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MEMO

DATE: **June 6, 2023**

TO: **Dan Hadaway**

FROM: **James R. Schrier**

RE: Email retention

We recommend a policy of retaining emails for 7 years.

Because emails may contain data relevant to litigation, they must be retained in the event they are required for evidentiary purposes. In the event of a legal dispute, compliance audit, or employment tribunal, emails likely will need to be produced.

Federal laws require the retention of email, some of which are specific to the banking industry. FDIC regulations apply to the storage of covered financial companies' records, including email databases, and stipulate that emails be retained for at least five years. See 31 CFR § 1010.430(d). However, the Gramm-Leach-Bliley Act requires banks and financial institutions to retain emails for at least seven years.

Indiana also requires financial institutions to develop a records retention policy that takes into consideration "legal actions and administrative proceedings in which the production of company records is necessary or desirable; state and federal statutes of limitation applicable to legal actions and administrative proceedings; and availability of information contained in the company records from other sources." Ind. Code § 28-13-10-11(c). Records may be disposed of after the required period, and there is then no duty to produce those records in any action or proceeding. Ind. Code § 28-13-10-11(d).

Ohio law more explicitly requires banks to maintain records for a period of six years (or the period set by applicable federal law or regulation, whichever is longer). 11 Ohio Rev. Code § 1109.69(B) As in Indiana, a bank is authorized to dispose of any records that have been retained or preserved for the appropriate period. 11 Ohio Rev. Code § 1109.69(E).

Because various rules establish different email retention periods, the safest approach is to provide for retention of emails for seven years, which is the longest period mandated. Under Indiana and Ohio laws, the records may then be erased.