

## ***Discovering Electronic Messaging Archiving:***

*The Laws and Regulations That Make  
Archiving Mission Critical*

### **ABOUT EZE CASTLE INTEGRATION**

Eze Castle Integration ([www.eci.com](http://www.eci.com)) is the leading provider of technology and IT services to the investment industry. The company's service areas include Startup and Relocation, Outsourced Technology Support, Telecommunications, Business Continuity Planning and Disaster Recovery, Archiving, Storage, and Internet Service. Eze Castle Integration is headquartered in Boston and has offices in New York, Greenwich, CT, San Francisco, Los Angeles, Minneapolis, and London.

# Table of Contents

<b>Introduction</b> .....	3
<b>The Changing Legal Landscape</b> .....	3
<b>Federal Rules of Civil Procedure</b> .....	4
<b>The Significance for Hedge Funds and Investment Firms</b> .....	4
<i>Top 10 Considerations for Selecting an Archival Service</i> .....	5
<b>Conclusion</b> .....	6
<b>Eze Castle Integration Archiving Services</b> .....	7

## INTRODUCTION

In a world where communications and data storage are primarily performed electronically, businesses are scrambling 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, SEC guidance and data discovery rules, a comprehensive solution that systematically saves and protects data and enables easy access and retrieval in the future is vital for a financial services firm now more than ever.

## THE CHANGING LEGAL LANDSCAPE

Email and instant messaging are fundamental electronic communication mechanisms within the finance industry. The Radicati Group, a technology research firm of Palo Alto, California, reports that the amount and size of emails being sent now has dramatically increased compared to previous years, but only 14 percent of all corporate email accounts are currently being backed up and archived for future access. Much of a company's business-critical information is discussed within emails; and instant messaging 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 big name 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 jump on the chance to sue, 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's 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 email 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 US 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 gains responsibility for providing details on their information systems locations, content, management and policies to lawyers, courts, etc.

The impact of these new rules is extensive and significant. Ensuring messaging information and all other records concerning electronic activity are easily accessible is a top priority for organizations across the US, 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**

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 obligations. Becoming familiar with the changes and the impact these changes 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 effective-

ness 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 can be costly and time-consuming. Archiving email and instant messages 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

### Top 10 Considerations for Selecting an Archival Service

1. Does the Archive service provide a dedicated server per archive client or does multiple clients' data intermingle on one server?
2. Is IM capture provided as part of the monthly service, delivered for a separate fee or handled in-house by the client?
3. Is Natural Language Processing (NLP) or Keyword filtering used for categorizing, indexing and searching files? NLP is the preferred method because it recognizes sentence nuances.
4. What method of message capture does the service use? The Interception method, which sits in the middle of message traffic, or Journaling, which allows traffic to flow normally without interruption if the connection to the archive is lost or an outage occurs?
5. Are discovery services offered by the Archival service provider?
6. Is the solution Bloomberg-compliant?
7. Does the service utilize WORM (Write Once Read Many) Storage at the point of capture to maintain message integrity? WORM is recommended by the SEC.
8. Is message stubbing utilized to manage the size, performance and service level agreements of the enterprise mail server?
9. Do the document management processes allow single-search searching of all email, IM, Bloomberg, and documents relating to a specific subject?
10. Are end users able to see and easily search their own electronic records out seeing all user documents?

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.

## **CONCLUSION**

It is no secret that electronic files are vital components to corporate litigations; the “electronic paper trail” often makes or breaks a case. Even if an organization is not currently a part of any litigations, the damaging consequences of not being prepared for one makes it mandatory that companies be in compliance with the FRCP’s guidelines. If not just for legal reasons, firms must implement an archiving system to better manage critical business information that is transferred through various communication channels, employee to employee. With no better alternative, archiving processes and technology are an essential business function, too beneficial to ignore and too critical to operate without.

## EZE CASTLE INTEGRATION ARCHIVING SERVICES

With Eze Archive services, all email and IMs, including Bloomberg Mail and Bloomberg IM, are easily archived. We offer our clients a comprehensive, SEC-compliant solution that provides secure and efficient archival of all e-mail and instant messages. With Eze Archive, messages are always available and accessible to authorized employees through a protected website.

As more and more communications and business transactions are made through e-mail and instant messaging it is vital to keep these communications stored and easily accessible. Eze Archive uses the latest information searching and sorting mechanisms, including Natural Language Processing (NLP) which understands the nuances of sentence structure.

Other Eze Archive benefits include:

- **Comprehensive** – Our solution archives every e-mail and instant message and makes them highly accessible through a protected website.
- **Easy Searching** – Eze Archive service indexes all captured records and provides simple searching and retrieval through a secure website using the latest information searching and sorting mechanisms.
- **Flexibility** – View and/or download messages in their original format with attachments.
- **24 x 7 x 365 Availability** – You can access your archives anytime from anywhere – securely and easily.
- **SEC Compliant** – Eze Castle Integration stores your e-mail and IM records per SEC guidance on WORM (Write Once Read Many) storage which prevents alterations and helps assure message integrity.
- **Non-intrusive** – Eze Archive works by automatically capturing incoming and outgoing messages behind the scenes using Exchange Journal functionality so live email and IM traffic is never interrupted.