



DST Launches E-Mail, Records Retention Tool for Funds

By Jackie Noblett

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DST has launched a new service to manage fund companies' mountains of paper records and electronic documents in response to a growing need for records management technology in the industry.

As regulators and litigators demand quicker access to more and different types of documents — from trading audit trails to e-mail and social media messages — fund companies are being pressed to produce those records in a timely fashion. Without a strong records management policy and systems to implement such a policy, firms face an expensive discovery process or even the risk of fines associated with noncompliance.

“There are very few opportunities to get control of the costs associated with e-discovery, but having good and effective records retention policies in place when litigation strikes is probably a company's best defense against out-of-control discovery costs,” says Stephanie “Tess” Blair, chair of the e-data practice at **Morgan Lewis**.

That's a lesson some firms have had to learn the hard way. In May, broker Piper Jaffray was hit with a \$700,000 fine by the Financial Industry Regulatory Authority for failure to retain 4.3 million e-mails. Finra hit Foreside Distribution Services, a subsidiary of Foreside Financial Group, in March with a \$100,000 fine for inadequate e-mail retention.

Compliance experts say a firm's inability to produce records and e-mail upon request is a red flag to regulators and can encourage greater scrutiny and digging.

While records management tools are not new, DST's product is unique in that it is tailored to the industry and aggregates electronic communication, documents and other records. IT giants such as **IBM**, **Oracle** and **EMC Corp.** as well as traditional paper storage firms like **Iron Mountain** have offered e-discovery and records management software to a variety of industries for several years. But DST says its history with managing mutual fund back-office data gives it a unique insight into the industry's data management needs.

“We have almost 40 years of experience with recordkeeping for mutual fund companies,” says Jeff Dittmer, director in charge of the Electronic File Solution product group at DST. “The reputation that DST has with its existing customers, mutual funds and clients in other industries really makes a statement that it has the technology — the advanced data centers and scanning facilities — to provide records management solutions.”

Indeed, the genesis of the EFS product was a request from one of its mutual fund clients to construct a system that would help it convert a warehouse full of paper records to digital format, Dittmer says. The firm would not disclose the identity of that client. There are increased risks associated with holding paper, he says, when those paper documents are the only copy a firm has of that event.

Converting paper to digital files has an additional advantage in any regulatory or legal proceedings, sources say. “When a regulator asks for documents that go back two years, the ability of the investment advisor to go back into the system and pinpoint the exact records being requested is crucial,” says Gary Watkins, partner at **ACA Compliance Group**. “Having records in a digital format can be helpful, but you have to make sure that you've cataloged and saved the record in a format you can easily search.”

The DST system combines electronic records archived from corporate servers and those derived from paper documents into one searchable platform. Compliance, legal and IT departments can use the systems to manage record-retention policies. One file can be flagged and kept for five years, whereas another document can be flagged to keep indefinitely. The system can also be packaged with DST's mutual fund shareholder recordkeeping platform and services.

By offering the product in a software-as-a-service platform — meaning DST runs the servers where the documents are stored and the fund company accesses those files via a Web portal — fund companies can in many cases reduce the cost of keeping digital files on in-house servers or paper ones in warehouses, as well as the risk of data loss and breaches, Dittmer says.

But more importantly, records management systems like DST's are growing in importance for fund companies as the amount of data produced that is subject to discovery or regulatory review grows.

“It’s the substance of the message that drives the requirement to preserve the record, and therefore any format is fair game for discovery,” says Kay Gordon, a partner at **K&L Gates**. “The regulators are looking for an increasing array of different types of records, and because of technology and other considerations, this trend is expected to continue.”

In addition to traditional e-mail communications, Finra and the SEC are requiring firms to keep track of internal and external messaging system usage and even social media activity to ensure that firms are complying with conflict-of-interest rules and other regulations. Within the legal landscape, a 2006 amendment to the Federal Rules of Civil Procedure left the definition of electronic material subject to discovery broad so that it could encompass the evolving nature of digital records, Morgan Lewis’s Blair says.

Technology systems, whether they are records-based like DST’s or electronic-communication-specific such as systems by **Smarsh** and **Socialware**, are helpful in taking a proactive approach to records management and compliance. But, says ACA Compliance’s Watkins, “the question is whether firms want to invest in that technology to support the compliance function.”