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HOT ISSUE

EMAIL ARCHIVING FOR THE FINANCIAL INDUSTRY

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EMAIL ARCHIVING FOR THE FINANCIAL INDUSTRY

INTRODUCTION

While every business faces certain challenges, businesses in the financial industry face some of the toughest challenges around. There are extensive regulations governing the financial industry and most of these have an effect on the way that IT managers have to manage email archiving. Depending on the specific industry and the size of the business, these can include: SEC, FIRA, Sarbanes-Oxley, Dodd-Frank, Patriot Act, Gramm-Leach- Bliley, and the banking regulations act.

When it comes to email archiving, a lot of these regulations have things in common. Simply put, email communications are considered important corporate records and they must be retained and produced when requested by a regulator. In addition, they need to be protected and secure in the case of disaster recovery process or when required for legal discovery.

Every industry has it's own retention period, the maximum length of time that records should be stored securely for. In most cases, email in the financial industry needs to be archived for between 3-7 years. On top of email archiving, there are also other regulatory requirements such as IM archiving.

CHALLENGES FACED BY THE FINANCIAL SECTOR

Due to the nature of the sector, the finance industry is subject to a lot of regulation which presents specific challenges. Here are some of the most common that apply (some of these are across the board, while others are industry-specific):

Records management: This involves management of all communications like email, instant messages, and others. This means retention based on timescale and the appropriate destruction of communications in compliance with the specific regulations in the industry.

Data leak protection: Financial firms deal with a plethora of sensitive information and are obliged to protect it.

eDiscovery: Firms are obliged to produce communications as evidence in legal inquiries.

Spiraling costs: Financial firms are working with decreasing budgets and spiraling IT costs. Email servers and email storage demands are increasing at a rapid rate. HR issues: A work environment needs to be free of harassment issues, and these days harassment happens over email in most circumstances.

Across the globe, laws and regulations have governed all industries and companies, and the finance industry is probably under the most scrutiny of them all. Think about it: email communication is now the mainstay in every office, and compliance has grown in importance along with it. Banks and other kinds of financial institutions are taking record keeping and email archiving more and more seriously due to recent shake-ups in the industry.

WHY FINANCIAL FIRMS NEED TO COMPLY

The Dodd-Frank Wall Street Reform Act

Given its high profile, it's likely you've already heard of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The act was implemented in July 2010 and has instigated a fundamental shift in financial service regulation within the United States.

Before the Dodd-Frank Act, regulations already required financial services firms to archive all data relating to specific business transactions and financial activities.

By examining these records, the financial regulators were able to carry out their work: determining if a specific firm or employee had violated any laws or regulations.

The specific regulations like FINRA, SEC 17a-4, and others have always required financial services firms to prove their business is being conducted in the appropriate manner. These would have included requests similar to eDiscovery, with terabytes of data involved and a certain time frame set out for results to be provided.

The difference between these compliance requests and modern compliance is that the search only focused on a specific department. The Dodd-Frank Act has a much broader scope, and regulators are no longer focused on minor issues or misdemeanors. The financial regulators are now ever vigilant in ALL aspects of a firm's operations, in order to determine if they are a threat to the finance industry or even the economy.

There is only one way for regulators to achieve the required level of vigilance. They must continuously monitor the internal operations of all firms. To have full vigilance, regulators need access to internal email communications throughout the company. By ignoring the email archiving and compliance issue small financial firms are asking for trouble.

COMPLIANCE REGULATIONS

SEC 17a (3, 4)

- *Applies to all persons who are engaged in trading securities as brokers or dealers, and persons associated with the business.*

The Securities and Exchange Commission established rules for the Electronic Storage of Broker-Dealer Records, which was put in effect May 2003. It establishes standards for document and email retention in an accessible non-rewriteable and non-erasable format.

The SECa-4 requires brokers and dealers to preserve email records for six years; the first two years of which must be in an accessible location. All records must be time-stamped with a unique and sequential identification number, stored in a non-rewriteable/non- erasable format, organized and indexed with a duplicate copy stored separately from the original. The indexes should also be duplicated and stored separately from the original.

