

Insights



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Regulator Preservation Notices—Can You Narrow the Scope?

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A federal or state regulator, such as the SEC or a state attorney general, sends a company a preservation notice stating that it believes the company may possess “documents” relevant to an ongoing investigation and requests that the company “reasonably” preserve such evidence until further notice. The stated subject matter of the investigation is very broad and the notice requests the company preserve documents going back a number of years. “Documents” is defined broadly in the notice and includes not only emails, hard copy documents, Word documents, and even voicemails, but also categories that may be undefined and unfamiliar to many such as backup files, file fragments, and logs. The notice advises that the company may need to act to prevent routine destruction practices, including regular deletion of emails and recycling or rotation of backup tapes. The notice also states that if the company does not comply it could face civil or criminal liability.

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