

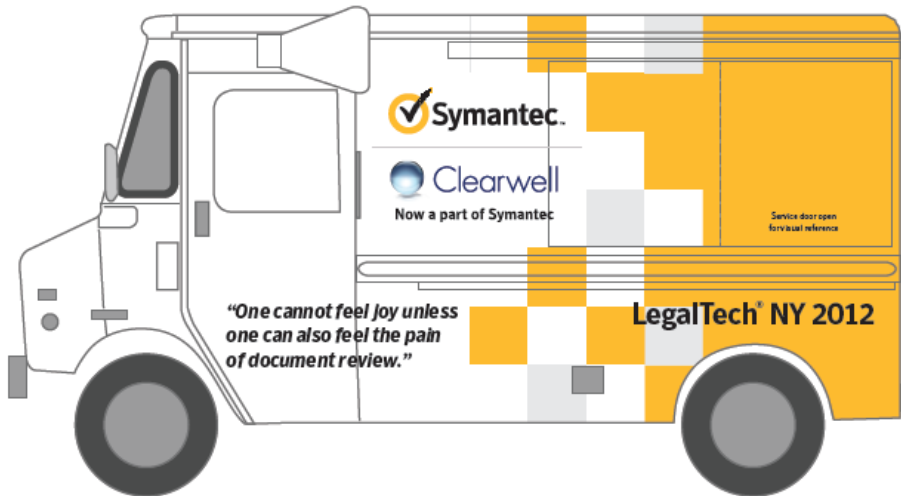
# Money Never Sleeps and Neither Does Social Media: Is FINRA's View the Future For All?





# Symantec Presents: The Sweetery at LegalTech

- Enjoy complimentary food from New York's top gourmet food truck
- Attend a Symantec super session or drop by the booth for your voucher



# Symantec's legaltech twitter contest



- **What you win:** Bose QuietComfort® 15 Acoustic Noise Cancelling® headphones
- **How to enter:** Tweet something you learned or heard at the session. Use both hashtags #LTNY and #SymSS1D
- **But I don't have Twitter:** No problem! Text your tweet to 650-427-0806 and include you first and last name
- Tweet as many times as you like, winner will be randomly selected at end of the session

# Speakers

- **Debbi Corej**, *Recently of Prudential, VP of Compliance*
- **Melanie Kalemba**, *VP Business Development, Socialware*
- **David Shonka, Esq.**- *Principal Deputy General Counsel of the Federal Trade Commission and Head of the eDiscovery Steering Committee*
- **Lisa Sotto, Esq.**- *Partner and Head of the Global Privacy and Data Security Team, Hunton & Williams LLP*
- **Allison Jane Walton, Esq.** – *eDiscovery Counsel, Symantec*

# Agenda

- Introduction to Privacy
- Elements of a Sound Social Media Policy
- Regulatory Framework
- Who is Archiving Social Media Today?
- Who's Next?

# What is Privacy?

- **Privacy is the appropriate use of information as defined by:**
  - Law
  - Consumer Expectation
- **Security is the protection of information**
  - Confidentiality of Data
  - Data Integrity
- **4 Major Risks**
  - Legal compliance
  - Reputation
  - Investment
  - Reticence

# Patchwork of U.S. Privacy Laws and EU Overview

- U.S. has no overarching privacy scheme
- Sectoral approach
- More than ten federal privacy laws and hundreds of state laws
- Industry standards such as PCI DSS
- No uniform definition of “personal information”
- EU Data Protection Directive
  - Historical backdrop
  - “Omnibus” legislation
  - Directive sets the floor, but each country has its own national data protection law
  - Requires entities to register before processing personal data
  - Prohibits transfer of personal data to non-EU jurisdictions unless an “adequate level of protection” is guaranteed
  - Upcoming changes to EU data protection framework

# Major U.S. Privacy Laws – Federal

- **GLB:** Financial institutions
- **HIPAA:** Health care entities
- **FCRA/FACTA:** Consumer reporting agencies
  - FTC Disposal Rule
  - Red Flags Rule
- **COPPA:** Children's data
- **CAN-SPAM:** Commercial email
- **ECPA:** Electronic communications
- **DPPA:** DMV records
- **Do-Not-Call Registry:** Telemarketing
- **Privacy Act of 1974**

# State Privacy Laws

- There are numerous categories of state privacy and data security laws, such as:
  - SSN laws
  - Credit report use restrictions
  - Marketing restrictions (CA's SB 27)
  - Privacy policy requirements
  - Radio Frequency Identification (RFID) laws
  - Anti-Spyware
  - Child protection registry laws
  - Information security requirements
    - Massachusetts
    - Nevada
  - Breach notification laws

