perspectives

MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight

WHEELER MISSION Ministries

Founded in 1893, Wheeler Mission Ministries has grown into central Indiana's leading service provider for homeless men, women and mothers with children.

The iconic sign declaring, "Jesus Saves," shines brightly on the corner of Delaware and New York Street in downtown Indianapolis and has been synonymous with Indy's homeless services for many years. However, many people are unaware about the vast range of services that Wheeler Mission provides to people who are in great need. Every day during the winter (Wheeler Mission's busiest season), the organization's staff and volunteers serve more than 1,000 meals to the homeless who come in needing food. Hundreds of people fill the warm, clean beds, and hundreds more will be forced to sleep on the floor, as all available beds will be full. All of these people receive an opportunity to shower, store their small list of belongings and rest for the evening. But there is much more going on beyond these typical services.

Wheeler Mission operates five residential locations and seven locations in all. Within these various locations exist special programs designed to serve the community's desperately addicted men and women. These individuals are living at Wheeler Mission for one to two years, getting their lives pieced back together and strengthened so they can be productive citizens in the Indianapolis community. Also within these locations are short-term programs for men and women who desire to work closely with counselors to eliminate barriers in their

Critical Issues for Use of Cloud-Based "Infrastructure as a Service" in the Age of Security and Privacy Regulation

Michael D. Stovsky

The past few years have seen the advent of several competing trends. Companies large and small have decided that it is in their best interest to move and store critical data off-site, to the "cloud" using the infrastructure provided by third parties as a service. This form of business process outsourcing, called "infrastructure as a service" or "IaaS," provides cost savings and operational efficiencies. At the same time, concerns about the privacy and security of IaaS-stored data have increased significantly, and a myriad of federal, state, local and foreign laws, rules and regulations have been enacted in response to those concerns. These competing trends mean that, while IaaS can be beneficial, it is not without risk. This article will summarize the business case for IaaS and address some of the most important issues that arise in connection with the implementation of IaaS that can complicate an otherwise straightforward business case.

The Business Case for IaaS

The business case for moving to IaaS to support critical data storage and other information technology infrastructure needs is compelling. Many companies including market leaders Amazon Web Services, Microsoft Azure, Terramark, Savvis, CSC, Dimension Data, Rackspace, Tier 3, SAP/SuccessFactors and IBM/Sterling Commerce, as well as lesser known regional players, and specialized players such as Lexis Data and Equifax Information Services in the financial services sector, have entered the marketplace offering IaaS and data warehousing services. At the international level, companies such as AT&T, IBM, Datapipe, Hosting.com, Tata Communications and Virtacore Systems have become recognized participants. Regardless of the geographic reach or size of the IaaS vendor, the business case for moving toward an outsourced model for infrastructure and data storage remains the same—cost and efficiency. Companies large and small are able to utilize the availability, scalability and cost savings inherent in third-party IaaS offerings to outsource their infrastructure needs. In addition, these companies are able to shift some of the risk inherent in managing critical infrastructure to third-party IaaS vendors contractually through service level, disaster recovery and other provisions; reduce manpower needs for infrastructure maintenance and support, or shift workers to other critical projects; and achieve higher levels of critical infrastructure redundancy and geographic diversity than they might otherwise be able to achieve without IaaS. In short, the business case for IaaS has become a compelling one—pushing internal information technology, finance and strategy executives to consider increased use of the cloud (and IaaS vendors in particular) as sources for the expansion of critical infrastructure.

