



Reaping the Benefits of Electronic Message Surveillance

Survey finds that supervision activities yield valuable information and reduce risk exposure

Fortiva Inc., 2006



Executive Summary

Electronic message surveillance can yield valuable information and may significantly reduce a company's exposure to risk.

This survey was done to determine what the securities industry is currently doing to meet NASD and NYSE supervision requirements, and to enable organizations to compare their electronic message surveillance activities to industry benchmarks. The results indicate that despite a lack of guidance, companies have been very proactive in making sure they meet regulatory requirements.

"79 percent of businesses that supervise email activity feel that it is deterring employees from engaging in correspondence that violates corporate policies and regulations."

76 percent of respondents review internal electronic communications, even though the NASD/NYSE rules do not specifically require supervisory review of internal communications (review is required only of communications by registered persons with the public). The SEC requires broker-dealers to retain internal correspondence, but does not specifically require them to review this correspondence. This indicates that organizations are going beyond minimum compliance with the rules to more proactively supervise their employees' activities.

The results also confirmed that supervision activities are giving organizations valuable visibility into their employees' actions. The survey found that 26 percent of organizations have terminated an employee as a result of information yielded through email supervision. In addition, 12 percent have uncovered customer complaints that were not previously escalated or disclosed, while 14 percent say copies of employee correspondence have been forwarded to a regulatory body or law enforcement agency.

According to the survey, electronic message surveillance is a time-consuming, but valuable activity. The survey found that for every 100 employees, companies are spending 12 hours per week to review 10 percent of electronic messages. In addition to meeting regulatory responsibilities, this time investment may be helping prevent lawsuits, harassment claims and exposure of confidential information. According to the results, while 83 percent of organizations don't prohibit users from sending or receiving personal email, 79 percent of businesses that supervise email activity feel that it is deterring employees from engaging in correspondence that violates corporate policies and regulations.

Additional findings from the survey include:

- 64 percent of respondents sample a percentage of electronic communications across all their employees, while 36 percent only sample some groups of users such as brokers, advisors or executives
- Sampling size varies, ranging from 1 to 50 percent, with the median being 10 percent
- 95 percent of respondents say their sampling sizes have never been questioned by a regulator
- All securities organizations surveyed are reviewing email messages, but 5 percent don't review the contents of the email attachments. In addition to email, 52 percent review instant messages and 41 percent review Bloomberg and Reuters Mail.
- 83 percent of companies do not exempt any group of employees from the review policy (such as the legal department, CEO, compliance department)

It is clear from these results that the rewards can be substantial for those companies that invest the resources to review electronic communications and protect themselves from email risks.

Survey Methodology

Survey results are based on 100 North American organizations that monitor and review the messages of their employees. The survey polled readers of leading Securities Industry publications that are responsible for the electronic message surveillance activities within their organization as well as Fortiva customers. The survey was conducted over a 4 week period from late October to early November, 2006. Of the companies that responded to the survey 13 percent have between 1 and 25 employees; 16 percent have between 26 and 100 employees; 43 percent have between 100 and 1000 employees; 9 percent have between 1000 and 5000 employees; and 20 percent have over 5000 employees.

The survey was conducted by Fortiva, a provider of secure, managed email archiving, in conjunction with Jeffrey Plotkin, a securities enforcement specialist and a partner with the law firm Pitney Hardin LLP.

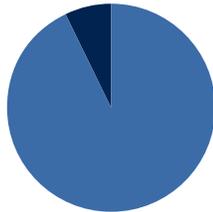
Findings

POLICY

Most respondents (93 percent) have an electronic communications policy in place, 83 percent circulate a written version of the policy to all employees, and 71 percent require all employees to sign it. 83 percent of organizations do not prohibit users from sending or receiving personal email within the corporate messaging system, and 78 percent prohibit employees from conducting company business on external systems that cannot be monitored.

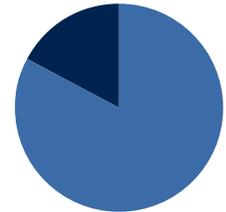
Q. Does your organization have a formal electronic communications retention and review policy?

93% Yes
7% No



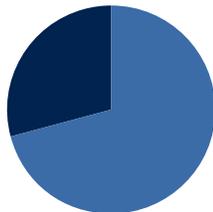
Q. Do you circulate a written version of your policy to all your employees?

83% Yes
17% No



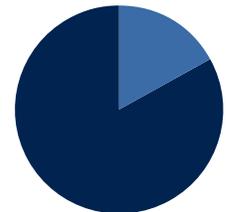
Q. Do you require all employees to confirm their understanding and acceptance of the policy by signing it?

71% Yes
29% No



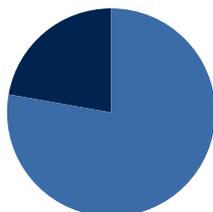
Q. Do you prohibit users from sending or receiving personal emails with the corporate email system?

