

The risks of using social networking sites

Social network sites such as Facebook, LinkedIn and Twitter have become very popular. With this popularity has come a diversified and expanded user base. These sites are not just for kids anymore — they're now frequently used by businesses, including the CEOs of many large corporations.

Pages can be personal (such as Bill Gates' Facebook page), political (such as Barack Obama's Facebook page, currently the most popular page) or corporate (such as Coke's Facebook page, currently the most popular corporate page).

These sites can be a great way to network, advertise and communicate. However, they come with risks.

Privacy

One of the big risks is privacy. Social network sites facilitate the disclosure of a lot of personal information. A study by the McMaster eBusiness Research Centre in 2008 found that approximately 1.7 million Canadians had been victims of identity fraud in the previous year, and according to the Privacy Commissioner of Canada and the RCMP, very little information is needed to steal a person's identity.

Last year, the Privacy Commissioner conducted an in-depth investigation into Facebook's privacy practices, and found that Facebook was not complying with Canadian privacy law in a number of respects. Earlier this year, the Privacy Commissioner rebuked Google for launching its new social networking site *Buzz* with-



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out first consulting with the commissioner's office, given the risk of violating Canadian privacy laws.

Confidentiality

Another risk is loss of confidentiality. As with blogs and other websites, information posted on social networking sites can be viewed by many people, all without any obligation of confidentiality. Employees posting on their own social network pages or on a company's social network pages

could inadvertently (or intentionally) disclose corporate secrets that should be kept confidential.

Securities laws

In the U.S., the Securities Exchange Commission (SEC) amended its proxy rules to permit use of electronic shareholder forums by public companies. The SEC amendments, which came into effect on Feb. 25, 2008, were two-fold.

First, they state that a company, shareholder or representative that establishes, maintains or operates a shareholder forum will not be liable under federal securities laws for statements provided by a third party participating in the forum (although the third party may be liable). Secondly, they exempt from the proxy rules statements made by or on behalf of a person who does not seek to act as a proxy for other shareholders, provided that the statements are made at least 60 days prior to the date of the company's next shareholder meeting. In essence, this rule exempts the use of electronic shareholder forums from being considered a solicitation, provided that the conditions of the exemption are satisfied.

In contrast, Canada has no rules that specifically address electronic shareholder forums or social networking sites. Our closest policy is National Policy 51-201, which provides certain guidelines on the disclosure of information by Canadian public companies. For example, s. 6.13 discourages participation in electronic chat rooms and bulletin

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boards, and recommends that a company's disclosure policy prohibit employees from discussing corporate matters.

If the company website allows visitors to send e-mails to the company, s. 6.13 warns against the risk of selective disclosure when responding to the e-mails. Selective disclosure occurs when a company discloses material non-public information to certain individuals or companies, and not

to the investing public in general.

Section 6.14 of the policy recommends that companies adopt a "no comment" policy on market rumours about the company, to avoid the risk of selective disclosure when responding to such rumours.

Given that NP 51-201 is now over seven years old, however, and that electronic shareholder forums and social networking sites are relatively new phenomena, the guidelines in the policy are likely inadequate and should be revised to reflect the new concerns that electronic shareholder forums and

other social networking sites raise.

Based on the new SEC rules and the recommendations found in NP 51-201, there are two main issues that need to be addressed by Canadian securities legislation. First, the legislation should address whether companies would be vicariously liable for statements made by third parties in shareholder forums or chat rooms, where such statements amount to misrepresentations. Secondly, the legislation should clearly set out what constitutes a "solicitation"

of proxies in shareholder forums or chat rooms.

Recommendations

Regardless of what rules might eventually be adopted, Canadian public companies should be careful that only authorized spokespersons communicate to the public on behalf of the company, and that people who participate in forum or chat room discussions and who purport to speak on behalf of the company do not engage in selective disclosure.

Companies should also estab-

lish employee policies to deal with some of the risks of social networking sites. These policies should cover issues such as privacy, confidentiality, copyright infringement, defamation and comments by employees on the business and activities of the employer. ■

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