#### **Conversation with Daniel Bernstein**

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"Keeping Current with Regulatory and Technology Changes to Maintain Social Media Compliance"

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More than 3.5 billion pieces of content are shared on Facebook each week. Twitter sees 460,000 new accounts created every day; 55% of users share links to news stories. As for LinkedIn, it has more than 200 million members, including executives from all Fortune 500 companies. What does this mean for you? It means that social media sites are where your clients are – and where you should be, too. According to CFP Board, 45% of CFP professionals use social media for business purposes – LinkedIn (82%), blogs (72%), Twitter (46%), Google+ (34%) and Facebook (20%). It also means being smart and compliant about social media.

### 1. Have regulations caught up with today's world of advisors using social media?

No, and in my opinion that's a good thing. Regulations shouldn't try and chase new developments in communications and technology – frankly, by the time they catch up, it's moved on. It's a constantly moving target. We advise planners – and we work primarily with RIA firms – to look to the current SEC or state rules and treat social media as another form of communication, because it is. Social media is essentially an advertisement. The industry asked the SEC for guidance on social media and the response was that specific policies and procedures regarding social media aren't necessary, although the SEC highly recommends having them as a best practices. FINRA and an advisor's broker-dealer, if they are registered with one, are different matters. FINRA is rules-based – there's a rule for everything – whereas while the SEC prohibits certain types of advertisements, the rules are principles-based and more about acting in your clients' best interests and not being misleading.

### 2. What is the biggest tricky area for advisors and social media?

Testimonials and endorsements are the most troublesome areas for advisors. It may be touchy to ask a wonderful client not to recommend or endorse you on LinkedIn, but that's a no-no as far as social media compliance. The easy solution is to set your LinkedIn settings so that recommendations and endorsements don't show. A client "liking" you, or something you post, on Facebook is a gray area, especially if your post is a link to an article somebody else wrote. If it's an article you wrote that reflects the services of your firm, that's what I call a charcoal gray area and most likely prohibited.

# 3. An entire industry has sprung up around social media, with hundreds of firms offering consulting services to advisors and others on social media best practices. Does that worry you at all? What can we really know about the knowledge and expertise of these firms?

I think it's terrific, actually. Many planners need help with social media. The best advice on using one of these firms is this: I'm a lawyer; I shouldn't be writing your marketing copy and be your social media guru. So by the same token, don't totally trust your social media guru when he or she tells you "this is 100% compliant." You must know the guidelines yourself.

## 4. What is coming down the road as far as issues relating to social media that planners need to be aware of?

Privacy is *huge*. Outside of the realm of the SEC and state agencies, more restrictive privacy laws have been passed in a number of states – not surprisingly, California, Massachusetts and Illinois are the trailblazer states – that curtail any attempt by an employer to access an employee's social media page. This includes asking for password so they can "look around," or even to say "log in now and let me look over your shoulder." This activity triggers all sorts of issues surrounding first amendment rights as well as subtle violations of discrimination and general privacy rights – about political beliefs, sexual orientation and so on. The problem is that based on regulations, advisory firms need to know what employees may be posting that relates to the advisory business and be able retain the communications. The big challenge is this: You may be breaking the law in some states if you ask to access your employees' social media accounts directly through a user name and password or even by requiring them to provide access through a third-party service. Does that prevent you from being able to properly supervise employees and from archiving social media posts? It's another big gray area and one we'll hear a lot about in the coming years, especially as the line between personal life and professional life continues to blur.

## 5. We know BSC attendees will have great questions for you, but what is the best question you ask advisors involved in social media?

What are you trying to get out of your social media presence? Many of your clients are on Facebook, Twitter and other sites, so it's almost imperative to have a presence. This is a case where everybody's on the bandwagon – and you probably should be, too. But advisors really need to go into this with some quantifiable expectation of return on their time and investment. Otherwise, you're just along for the ride.