17% Yes
83% No



Q. Do you prohibit users from conducting company business on external systems that cannot be monitored?

78% Yes
22% No



MONITORING

All organizations are reviewing email messages, but 5 percent don't review the contents of the email attachments. In addition to email, 52 percent review instant messages and 41 percent review Bloomberg and Reuters Mail.

The majority of organizations review messages after they have been sent or received, with only 20 percent reviewing messages before they are sent, and 19 percent reviewing messages before they are delivered to the appropriate mailbox.

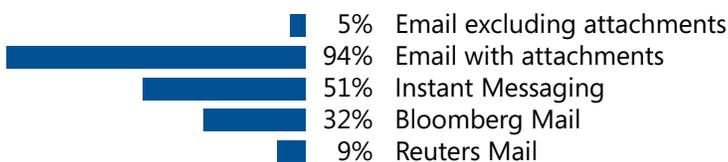
76 percent of respondents review internal electronic communications, even though the NASD/NYSE rules do not affirmatively require supervisory review of internal communications.

73 percent of organizations utilize a central review team to supervise messages, whereby one or more people are responsible for reviewing all messages that are added to the supervision queue, regardless of who sent the message, or what potential violations have been identified. 71 percent then escalate potential violations for further review, with 86 percent of these escalating the potential violations to the Compliance department.

64 percent of organizations sample a percentage of electronic communications across all their employees. 36 percent only sample some groups of users such as brokers, advisors or executives.

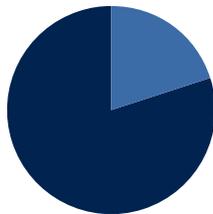
Sampling size varies, ranging from 1 to 50 percent, with the median being 10 percent.

Q. Which of the following are you monitoring? Please check all that apply.



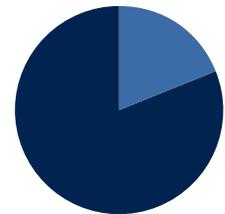
Q. Do you currently review messages before they are sent?

20% Yes
80% No

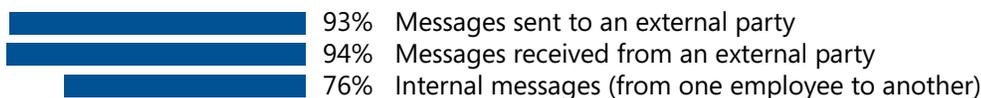


Q. Do you currently review messages before they are delivered to the appropriate mailbox?

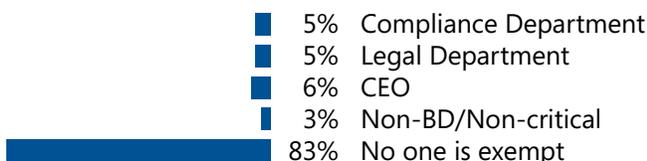
19% Yes
81% No



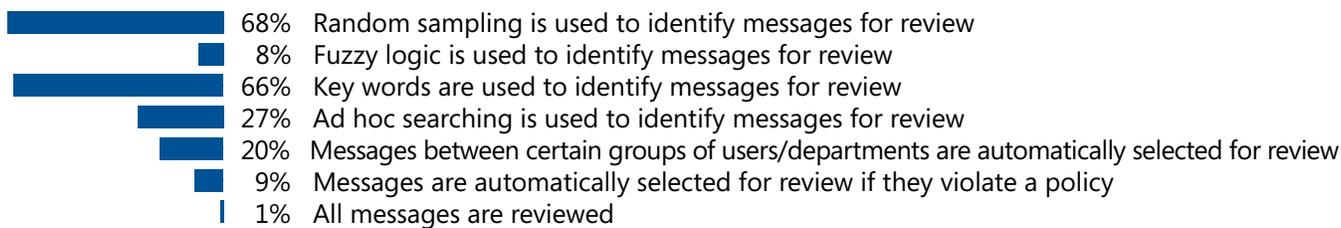
Q. Which messages does your organization monitor/review? Please check all that apply.



Q. Are there any groups of employees that are exempt from your review policy? Please check all that apply



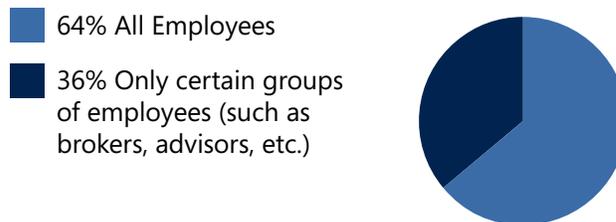
Q. How do you flag messages for review? Please check all that apply.