The State of the Law

As the business case for increased use of IaaS becomes more and more compelling, the legal environment, both in the U.S. and abroad, is changing rapidly. Just as IaaS becomes a global industry with a critical mass of vendors supporting customers that are large and small, public and private, we see an increased level of scrutiny and both statutory and regulatory efforts to protect data of all kinds. These efforts arise under federal, state, local and foreign laws, rules and regulations

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Critical Issues for Use of Cloud-Based "Infrastructure as a Service" in the Age of Security and Privacy Regulation

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which, in their attempts to protect against privacy and data security breaches, substantially increase the risk associated with the use of IaaS (and its cousins software as a service, or SaaS, and platform as a service, or PaaS). In the years since the advent of cloud-based computing systems and platforms, the law, both domestic and foreign, has expanded exponentially. In the United States, where the privacy and security law is largely sectorial in nature (i.e., governing particular industries or types of data deemed to be particularly sensitive, such as financial information, protected health information and information pertaining to children), the last few years have seen a torrent of new laws and regulations.

These include specific laws and regulations pertaining to data security and privacy at the state and local levels; new omnibus regulations governing the security of protected health information; new regulations governing the privacy and security of information gathered from children; statutes and regulations governing the privacy and security of consumer financial information; and federal and state data breach disclosure laws and regulations. The applicable laws, rules and regulations are widely known by their sponsors' names or acronyms, including Gramm-Leach-Bliley or GLB, HIPAA, HITECH, COPPA, Sarbanes-Oxley and "Red Flag," to name a few. Several bills are currently pending in Congress that could further alter the legal landscape in the United States by establishing a national data security standard.

Internationally, the major industrialized nations of the world are far ahead of the United States in terms of the omnibus approach they take to preserve and protect the privacy and security of information. The European Union nations and Switzerland alone have passed expansive legislation in compliance with EU directives on privacy, security, eCommerce, distance selling and the use of "cookies" and other devices that impact the privacy of personal information. The European directive pertaining to data security and the cross-border transmission of personal information is undergoing a substantive overhaul, with final rules expected in the coming months. Other nations including Canada, Australia, Mexico and the major industrialized nations of Asia have followed suit

by promulgating extraordinarily stringent privacy and security laws and regulations that apply to cross-border data transmissions.

Oftentimes, the laws, rules and regulations imposed on companies seeking to transfer data to third-party data centers and utilize IaaS provide onerous yet conflicting requirements on companies. Many of the laws, rules and regulations pertaining to data security contain either explicitly required data security standards or recommended guidelines. For example, the recommended security standards under HIPAA and HITECH are the standards published by NIST, while the recommended security standards under the data security laws of the European Union and Switzerland are the ISO 27000 standards. To further complicate matters, in the United States (other than under HIPAA and HITECH), the applicable required or suggested privacy and data security standards and guidelines include guidelines promulgated by the Federal Trade Commission and the PCI Data Security Standard, or PCI DSS.

One example of this arises in connection with the so-called Mega Rule—the omnibus security rule promulgated under HIPAA and the HITECH Act that became effective in March 2013 and became effective for compliance purposes on September 23, 2013. This rule alone spans hundreds of pages and essentially requires that entities that were never originally intended to be brought within the purview of HIPAA security compliance comply in full with the intensive security rules under HIPAA and HITECH. These include entities that are far afield of any connection to healthcare or the provision of health services such as manufacturing companies with self-insured health insurance plans and service providers that do business with such companies and store or process employment data that includes protected health information. Companies that now find themselves covered by the Mega Rule and desire to utilize IaaS for the storage of employment data that includes protected health information must, therefore, ensure that the IaaS vendor(s) with which they contract are in turn Mega Rule compliant. Some are…many are not.

A further example arises under the federal Sarbanes-Oxley Act, which applies by its terms to entities to public companies (and certain

private companies) under the federal securities laws. Under Sarbanes-Oxley and the rules promulgated thereunder, applicable companies are required to certify annually to their internal controls as part of the certification of the accuracy of the financial data incorporated into their public filings—the theory being that without adequate controls, the accuracy and integrity of financial data could be in doubt. As part of the process of maintaining adequate controls, ensuring data security is paramount. As a result, companies seeking to utilize IaaS routinely demand specific security-related audit information from vendors, including SSAE 16 (SOC 2) type 2 reports or equivalent audit reports, and to provide indemnity for data security lapses and breaches.

