Navigating financial sector legal landscape with AI-enabled eDiscovery

Suveer Khanna
Partner, Forensic
KPMG India Ltd.

Kirit Amichandwala
Partner, Forensic
KPMG India Ltd.

Key trends in Financial and Capital Markets sector

✓ The SEC filed 760 enforcement actions in 2022 against Financial Services (FS) companies, a 9 % increase over prior year and recovered record $6.4 billion in penalties and disgorgement on behalf of public. This trend is expected to continue in 2023-2024.

✓ Fitch analyzed over 1,500 reports on banks from 2020-2022 that were tagged to financial crimes, governance, regulatory issues or institutional scandals in a database of news items identified and catalogued as 'risk events' by Sigma Ratings, a global risk intelligence provider. More than 600 reports indicated instances of governance failings, regulatory fines accounting for half of these.

✓ As per FinCen's Financial Trend Analysis report released on January 9, 2024, in the period of January to December 2021, approximately 1.6 million, or 42% of around 3.8 million total BSA reports, equivalent to $212 billion in suspicious activity, related to identity.

✓ 54% of financial advisors plan to invest in financial planning technology in 2024, with Client Relationship Management, Client reporting, Portfolio Management and Digital Marketing.

Present challenge

It is estimated that by 2025, 200+ zettabytes of data will be in cloud storage globally. As data continues to increase, there has also been a rise in the need to scale up and intensify data review for lawyers, with global digital interchange. Further, regulatory pressures and tight production timelines necessitate quick problem-solving solutions. FS sector particularly, with its vast complexities, benefits from technologically advanced and Artificial Intelligence (**AI**)[1] enabled electronic discovery (**eDiscovery**)[2] tools to level up with variety of project sizes and data sources. AI is also useful in instances of multi-state litigations, geopolitical operations and data privacy reviews.

Understanding how eDiscovery/legal-support tools are complemented by AI

The emergence of several new AI models, Generative AI and other technological tools has resulted in a significant transformation of eDiscovery tools. The surge of digital communication and data storage requirements globally has resulted in a need to swiftly analyze vast amounts of data quickly yet accurately. Traditionally, this required human review but AI can now be used to complement this effort, reduce turnaround time (**TAT**) and significantly enhance efficiencies. In recent years, there has been additions of several AI-enabled eDiscovery tools through the introduction of Predictive Coding[3] models.

AI assisted eDiscovery platforms are being aggressively utilized by varied enterprises/leading corporates, such as Tesla, Fujitsu, National Treasury of South Africa, Commonwealth Bank, Ericsson and LinkedIn[4]. Within the FS sector, JP Morgan Chase, for instance, has implemented "COIN", short for Contract Intelligence. COIN is a program that runs on a machine learning system supplemented by a private cloud network that reviews contracts in seconds, a task that previously took lawyers over 360,000 man-hours[5]. This allows lawyers to delegate tasks that may be repetitive or require basic contracting skills such as standardized contracts and focus on bespoke ISDA and derivative type of contracts. Other companies like Goldman Sachs, Morgan Stanley, Barclays and Deutsche Bank have also made considerable investments in AI-enabled eDiscovery tools to enhance legal and compliance reviews.

Today investment in technology is not just about cost, but also about consistent quality and accuracy, produced in a time-bound manner. AI tools aiding this effort include varied review analytics, contract data analysis, and compliance elements.[6]

How AI-enabled eDiscovery tools augment better deliverables for lawyers[7]

- **User friendly interface** - Integration of data analytics with AI-enabled eDiscovery solutions offer user-friendly, instinctive dashboards that drastically reduce training time for legal teams and facilitate faster decision making.
- **Cost effective** – These tools are largely cloud and subscription based, which reduces costs related to procurement, recurring maintenance costs and better handles data privacy requirements.
- **Learning and evolving technology** - These tools also support active continuous learning making the process more effective and efficient.

Takeaways for FS/Capital Markets lawyers: Adoption of AI in Regulation-Technology tools (**Reg-Tech**) is common now and is bound to increase. Few benefits of the AI tools are:

1) **Common eDiscovery tasks facilitated by Large Language Model algorithms** - Crafting Boolean searches, document summarization and first pass review can be completed faster.
2) **Classification and clustering of themes** - Clustering helps identify relevant issues and significant documents quickly which helps experts prioritize relevant documents and identify patterns.
3) **AI-enabled Early Case Assessment (ECA)** - Large Language Models (LLM) can assist in analyzing data to determine scope, timelines, developing case strategy and settlement negotiations.
4) **Sentiment Analysis:** Natural Language Processing (NLP) - Tone and Sentiment can be significant when identifying high risk factors such as frauds or violations of regulatory policies such as AML, sanctions, bribery, privacy and sector specific regulatory requirements. AI models can help gauge the intentions or "mens rea" by identifying biased or prejudicial language.
5) **Redaction of Privileged and Personally Identifiable Information (PII)** - Confidentiality of personal data can be ensured by training AI models to identify / automatically redact such information.
6) **Generating eDiscovery analytics** - AI-based analytics can effectively identify patterns and recurring problems, which can help organizations be more preventive as opposed to reactive and assign matters to the relevant legal counsel based on available metrics, and better manage data.[8]
7) **Managing eDiscovery costs** - AI also helps reduce costs by reducing data sizes for human reviewers.
8) **Visually Clustering Risks** - Integration of visual analytics helps break down large data and offer deeper insights. FS sector/Capital Markets have their own industry jargons, emoticons, corporate slang etc. and AI-enabled eDiscovery can help identify risks in the context of such cryptic communications quickly so that risks can be isolated in the early stages of review.