They should also be available for examination and preserved as long as the original records for at least six years.

Failing to comply with the standards set out by SEC 17a (3, 4) can result in heavy fines, imprisonment, loss of corporate reputation, or any combination of these penalties. The act is designed to protect investors and brokers from fraudulent activity and misinterpretation through electronic messaging.

NASD Rule 3110 & NYSE Rule 440

- *Similar to SEC 17a, these compliance regulations apply to all persons who are engaged in trading securities as a broker or dealer, and persons associated with the business.*

Both the National Association of Securities Dealers (NASD) Conduct Rule 3110 on Books and Records and the NYSE Rule 440 went into effect May 2003. Both rules establish standards for the preservation of accounts, records and importantly, electronic correspondence under the guidelines approved by the SEC 17a (3, 4).

The NASD Rule 3110 and NYSE Rule 440 require brokers and dealers to retain all electronic records and correspondence between the firm and customer. In close relation to the SEC 17a (3, 4) rules, there is a requirement to retain emails for six years in an accessible, non-rewriteable and non-erasable format. NASD Rule 3110 requires that supervisors have the ability to review corporate outgoing mail for non-compliant language and to enforce internal policy surrounding email correspondence.

Again, similar to SEC 17a (3, 4) failing to comply with these regulations can result in heavy fines, imprisonment, and/or loss of corporate reputation. The rules are designed to protect investors and brokers from fraudulent activity and misinterpretation through electronic messaging.

IDA 29.7 (Canada)

- *These regulations apply to all Canadian Investment companies and those who do business with said companies.*

The Investment Dealers Association of Canada, or commonly referred to as IDA 29.7 is a regulation that mandates that all client correspondence, largely through email, must be archived and retained.

All client correspondence, largely emails and IM, must be retained for a period of five years from the date of creation. All information must be available for audit and review by the Association at all times, so a speedy discovery process is a necessity to comply with the request. Proof is required to ensure the information has not been corrupted. Again, failing to comply with these regulations can result in heavy fines, imprisonment, and/or loss of corporate reputation.

The IDA 29.7 act provides corporate accountability in the face of fraudulent activity and misinterpretation of electronic information.

INVESTMENT ADVISORS ACT

- *This applies to Hedge Fund Managers/Advisors and their companies with assets worth $25M or more. The SEC implemented a new regulation on private investment pools called the Investment Advisors Act (IAA) in February 2006. All hedge fund managers with $25M worth of assets or more are liable under the IAA regulations. The SEC requires that all said companies be registered under the Investment Advisors Act.*

IAA mandates that Investment Manager and Advisors archive their records, largely electronic correspondence, for a minimum of five years in an easily accessible location from the end of the fiscal year in which that record was created. For the first two years the records are required to be located internally in the Investment office and are subject to random review by the Commission. Archived messages must be stored in an archive available online, with a second copy stored on tamper proof media. Further, messages are required to be time and date stamped

with a unique serial ID. Failure to comply can result in heavy fines, imprisonment, or damage to the organization's reputation. The Investment Advisors Act provides corporate accountability against fraudulent activity and corruption. It also safeguards financial information from potential leakage.

SARBANES-OXLEY

- *Sarbanes-Oxley (also commonly known as SOX or SarBox) compliance applies to all publicly traded companies, along with associated attorneys and business partners. Sarbanes-Oxley has also set an e-records management standard to which all business should adhere.*

The Enron and WorldCom scandals redefined electronic record management legislation globally. Sarbanes-Oxley was implemented in 2002 and legislates how business records are protected and preserved to prevent destruction and corruption. Further, SOX enforces corporate accountability particularly in the face of audit and litigation requests.

Sarbanes-Oxley mandates that all electronic records (including email), audit work papers and correspondence be retained for a period of seven years. Further, tamper proof resources are required to prevent corruption and modification of records. Failure to comply with Sarbanes -Oxley can result in large fines, up to 20 years imprisonment, and/or loss of company reputation.