Q. Which of the following message review scenarios does your organization have in place?



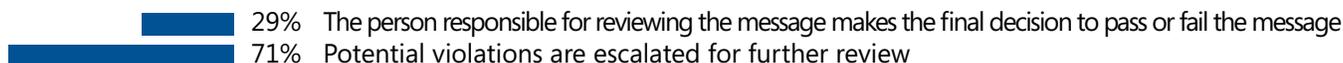
Q. Who do you sample the electronic communications of?



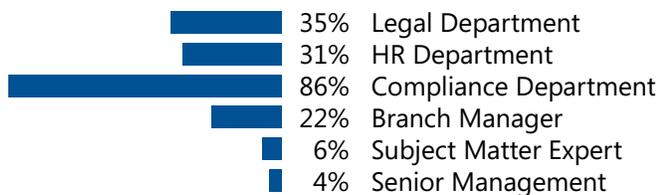
Q. What percentage of messages do you randomly sample for review?

Median Response: 10%

Q. How are messages that are flagged as potential violations handled?



Q. Who are potential violations escalated to?



IMPACT OF SUPERVISION

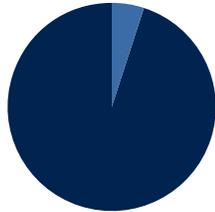
95 percent of respondents say their sampling sizes have never been questioned by a regulator.

The survey found that for every 100 employees, companies are spending a median of 12 hours per week to review 10% of electronic messages. In addition to meeting regulatory responsibilities, this time investment may be helping prevent law suits, harassment claims and exposure of confidential information. According to the results, 79 per cent of businesses that supervise email activity feel that it is deterring employees from engaging in correspondence that violates corporate policies and regulations.

26 per cent of organizations have terminated an employee as a result of information yielded through email supervision. In addition, 12 per cent have uncovered customer complaints that were not previously escalated or disclosed, while 14 per cent say copies of employee correspondence have been forwarded to a regulatory body or law enforcement agency.

Q. Has a regulator ever questioned your sampling percentage?

- 5% Yes
- 95% No



Q. Have any of the following resulted from your monitoring/review of electronic messages? Please check all that apply.

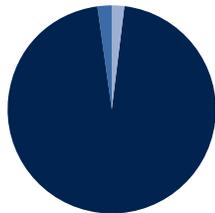
- 26% An employee has been terminated
- 14% Copies of employee correspondence have been forwarded to a regulatory body or law enforcement agency
- 12% Customer complaints not previously escalated or disclosed have been uncovered

Q. How many total hours per week is your organization spending on review activities? Please include time spent by everyone involved in supervision activities.

Median Response: 12 hours per week (per 100 employees)

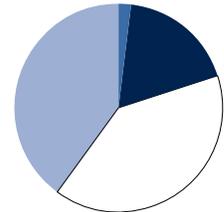
Q. Overall, what percentage of the messages flagged for review has been found to violate Federal Securities Laws or your organization's policy (ie. Failed)

- 96% - Less than one percent
- 2% - One percent
- 0% - Between two and three percent
- 2% - Three percent
- 0% - Greater than three percent



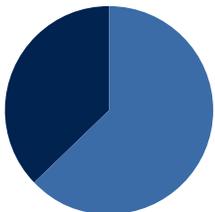
Q. How has the overall percentage of failed messages in your organization changed over time?

- 2% Increase
- 18% Decrease
- 40% Remained the same
- 40% Don't know



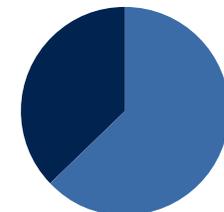
Q. Do you feel that your message surveillance activities have increased your visibility to the risks to which your organization is exposed?

- 63% Yes
- 37% No



Q. Do you feel that your message surveillance activities deter employees from engaging in correspondence that violates corporate policies and regulations?

- 79% Yes
- 21% No



About Fortiva

Fortiva is a leading provider of managed email archiving solutions for legal discovery, regulatory compliance and mailbox management. The Fortiva Archiving Suite automatically captures and indexes all electronic communications for redundant storage offsite. By outsourcing to Fortiva, customers can enforce a consistent message retention policy without having to worry about managing the storage infrastructure. Fortiva is the only email archiving service provider that guarantees search performance while offering total data privacy in a fully-managed solution. For more information, visit www.fortiva.com.

About Jeffrey Plotkin

Jeffrey Plotkin, a Partner of the law firm Pitney Hardin LLP in New York City, served for five years in the SEC's New York Regional Office, where he was the Assistant Regional Administrator and chief attorney in the Division of Broker-Dealer Enforcement. Mr. Plotkin's practice focuses on representing clients in investigations and enforcement actions by the SEC, NYSE, NASD, and New York State Attorney General's Office. He also handles internal investigations for financial institutions, commercial litigation in federal and state court involving the securities and commodities industries, and arbitration and mediation of securities industry disputes. For further information, visit <http://www.pitneyhardin.com> or <http://www.SECDefense.com>.