In the real world of technology transactions, the net effect of this is to significantly increase the costs associated with the provision of IaaS as vendors seek to limit their risk contractually or are forced to insure against increased risk. As part of their own compliance obligations, companies have no legal choice but to require that IaaS vendors comply in full with applicable law and attempt to pass the risk associated with these requirements on to the IaaS vendors with which they contract (though this may involve compliance with several different technical standards). All of this adds substantially to the complexity and cost of adopting IaaS, even when the basic business case favors it.

Conclusion

The business case for IaaS is clear, but the domestic and foreign legal environment is complex, changing and often in conflict. Companies looking to charge forward into more expansive use of the various forms of cloud-based business process outsourcing, including IaaS, SaaS and PaaS, must do so with their eyes wide open to the issues and risks associated with a legal environment that is not always in step with the desire to take advantage of the positive attributes of the cloud.

Not-for-profit organizations are encouraged to please pass this information along to their information technology departments. For more information, please contact **Michael D. Stovsky** at mstovsky@beneschlaw.com or 216.363.4626.

Consider the Cloud

Karen Anzuini

It seems everyone in the tech world is talking about "the cloud." And it seems pretty ephemeral. Is it something a not-for-profit organization should consider? When it comes to software and data storage, not-for-profit organizations have many of the same business considerations and questions as any other business.

Cloud-based software and services can be a cost-effective and efficient alternative for organizations of all sizes. Cloud offerings range from office applications, such as Google Docs and MS Office 365, to accounting systems, expense management, backup, spam filtering, secure file sharing, specialized databases, network monitoring and much more. Even phone systems can now be hosted in the cloud.

Benefits of Cloud-Based Applications

Benefits of cloud-based applications are easy to identify. They include:

- Low cost of entry
- Quick and easy startup
- Increased business agility
- Anytime, anywhere access
- Reduced internal management overhead
- Reduced internal hardware and datacenter costs
- Pay-as-you-go pricing
- Virtually unlimited storage capacity

What are the risks and other considerations?

Ensure that hosting services meet all security and regulatory compliance standards for your industry or programs. Know in what states and/or countries your data is physically located. Most hosting services have data stored at more than one location. Determine if the physical location of your data affects compliance requirements.

Ask the vendor to document how data is encrypted in transit and at rest. Identify who has access to your data for administrative and support purposes. Before you engage, make sure you have an exit strategy. What are the terms to cancel the service? Have a clear understanding of how data will be returned if you terminate service. In what format would

your data would be returned and in what time frame? Ensure the vendor agrees to destroy all copies of your data on all of its systems and backups should you terminate services. The vendor should provide documentation regarding the processes used for destroying data.

Understand the provider's Service Level Agreements (SLAs). What is the guaranteed uptime? What is the response time? What are your remedies if the vendor does not meet those SLAs?

Recognize that the bandwidth required for using hosted applications may increase. Fold this into the overall cost of the hosted solution.

Integration of data between cloud applications and in-house systems may be a challenge. Have a clear understanding of how data is used within your organization and identify data shared between applications before you move an application into the cloud.

Finally, thoroughly check vendor references and use communities and resources such as GroundWork.org and TechSoup.org for valuable information, discounted prices and insight relevant to your not-for-profit organization.

Additional Information

This article was authored by **Karen Anzuini**, Chief Information Officer at Benesch, who can be reached at kanzuini@beneschlaw.com or 216.363.4432. For additional information about the cloud and its implications for not-for-profits, please contact **Marty Sweterlitsch** at msweterlitsch@beneschlaw.com or 614.223.9367.

Goldner Named Chair of the Board of Directors of the National Federation for Just Communities

Benesch is pleased to share that **Allan Goldner**, a partner and Co-Chair of the firm's China Practice Group, has been named Chair of the board of directors of The National Federation for Just Communities (NFJC). He will serve a two-year term which began July 1, 2013.