The rule is designed to protect investors from fraudulent activity and safeguard financial data. All public companies are responsible to implement and practice dependable record management policies that allow for disclosure of information and transparency of business practices.

GRAMM-LEACH-BLILEY

- *Gramm-Leach-Bliley applies to all banks, credit reporting agencies, securities companies, tax preparation companies, real estate settlement service companies, debt collectors, insurance companies, and those doing business with said companies.*

The Gramm-Leach-Bliley Act, or commonly referred to as the GLBA, was signed in November 1999 and put into full effect in July 2001. The Act governs how customer's financial information is collected and disclosed and demands financial institutions to implement and maintain safeguards to protect information and prevent corruption, fraud and leakage.

The Gramm-Leach-Bliley Act mandates that the confidentiality and security of customer information is enforced through securing the information, such as email correspondence, and limiting its access. Places of storage for this information must be protected with secure access controls. Email retention periods parallel that of the SEC 17a-4 regulation which requires retention of six years in an easily accessible space, secure from erasure and rewriting.

Yet again, failure to comply with Gramm-Leach-Bliley can result in heavy fines, up to five years of imprisonment, and/or loss of corporate reputation. The significance behind the Gramm-Leach-Bliley Act is to enhance protection of non- public personal financial information and ensure its safety through proper record keeping, supervisory review, and access.

CASE STUDY

AIG vs Bank of America

Lawmakers have picked the entire private internal email archive at Bank of America subsidiary Countrywide apart during a court case worth $10.5 billion that was filed by AIG Insurances.

Executive Countrywide emails that were sent before Countrywide's much publicized collapse have been detailed in court, as AIG sued Bank of America (Parent company of Countrywide) over fraudulent sales practices. Countrywide's collapse was a very high profile case after mortgage market issues, which developed as a result of the financial crisis. The lawsuit by AIG alleged that top executives from the company knew that certain loans were being given to people who could not afford to pay them back, contributing greatly to the credit crisis.

Email archiving protects your business from stiff penalties

This court case highlights the importance of email archiving and eDiscovery. While it has been used against Bank of America in this case, had the bank not been able to produce these records then they would have been in a whole other world of trouble for breaching compliance laws. Every business is mandated under legislation to keep a backup and archive of company records so that they can be used when called upon in legal cases. Email communications are classed as company records, and so businesses are mandated to have some form of archiving system in place. E-discovery is also essential when trawling through potentially millions of emails looking for certain emails in particular.

Had Bank of America not been able to produce these records, they could have been fined billions by the state for breaching data compliance laws, and also have suffered great reputational damage.

Being able to produce email archives for evidence, either for the protection of your company or for the courts, is not only a prudent policy but also it is a legal requirement.

CONCLUSION

- Due to the nature of the sector, the finance industry is subject to rigorous regulation. As you can see, failing to comply with any of these regulations can result in heavy fines, imprisonment, and/or loss of reputation. It is imperative for companies in the financial sector, financial professionals, and any organization dealing with the aforementioned to ensure that they meet these compliance regulations.
- Email management is just one part of this compliance but given that most communications today are made through email it is significant. Therefore, an email archiving solution, which meets the required standards set out by the various compliance regulations, is an essential investment for those in the financial industry. Jatheon's range of email archiving solutions meet the standards required for each of the mentioned compliance regulations.

NOTES:

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Have more questions? *– Just call us, we can help!*

ABOUT JATHEON

Founded in 2004, Jatheon Technologies Inc. designed the world's first non-intrusive network appliance.

Today, Jatheon continues to raise the bar throughout the industry with its latest enterprise grade cCore appliance line, and ergo, its powerful email archiving, indexing, retrieval and dynamic monitoring software solution.

Jatheon is headquartered in Toronto, Canada and serves clients worldwide through its network of global business partners.

For more information, please visit ***www.jatheon.com****.*

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