## U.S. Enforcement Climate

- FTC enforcement authority: Section 5 of the FTC Act
  - Prohibits “unfair or deceptive acts or practices in or affecting commerce”
  - FTC privacy enforcement actions typically result from (1) security breaches, (2) deceptive statements in privacy policies, and (3) lack of conspicuous notice
  - Google Buzz settlement changed the landscape
- Director of Consumer Protection Bureau kept his promise to bring more “pure privacy” actions
- HHS and State AGs are now also proactive

# Global Outlook

- Privacy and information security have emerged as the seminal issues of our information age
  - Both in the U.S. and around the globe
- Significant efforts toward semblance of global harmonization are ongoing
- BUT these efforts are a long way off from a practical perspective
  - More important than ever to proactively monitor the legal climate

## Levels of Social Media

- Internal
  - Used by employees only
  - Collaboration or sharing thoughts, information, product
- External / Sponsored
  - Blogs, Facebook pages, etc.
  - Product information websites
- External / Not Controlled
  - Organized by customers, users, etc.

# Minimizing Risks

- **Policies**

- Mandatory
- Enable or Disable Technology to Match your Policies
- Who is authorized to speak
- Processes
- Ownership
- Records Retention, Discovery, Privacy

- **Training**

- Mandatory

- **Monitoring/Supervision**

- Employee Discipline

## Elements of a Social Media Policy Checklist

- Form social media committee to manage project adoption.
- Gain consensus of company's key stakeholders to establish and prioritize objectives and goals of employing social media.
- Research and understand social media options, benefits, and pitfalls.
- Determine best fit of company with social media options.
- Determine which features/options/settings the firm is comfortable with or would prefer to prohibit.
- Develop firm and regulatory compliance processes.
- Draft company's social media policy.

## Elements of a Social Media Policy Checklist

- Designate employees to test approved social media sites.
- Collaborate/coordinate with marketing department on guidelines for communicating with the public and pre-content approval process.
- Work with legal department to develop proper disclaimers.
- Work with IT department to integrate tools and automate procedures (monitoring, documentation, access).
- Implement social media training program.
- Establish monitoring, supervision, and documentation procedures.
- Activate social media program (enable & automate access).
- Review written policy frequently as social media is evolving rapidly.

# Personal OR Business?

## Intent of Content

- College Reunion
- Add Photos of Reunion
- Add Ski Photos from family vacation
- Comments on ski article in NY Times
- Joins College Alumni Group
- Posts Birthday wish to College Friend

- Business Card Info on LinkedIn Profile
- Employer Info on FaceBook Profile
- Comment on Ski Article in NY Times
- Joins Industry LinkedIn Group – Listens ONLY
- Joins Chamber of Commerce Group
- **Classmate posts question about annuity**

- Comments on WSJ article about market fluctuation
- Comments on Firm's Branded Twitter account
- Makes Recommendation
- Assists Firm create Branded Marketing site on Facebook
- Posts Advertisement on SMSites
- Responds to Classmate

*Code of Conduct - - - - - Ethics - - - - - Privacy and Information*

*Information Security - - - - - Complaint Handling*

*Trademark - Branding*

*Advertising - Record Retention*

# Regulatory Framework as it Exists Today

- FINRA Regulatory Notice 07-59, 10-06 & 11-39- Social Media and ESI
- Rules 17 a-3 & a-4 of Securities Exchange Act of 1934- Record Keeping
- NASD Rule 2210- Communications with Public
- NASD Rule 3010- Supervision
- SEC
- FTC
- Interplay of agencies