Allan Goldner

The NFJC is a national federation of member organizations working for social justice, respect and inclusion across America. Mr. Goldner previously served as Chair-Elect of the NFJC'S board of directors. He also currently serves as a Vice Chair of the board of directors of The Diversity Center of Northeast Ohio, a member organization of the NFJC. Mr. Goldner is also actively involved in leadership positions with several other local and national civic and charitable organizations.

Shelley Recognized by Law Foundation for Outstanding Community Service

Brent Shelley

We are pleased to announce that **Brent Shelley**, an associate in Benesch's Corporate & Securities Practice Group, has been named the recipient of the Ohio State Bar Foundation's (OSBF) 2013 Community Service Award for Attorneys 40 and Under for District 12 for his outstanding service to our community. This award is presented to attorneys who contribute substantial time and effort in service to a local social service or to a local civic, artistic or cultural organization. The service must be outside the recipient's practice of law and given without compensation. Recipients of this award represent the highest ideals of the legal profession. Mr. Shelley will be formally presented with the award at the Ohio State Bar Association's Spring 2014 meeting

Mr. Shelley has excelled both in his legal career and in his extensive outside volunteer work. Each year, he volunteers over a thousand hours to provide educational opportunities for Cleveland-area youth. He serves as the Dean of Academics for Minds Matter Cleveland, a not-for-profit organization that helps high-performing high school students from low-income backgrounds achieve academic excellence and college success. Over the last five years, Mr. Shelley has helped Minds Matter Cleveland to grow to over 80 students and over 200 volunteers. He develops and administers Minds Matter Cleveland's academic program and oversees a team of volunteer instructors, tutors and writing consultants who provide weekly instruction in writing, mathematics, science and standardized test preparation. In June 2012, Mr. Shelley joined Minds Matter National's Executive Committee as the Director of Programming for Minds Matter chapters nationwide.

Mr. Shelley also serves on the board of directors for Daily Dose of Reading, a not-for-profit organization dedicated to preventing illiteracy by providing families and caregivers with the resources and early-literacy skills to foster a lifelong love of reading and learning in children. He is also a volunteer business law instructor at the Hispanic Business Center, which provides educational resources to small-business owners.

Not-for-Profit Spotlight

lives so they can conquer homelessness and poverty. Programs are also in motion for the mentally ill, as well as for homeless mothers with children.

The cost to run all of these vital programs is high (more than $7 million annually), and Wheeler Mission does not receive any government funding. Generous donations from the community help the Mission's important programs run, as well as thousands of volunteer hours.

One fun and exciting way the community helps Wheeler Mission serve Indy's homeless is at the annual Thanksgiving morning fundraising event, the Drumstick Dash. This Thanksgiving, nearly 18,000 people are expected for the run/walk's 9:00 a.m. start in Broad Ripple, making it the third largest running event in Indiana. Many will be dressed in entertaining,

Thanksgiving-themed costumes, and all will be working to "Move Their Feet So Others Can Eat!"

If you would like more information about Wheeler Mission, including opportunities to donate or volunteer, please visit www.WheelerMission.org.

perspectives

Trends and topics in not-for-profit management   **September 2013**

Events

Indiana Nonprofit Resource Network's *The Future of Fundraising— Multichannel Fundraising*

Reaching donors today requires not-for-profits to communicate and fundraise in multichannel ways—social media, email, direct mail and personal solicitations. Presenter Derrick Feldmann, CEO of Achieve, will speak on how to create fundraising approaches that are appropriate for your organization.
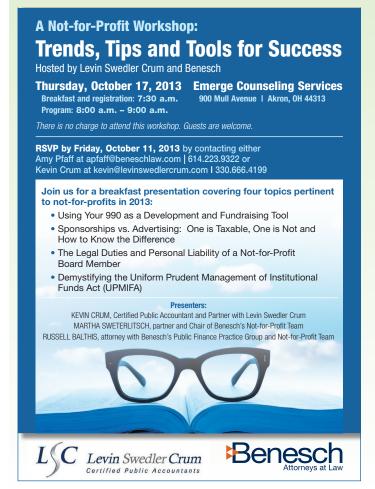
Date: October 10, 2013

