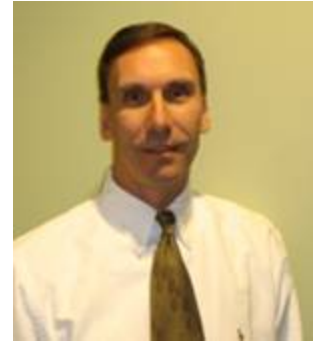


Feature

The Laws and Regulations That Make Archiving Critical for Hedge Funds

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In an era where communications and data storage are primarily performed electronically, businesses are driven to find a proven, reliable way to track and retain the constant flow of data. Many hedge funds and investment firms are realizing they lack a structured archiving system that will properly organize and store their communications. To prepare for today's corporate laws, Securities Exchange Commission (SEC) guidance and data discovery rules, firms must understand the evolving legal landscape and take steps to implement a solution that systematically saves and protects data for retrieval.



The Changing Legal Landscape

Email and instant messaging are fundamental electronic communication mechanisms within the finance industry. The Radicati Group, a technology research firm in Palo Alto, Calif., has said that the amount and size of emails being sent now has dramatically increased, but only 14 percent of all corporate email accounts are backed up and archived for future access. Much of a company's business-critical information is discussed within emails; and instant messaging (IM) has become a standard for trading deals in the banking and securities industries.

Accordingly, email and other communication channels are used more and more in various legal and regulatory proceedings, even providing the grounds for prosecuting criminal cases. Incidents involving large corporations, such as Intel and Oracle-SAP, and their inability to produce crucial emails and other documents in court, have brought attention to the importance of archiving company records. The hedge fund industry has always been the victim of a number of lawsuits brought against fund managers and their partners, officers and directors. Investors in hedge funds and certain government regulators can quickly sue a fund for reasons such as misrepresenting a fund's performance, failing to disclose the risks of an investment in a fund, or mismanaging the fund's assets.

Given these factors, it is no wonder the demand for strategic archiving has increased. Gone are the days when it was up to end users to maintain their own email accounts and IT departments took weeks to track and find emails. As organizations' dependency on technology grows, so too do the capabilities of the technology that supports them. Technology vendors have expanded the capacity of their storage units beyond e-mail archiving to accommodate the multiple channels of information exchange employees are using.

Federal Rules of Civil Procedure

On December 1, 2006, amendments to the Federal Rules of Civil Procedure (FRCP) that address issues of Electronically Stored Information (ESI) went into effect. Essentially, the rules have become the de facto for eDiscovery, governing when and how information is collected, preserved and produced in connection with legal discoveries in U.S. federal courts.

The new rules have several direct implications on how a company maintains its ESI, as well as the processes for its retrieval. ESI includes not only the assumed documents, spreadsheets, etc., but also email, IM, photos, chat room conversations, and wireless email and text messages. The amendments specify that all ESI is a formal category of discoverable information and requires litigants to be prepared to collect and

maintain data and metadata in its native format, or some other reasonably useable form. When records are subpoenaed, parties now must produce all relevant ESI or provide a description and location of all such data, and preserve it for the duration of the litigation. The IT team is responsible for disclosing details on the company's information systems locations, content, management and policies to lawyers, courts, etc.

The impact of these new rules is extensive and significant. Ensuring easy access to messaging information and all other records concerning electronic activity is a top priority for organizations across the United States, including hedge funds and investment firms. Courts are not willing to wait weeks for companies to retrieve electronic data from inefficient storage sources, such as tapes. Firms that cannot provide requested information quickly risk being held in contempt of court. There is a strong incentive to implement proactive, cross-functional data management processes and policies; failure to do so can result in penalties and sanctions.

The Significance for Hedge Funds and Investment Firms

Today's investment decision-makers base their choices on large amounts of data and information, so implementing new technologies to maintain transparency has become a crucial component and market differentiator for fund managers and investment firms. Investors are more open to working with a hedge fund if they understand and recognize that the firm is working as transparently as possible, complete with technology monitoring, automated data replication, an off-site archive, and fast and secure remote connectivity to information.

If a hedge fund or investment firm has not done so already, they should immediately take proactive steps to align their business with the new FRCP obligations. Becoming familiar with the new eDiscovery changes and the impact they will have on the organization is the first step. From a technology standpoint, understanding all the sources of data in the enterprise and evaluating the effectiveness of current technology and its related processes is the next step.

Establishing procedures that are compliant to legal and SEC guidelines is not a simple undertaking and are often costly and time-consuming. Archiving email and IMs is a small component of overall compliance within a fund, but can be a burden because of the electronic and public nature of the information exchanged. Because of this burden, many funds turn to outsourced providers. It is no longer just small companies outsourcing their IT; larger organizations find that outsourcing is a better way to deal with their quickly expanding archives.

A vendor with seasoned, proven archiving services is essential to find if your firm decides to go the outsourcing route. When evaluating a potential archiving solution, investment managers should look for one that includes three core components: message archiving, message storage and straightforward message retrieval. All data should be stored in the correct format for a specified amount of time and should allow for "good faith" destruction of data.

As previously stated, in accordance with the FRCP amendments, records must be preserved in their native format or other usable way for the duration of litigation. To protect against potential disasters and to ensure discoverable data is not lost, all emails and IMs should be duplicated at a secure third-party facility and be indexed appropriately. Arguably the most necessary in the event of a subpoena, message retrieval, or "discovery", should be obtainable via searchable queries from a secure website and be easily performed through a standard web-based interface.

Without archival discovery functionality, a fund would need to restore its data from tape, and then manually scan all of the data so that the relevant messages can be retrieved. Using retrieval technology allows users to easily execute a search through a simple interface and generate reports utilizing the retrieved data. Firms should select an archival system that allows them to search and retrieve information based on a wide range of criteria including date, time, sender, receiver, type, status, group, or indexed entities in the header, body or any attachment. The ability to easily sort and retrieve only the necessary information helps provide quick access to relevant data and avoids disclosure of irrelevant, sensitive or proprietary information.