# *Who is Actually Archiving Social Media and How are They Doing It?*

# Some Industries Are Embracing Social Business

## LIFE INSURANCE



## BROKER DEALER



## ASSET MANAGER / FUND



# Social Media Specifically for Financial Services



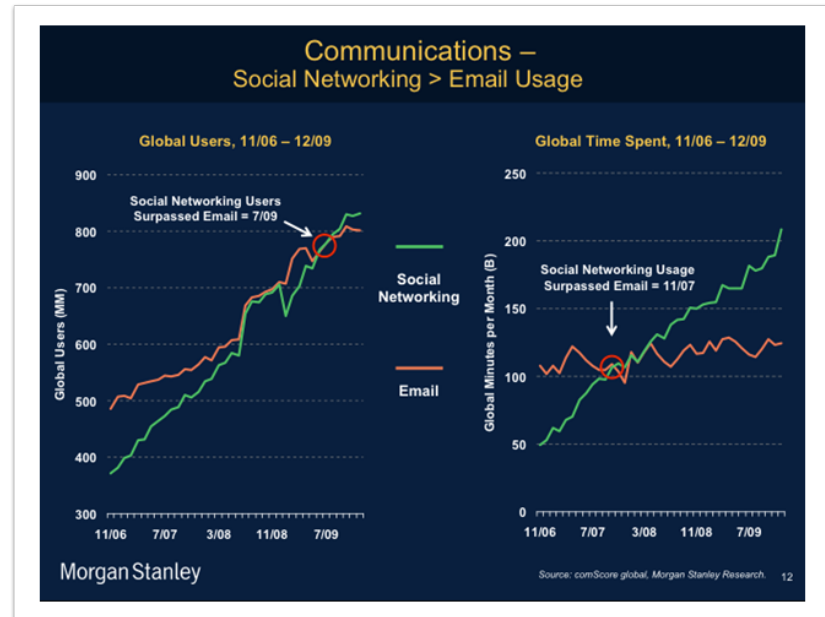
80% of financial advisors currently use social media for business purposes



39% would use social media even if prohibited by firm.

*Advisors using social media earn more and have larger books of business including the 65% of advisors ages 26-35 with clients averaging >\$300,000 invested.*

**Source: Socialware 2011 Advisor Survey**  
– Social Media Use by Financial Advisors



*“Social media is about relationships and this industry more than any other is about people and relationships.”*

**Bill Doyle, VP, Forrester**

2011 Social Media in Financial Services Forum

# Connect to What Matters

**f facebook.**

800 MLN +  
users



Log in every day



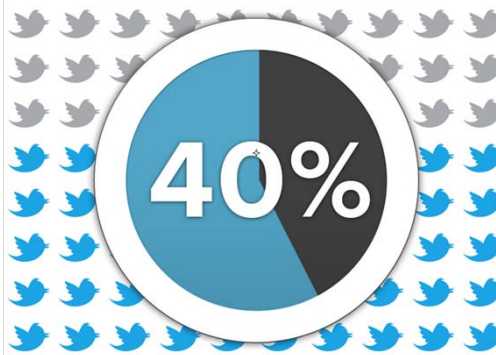
of US internet users are on Facebook



Average user connected to 80 community pages, groups and events.

**twitter**

200 MLN +  
users



Don't tweet but rather follow others

1 000 000 000  
TWEETS PER DAY

**Linked in**

150 MLN +  
users

**FORTUNE**  
**500**

includes executives from all 2011 Fortune 500 companies as members



InMail is 30x more effective than a cold call

# Compliant Social Business Use Case

## CHALLENGES

- 1 Not Participating:**  
Clients using social, but advisors missing opportunities to improve customer experience and grow businesses.

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- 2 Compliance Unsure:**  
Compliance blocked access because of supervision concerns. Manual processes could not scale.

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- 3 Marketing could not support engagement:**  
No way to publish content through social channels in a compliant way or measure it.

## SOLUTIONS

- 1 Participating**  
in social media with complete archive, access control and native site access.

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- 2 Social Business Strategy**  
focus that includes and extends beyond compliance.

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- 3 Metrics Based**  
marketing support to drive client engagement from pre-review to publication of content.

*Who will be next?*

# Help Say “Yes” to Use of Social Media

- Have a Strategy for How Social Media Will be Used
- Educate Management & Decision Makers and COMMITMENT
- Understand Social Media Sites (SMS) and Key Functionality
- Key Issues to Assess and Address
  - Regulatory and Operational
  - Compliance and Business Concerns
  - Automated Solution Due Diligence
- Develop and Communicate Policy and Procedures
- Develop Implementation Strategy
- Educate and Train Users
- Share Lessons Learned and Leverage Successes

# Resources & Reference Material

## e-discovery 2.0

thoughts about the evolution of e-discovery

« Dallas "Mini-Conference" Explores Big Electronic Discovery Issues – Future Still Blurry  
Email Isn't eDiscovery Top Dog Any Longer, Recent Survey Finds »

### Breaking News: \$919 Million Verdict for DuPont in Trade Secret Theft and eDiscovery Sanctions Case

BY PHILIP FAVRO ON SEPTEMBER 15TH, 2011    



A federal jury returned a stunning verdict in the DuPont trade secret theft case. In *de Ne Industries*, the verdict was the culmination of a two-and-a-half year battle that DuPont waged against Kolon Industries to prove

to share our thoughts about e-discovery and encourage discussion among like-

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Social Sharing

sanctions issues is necessary?

Yes (79%)

# Quick Response Code for Presentation Materials

