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

## Cybersecurity

### **NIST Holds Fifth Workshop on Cybersecurity Framework; Incentives Still Lacking**

On November 14-15, 2013, the National Institute of Standards and Technology held a **workshop** at North Carolina State University on the **preliminary Cybersecurity Framework**. Venable attended the workshop in Raleigh, as well as all of the previous NIST workshops addressing the Framework.

**Authors:** Michael J. Baader, Jamie Barnett, Rear Admiral (Ret.), Dismas Locaria, Anthony J. Rosso, Brian M. Zimmet, and Jason R. Wool

## Advertising Law News & Analysis

### **November 1, 2013 Edition**

Featuring articles on *U.S. News - Best Lawyers* naming Venable Law Firm of the Year for Advertising; outdated agency agreements creating problems for online advertisers; new FTC enforcement actions regarding biodegradability claims; and the CFPB's new policy for "in-market" testing of disclosures.

### **November 7, 2013 Edition**

Featuring articles on the FDA's potential ban of trans fats; the potential pitfalls of using common claims; another decision from the NAD on native advertising; the importance of clarity in disclosures; and the recent court ruling that held an internet platform liable for counterfeit sales.

### **November 14, 2013 Edition**

Featuring articles on meaty issues in calorie-free food ads; requirements for "made in" claims; and the value of self-regulatory decisions.

### **November 21, 2013 Edition**

Featuring articles on the FTC's agenda for a native advertising workshop; FTC enforcement actions against payment processors; a discussion of recent NAD decisions related to native advertising; jurisdiction over discontinued advertising claims; and the FDA's possible crackdown on trans fats.



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## Banking and Financial Services Regulation

### **FIRREA: The DOJ's Expansive (and Expensive) Tool of Choice**

A series of recent court rulings have broadly interpreted a little-known provision of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 to allow the DOJ to seek millions of dollars in penalties from federally insured financial institutions for violations of criminal fraud statutes.

**Authors:** Allyson B. Baker and Andrew Olmem



### House Passes Retail Investor Protection Act

In October, the House of Representatives passed the [Retail Investor Protection Act of 2013](#) which prohibits the Secretary of Labor from prescribing any regulation under ERISA defining the circumstances under which an individual is considered a fiduciary until 60 days after the SEC has issued a final rule governing standards of conduct for brokers and dealers.

**Authors:** [Scott E. Gluck](#) and [Andrew Olmem](#)

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## Consumer Financial Protection Bureau

### Spotlight on CFPB Procurement Opportunities

For many organizations the CFPB represents more than just a regulator – it can also serve as a potential customer. Government contracts are big business and procurement opportunities at the CFPB are on the rise.

**Authors:** [Jonathan L. Pompan](#) and [Dismas Locaria](#)

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## The Download: Developments in E-Commerce, Privacy, Internet Advertising, Marketing, and Information Services Law and Policy

### November 2013 Edition

The November issue features the following articles:

- Senator Markey and Representative Barton Reintroduce Do Not Track Kids Act;
  - House Bipartisan Working Group Continues Discussion on Privacy;
  - Federal Trade Commission Holds Workshop on “Internet of Things;”
  - Federal Trade Commission to Hold Workshop on “Native Advertising;”
  - Government Accountability Office Report on Information;
  - Resellers and the Need for an Enhanced Consumer Privacy Framework;
  - National Institute of Standards and Technology Releases Draft Preliminary Cybersecurity Framework;
  - Court Dismisses Class Actions Challenging Use of Third-Party Cookies on Safari Browsers;
  - U.S. District Court Holds Email Address Is Personal Identification Information under *Song-Beverly: Capp v. Nordstrom, Inc.*;
  - Revised Payment Card Industry Data Security Standard Released; and
  - Article 29 Working Party Weighs in on Cookie Consent Mechanisms.
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## Employee Benefits & Executive Compensation

### 2014 Dollar Limits on Compensation and Benefits

The Internal Revenue Service has announced the 2014 annual dollar limitations on benefits, contributions, and compensation.

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## Food & Drugs

### Policing Your Donuts: FDA Tentatively Determines That Trans Fats from Partially Hydrogenated Oils Are Not Generally Recognized as Safe

The FDA issued a notice recently that tentatively determines that partially hydrogenated oils are not generally recognized as safe for use in food. If this determination is finalized, PHOs would effectively be banned from use in foods unless they are first approved by the FDA as “food additives,” which would likely be difficult.

**Author:** [John G. Moore](#)

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## Intellectual Property

### IP Buzz - November 2013

Featuring an article on the value (or lack thereof) of self-regulatory decisions in federal court cases.

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

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## Labor & Employment

### Takeaways from the Miami Dolphins' Locker Room: The Legal Risks of Workplace Bullying

Think your workplace has nothing in common with a National Football League locker room? Think again. The story of Jonathan Martin teaches a valuable lesson for all employers.