Location: United Way of Central Indiana, 3901 N. Meridian Street, Indianapolis, IN 46208

Time: 9:00 A.M.–Noon

Cost: $25 for United Way agencies; $30 for other not-for-profit orgnizations

Registration: Please click here.

A Not-for-Profit Workshop:

Trends, Tips and Tools for Success

Hosted by Levin Swedler Crum and Benesch

Thursday, October 17, 2013   **Emerge Counseling Services**
Breakfast and registration: 7:30 a.m.   900 Mull Avenue | Akron, OH 44313
Program: 8:00 a.m. – 9:00 a.m.

There is no charge to attend this workshop. Guests are welcome.

RSVP by Friday, October 11, 2013 by contacting either Amy Pfaff at apfaff@beneschlaw.com | 614.223.9322 or Kevin Crum at kevin@levinswedlercrum.com I 330.666.4199

Join us for a breakfast presentation covering four topics pertinent to not-for-profits in 2013:

- Using Your 990 as a Development and Fundraising Tool
- Sponsorships vs. Advertising: One is Taxable, One is Not and How to Know the Difference
- The Legal Duties and Personal Liability of a Not-for-Profit Board Member
- Demystifying the Uniform Prudent Management of Institutional Funds Act (UPMIFA)

Presenters:
KEVIN CRUM, Certified Public Accountant and Partner with Levin Swedler Crum
MARTHA SWETERLITSCH, partner and Chair of Benesch's Not-for-Profit Team
RUSSELL BALTHIS, attorney with Benesch's Public Finance Practice Group and Not-for-Profit Team

LSC Levin Swedler Crum *Certified Public Accountants*   **Benesch** Attorneys at Law

Ohio Association of Nonprofit Organizations and The Columbus Foundation's *Planning to Plan Workshop*

Do you need a roadmap that will guide your not-for-profit organization to fulfill its mission with maximum efficiency and impact?

Spend two hours in a workshop that will create a strategic planning process for your organization. You will gain the knowledge—and helpful resources—to implement effective strategic planning activities that will engage your board, staff, funders and audiences. The result: a succinct plan that has the backing of your most important constituents.

You are encouraged to bring a team of two senior leaders (including a board member, if possible) for this roll-up-your-sleeves session.

Date: October 24, 2013

Location: Columbus, OH

Time: 9:00 A.M.–11:00 A.M.

Cost: Free

Registration: Please click here for more information and registration.

2013 Exempt Organizations Conference—Sponsored by Blue & Co., LLC and Benesch

CPAs / ADVISORS

blue

Date: December 2, 2013

Location: The Medallion Club, 5000 Club Drive, Westerville, OH 43082

Time: Registration begins at 7:30 A.M. with a continental breakfast. Programs begin at 8:30 A.M. and end at 4:30 P.M. Lunch will be served.

Cost: $50 for 8 hours of CPE; payable at event

Registration: To RSVP, please contact Amy Pfaff at apfaff@beneschlaw.com or 614.223.9322.

Choose your path: Healthcare-specific topics, basic to intermediate topics and advanced topics

Some of the topics include: 2014 Healthcare Reform, the 2014 Revenue Cycle, Mergers and Acquisitions, Form 990 & the Board Member, Unrelated Business Income Issues, IT Security, Maintaining Tax Exemption, Forensic Accounting and the Exempt Organization, and separate panel discussions for both general exempt organizations and healthcare organizations.

Intended audience includes finance department staff and managers, controllers, executives and board members.

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