes to systemic risk; the Treasury Department's report on the macroeconomic effects of breaching the debt ceiling; a slideshow from Private Equity Growth Capital Council's annual meeting; comments by Association for Corporate Growth, Private Equity Growth Capital Council, Investment Adviser Association, and others on the SEC's Proposed Rule on general solicitations; House Ag Committee's hearing on CFTC reauthorization and a schedule of relevant hearings schedule this week; and the Davis Polk Dodd-Frank report for October.

### October 14, 2013 Edition

This update contains SBIA's efforts to modernize regulations involving Business Development Companies (BDCs); the new SEC website on market analytics ([www.sec.gov/marketstructure](http://www.sec.gov/marketstructure)), which is worth checking out; an interesting report by ISDA on credit default swap (CDS) activity from 2011-2013A; the Senate hearings on the debt ceiling and the impact on a default by the U.S. government; and a Third Way report on the Treasury bill market.

### October 21, 2013 Edition

This update contains a summary of the House Financial Services hearing on legislation to reduce impediments to capital formation; a summary of the House Small Business Committee hearing on easing regulatory burdens on small financial institutions; SBIA's 2013-2014 new officers and key Board members; and a FINRA report on conflicts of interests among broker-dealers.

### October 28, 2013 Edition

This update contains a summary of the House Financial Services hearing on legislation to reduce impediments to capital formation; the SEC's new proposed rule on crowdfunding; the sanctions SEC announced last week against three investment advisory firms for problems with their compliance programs; and reports by Treasury on the Small Business Lending Fund, the Private Equity Growth Capital Council (PEGCC), and the Investment Adviser Association (IAA).

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## Upcoming Events

### Managing Donated Funds: Donor Intent, Restricted Funds, and Gift Acceptance Policies

**Thursday, November 14, 2013**

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

Nonprofit organizations that receive contributions need to be familiar with the legal and accounting issues surrounding the acceptance of gifts. Compliance with, and deviation from, restrictions put on gifts by donors have been the subject of much recent litigation and legislation. Organizations must also be knowledgeable about the requirements and burdens surrounding the receipt of different classes of assets, including real estate and closely held stock. This program will focus on recent legal and accounting developments in these areas, as well as best practices aimed at avoiding problems.

[Click here to register.](#)

### Ten Federal Grantee Compliance Pitfalls: What Your Nonprofit Needs to Know

**Thursday, November 14, 2013**

**1:00 p.m. - 2:00 p.m. ET**

Please join Venable attorneys [Dismas \(Diz\) Locaria](#) and [Melanie Jones Totman](#) for a step-by-step discussion of ten of the most frequent compliance problems federal grantees run into, and for best practice tips based on their extensive experience advising nonprofits across the country in this area.

[Click here to register.](#)

### Opus Connect's New York Chapter November Event - Co-Investment Strategies: Opportunities, Challenges and Best Practices

**Wednesday, November 20, 2013**

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

Co-Investment can take different forms, but fundamentally it's about partnering with the right people. We'll explore several types of co-investing - including minority stakes, co-investing with GP's, and working with independent sponsors. Our panel of investors and deal sponsors will discuss the benefits and pitfalls of co-investing, best practices for promoting a healthy relationship among the parties throughout the life of a deal, and what investors and deal sponsors should look for when selecting partners for deals.

[Click here to register.](#)

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