**Authors:** [Michael J. Volpe](#) and [Nicholas M. Reiter](#)

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## Nonprofit

### Federal Grant & Contract News for Nonprofits - November 2013

With the federal government back to work, we saw several important federal initiatives continue in earnest in November. Two of these initiatives will have a tremendous impact on nonprofits' reliance on federal grant and contract funds – the President's cybersecurity efforts under [Executive Order 13636](#) issued this past February, as well as the President's efforts to curb human trafficking, based on an Executive Order from September 2012.

**Authors:** [Dismas Locaria](#), [Elizabeth A. Buehler](#), [Jason R. Wool](#), and [Jeffrey S. Tenenbaum](#)

### Preventing Fraud and Embezzlement in Your Nonprofit Organization

The *Washington Post* recently reported that from 2008 to 2012, more than 1,000 nonprofit organizations disclosed hundreds of millions in losses attributed to theft, fraud, embezzlement, and other unauthorized uses of funds and organizational assets. Nonprofits tend to be more trusting of their employees and have less stringent financial controls than their for-profit counterparts. Thus, they fall prey to embezzlement and other forms of employee fraud at an alarming rate.

**Authors:** [William H. Devaney](#), [Doreen S. Martin](#), [Nicholas M. Buell](#), and [Jeffrey S. Tenenbaum](#)

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## Private Fund Update

### November 4, 2013 Edition

This update reviews the two financial services-related bills passed by the House of Representatives; last week's Senate Banking Committee hearing on JOBS Act implementation; comments received by the SEC in response to the Department of Treasury's study on the asset management industry; charges the SEC brought against three registered investment advisory firms for violating the custody rule; and reports by Houlihan Lokey on shareholder activism and the Bipartisan Policy Center on the Volcker Rule.

### November 11, 2013 Edition

The House Financial Services Committee holds a markup on several bills that would likely be included in a JOBS Act 2.0, including legislation. Also of note, the Private Equity Growth Capital Council released its quarterly private equity performance update and the CFTC released its re-proposed rules on position limits.

### November 18, 2013 Edition

This update covers the House Financial Services Committee JOBS Act 2.0 markup; the HFSC markup of six bills related to the Consumer Financial Protection Bureau; the SEC Dodd-Frank Investment Advisory Committee meeting, which includes a proposal to impose user fees on registered investment advisors in order to fund additional SEC examinations; and the SEC's first deferred prosecution of an individual.

### November 25, 2013 Edition

This update reviews H.R. 1105, which exempts private equity funds from having to register under the Investment Advisers Act; the SEC Dodd-Frank Investment Advisory Committee decision to recommend imposing user fees on registered investment advisors in order to fund additional SEC examinations;

Senate Finance Committee Chairman Max Baucus's proposal to reform the tax code for cost recovery and change tax accounting rules; Pam Hendrickson's op-ed in *Forbes* defending Timothy Geithner's move to a private equity fund; and the recent House Financial Services Committee JOBS Act 2.0 markup, which affects BDCs and small M&A advisers.

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## Securities Enforcement & Compliance

### SEC Sheds Light on Its Pursuit of "Streamlined" Investigations

Securities market participants and their counsel have fretted recently over the SEC's aggressive new enforcement initiatives. Chairwoman Mary Jo White has vowed to pursue "even the smallest infractions." Many have questioned the efficacy of this approach given that SEC officials have pledged to continue bringing large cases. Gerald Hodgkins, an Associate Director in the SEC's Division of Enforcement, shed light on how the SEC will seek to accomplish these conflicting goals – by conducting "streamlined" investigations into strict liability violations.

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

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## Upcoming Events

### Work & Family: What Nonprofit Employers Should Know about Family-Oriented Employment Laws

**Thursday, December 5, 2013**

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

This program will discuss what nonprofits need to do to comply with family-oriented employment laws and best practices for how employers can help their employees tend to growing families, as well as aging or ailing family members. The discussion will include an overview of recent developments related to caregiver discrimination, lactation laws, family and medical leave law, as well as the recently evolving case law surrounding pregnancy accommodations and discrimination; and it will further provide participants with practical recommendations for avoiding common legal pitfalls.

[Click here to register.](#)

### "Making Nice with Bring Your Own Device - Tips for Successfully Implementing a BYOD Policy," WMACCA Technology and IP Forum

**Thursday, December 12, 2013**

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

An increasing number of companies are implementing "bring your own device," or BYOD, policies to allow their employees to access information using their personal handheld devices. BYOD presents advantages: employees no longer need to juggle multiple devices, and employers can reduce the small army of handheld devices necessary to maintain a connected workforce. But BYOD also presents new risks: data breaches, loss of privacy, employee relations issues, and administering multiple layers of security just to name a few. This session will provide practical guidance on how to reconcile the pros and cons and best practices in crafting an effective BYOD policy.

[Click here for more information and to register.](#)

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