Benefits of AI-enabled technology to the FS/Capital Markets landscape: AI enables companies to enhance customer experience. There are various benefits of deploying AI, which include[9]:

- **Risk Management:** AI can identify patterns that can help identify potential risks in services like underwriting. Lending institutions can ascertain creditworthiness of borrowers by analyzing relevant data points. Operational efficiencies can be enhanced in the Insurance industry with insurance pricing, claims processing, claims adjudication, policy servicing etc.
- **Regulatory compliance:** FS sector/Capital Markets are subject to stringent regulations and compliance requirements and routine processes like KYC and approvals can be completely automated with increased accuracy. This can help them avoid penalties and legal liabilities.
- **Fraud prevention:** Anomalous patterns and suspicious transactions can be monitored in real time. E.g., JPMorgan deployed AI-enabled fraud detecting applications for its account which helps detect fraud patterns every time a credit card transaction is processed & sends alerts to Chase data center.
- **Improving customer experience:** In the competitive Capital Markets sector, AI can provide the customer a seamless and swift experience by:
  - ✓ Developing personalized products based on customer preferences and market trends
  - ✓ Painless onboarding process
  - ✓ Quicker asset servicing
  - ✓ More control for investors by adoption of account aggregator platforms
  - ✓ AI-based chatbots for responding to queries
  - ✓ Ease of accessing historical data related to communications (internal as well with clients) to customize customer experience
- **Analyzing market trends:**
  - ✓ More agile in adapting to market volatility
  - ✓ Deeper analysis of historical data to make predictions
  - ✓ Facilitate digital marketing
- **Enhanced operational productivity and efficiency**
  - ✓ Tracking and managing regulatory compliances and filings
  - ✓ Reduce operational costs by automating repetitive tasks such as generating reports, reconciliation and placing orders and thereby optimizing resources
  - ✓ Generate reports directly from raw data and therefore more transparency
  - ✓ Better risk and fraud management and detection
  - ✓ Potential to build a digitized integrated end-to-end business process
  - ✓ Ease of recording, storing and accessing data as part of compliance requirement

Legal Fraternity Outlook

AI-Gen AI is not ready yet: An argument one hears from the legal fraternity is to wait for few more years to gauge how AI matures, which one can do, but not understanding today's eDiscovery tools, Generative AI, Robotics solutions etc., how to use them effectively in the present time could be devastating in future, both in terms of cost and efficiency. **Steer Ethical and Compliance Obligations:** Lawyers, in-house counsels, law firms, law consultants and other

independent practitioners are expected to steer their client's ethical and compliance obligations to a logical and satisfactory end in a most effective way. In this regard, eDiscovery tools and Technology Assisted Review (**TAR**)[10] are being utilized to classify large volumes of documents and conduct legal and regulatory compliance activities. Further, introduction of new AI layers and robotics make it easy to integrate with existing technology to further enhance efficiency/output quality.

Evidence Management: eDiscovery plays a critical role in uncovering evidence of fraud and financial wrongdoings. TAR, AI, and now Generative AI-enabled eDiscovery tools add great value within FS, Capital Markets and other highly regulated industries.

Cases in example - In the US, TAR has been widely accepted by the legal fraternity after the 2012[11] landmark judgment of *Da Silva Moore v. Publicis Group & MSL Group*[12]. Also, the 2001 Enron scandal strengthened the eDiscovery landscape due to huge data encryption & digital footprint, involving analysis of thousands of emails and financial records.[13] Further, in case of In-re Google Play Store Antitrust Litigation, the court ruled that there was a lack of custodian compliance on behalf of Google and that Google did not take reasonable steps to preserve data. Once litigation was reasonably foreseeable, they did not suspend their document retention policy, which was set to auto-delete chats after 24 hours.

Conclusion:
Lawyers can benefit immensely by deploying AI-enabled tools for tasks like analyzing big data quickly to better service their clients effectively.

FS and Capital Markets sector particularly benefit from AI enabled legal technology, by monitoring high risks and reducing regulatory exposure. Today, a major component of eDiscovery cost is related to litigations, internal investigations and compliance requirements. Thus, it is the responsibility of legal and compliance teams to familiarize themselves with the technological advancements to produce the best results, in a cost-effective and safe manner.

---

[1] AI is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings, Britannica, November 2023.

[2] eDiscovery involves identifying, collecting, reviewing, and producing electronically stored information (ESI) to help review and gather relevant documents. There are number of advanced eDiscovery tools in the market today, such as Relativity-RelOne and Brainspace that regularly help corporates, banks / financial institutions etc. review and monitor contractual and compliance breaches of policy, process, and regulations.

[3] Predictive coding suggests the brain actively predicts upcoming sensory input rather than passively registering it.

[4] Corporate eDiscovery and Internal Investigations Software, Relativity.

[5] JP Morgan COIN: A Bank's Side Project Spells Disruption for the Legal Industry, Harvard Business School Digital Initiative, November 2018

[6] Augmented Lawyering, European Corporate Governance Institute (ecgi), December 2020

[7] Technology-Assisted Review (TAR) | Everything In-House Counsel Need to Know [Guide], JDSUPRA, October 2021.

[8] A Chief Legal Officer's Guide to AI-Based eDiscovery and Analytics, JDSUPRA, May 2021.

[9] How to futureproof the financial services sector with AI, Retail Banker International, October 2023

[10] Leveraging Legal Leadership: The General Counsel as a Corporate Culture Influencer', Association of Corporate Counsel 2017, 2017

[11] Technology-Assisted Review (TAR) Everything In-House Counsel Need to Know, JD Supra, October 2021

[12] Da Silva Moore v. Publicis Groupe, Case Brief for Law School, LexisNexis

[13] The Most Famous eDiscovery Case Ever is a Financial Services Case, IPRO, May 2022