

PUBLIC SUBMISSION

As of: 2/17/16 10:11 AM
Received: February 16, 2016
Status: Pending_Post
Tracking No. 1k0-8nzw-og9x
Comments Due: February 16, 2016
Submission Type: Web

Docket: OCC-2015-0017

Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

Comment On: OCC-2015-0017-0001

Proposed Guidelines: Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches,

Document: OCC-2015-0017-DRAFT-0006

The Clearing House, SIFMA, & Financial Services Roundtable

Submitter Information

Name: John Court

Address: United States,

Submitter's Representative: John Court

Organization: The Clearing House, SIFMA, & Financial Services Roundtable

General Comment

See attached comment letter from The Clearing House Association L.L.C., the Securities Industry and Financial Markets Association, and the Financial Services Roundtable.

Attachments

The Clearing House, SIFMA, & Financial Services Roundtable



February 16, 2016

By electronic submission to www.regulations.gov

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219
Attention: Legislative and Regulatory Activities Division
Docket ID OCC-2015-0017
RIN 1557-AD96

Re: OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches (Docket ID OCC-2015-0017)

Ladies & Gentlemen:

The Clearing House Association L.L.C., the Securities Industry and Financial Markets Association, and the Financial Services Roundtable (collectively, the “Associations”)¹ appreciate the opportunity to comment on the proposed guidelines issued by the Office of the Comptroller of the Currency (“OCC”), *OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches* (the “Proposed Guidelines”).² The Proposed Guidelines would require any insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank with average total consolidated assets of \$50 billion or more (each, a “Bank”) to develop a recovery plan that describes options for responding to stress events.

The Associations recognize the fundamental importance of recovery planning for banking organizations, including their Banks. In this context, we believe it is fundamentally prudent for Banks to be prepared to mitigate and recover from the impact of unforeseen events that could cause them to suffer financial distress in order to continue to operate as going concerns and avoid failure or resolution.

¹ See [Annex A](#) for a description for each of the Associations.

² 80 Fed. Reg. 78,681 (Dec. 17, 2015).

The Associations believe that the focal point of recovery plans should be the development and executability of a comprehensive list of recovery actions available to the firm in a stress event and not stress testing or the stress scenarios precipitating the need for such actions. As a result, we believe that the final Guidelines should recognize that Bank recovery plans should focus on the recovery actions likely to be available at the Bank level, their likely effects, and the Bank's readiness to execute them. We further note that, given the Dodd-Frank Act's requirement that holding companies act as a source of strength to their insured depository institution subsidiaries, many or most of the items in a holding company's own comprehensive list of recovery actions will benefit its subsidiary Bank(s) in a recovery scenario. In addition, a focus on developing effective triggers and escalation procedures is key to recovery planning. In short, the Associations believe that recovery actions and governance are the core of an effective recovery plan.

Some of our members have also prepared parent company recovery plans in recent years as a result of Federal Reserve or non-U.S. regulatory requirements. In our experience, recovery plans are likely to be most effective when they are fully integrated into the continuum of risk management planning – in between “business as usual” capital planning, liquidity planning, contingency planning, and stress testing, on the one hand, and resolution planning on the other. Recovery planning that uses, builds on, and is fully coordinated with these other planning exercises can and should become a key tool for banking organizations and their regulators to enhance safety and soundness.

In this context, the Associations believe the general approach taken in the Proposed Guidelines is fully appropriate in that it emphasizes:

- flexibility, including through their issuance as guidelines rather than regulations;
- the usefulness of coordination and integration with other planning exercises;
- the importance of tailoring recovery plans to differences in size, complexity, and business models of different Banks; and
- a supervisory orientation that will allow Banks, with board of director oversight, to develop recovery plans that will be reviewed in the ordinary course of supervisory examinations, but that are not subject to any formal submission requirement.

The Associations also believe, however, that there are some aspects of the Proposed Guidelines that need clarification, consistent with the proposal's intent, while others raise concerns that we believe should be remedied. The remainder of this comment letter sets forth our suggestions for clarification and our concerns.

I. Clarification of Banks' Ability to Leverage Content from Capital Plans, Contingency Funding Plans, Resolution Plans, and Parent Company Recovery Plans

Banks and their parent companies produce extensive information and analysis in capital plans, contingency funding plans, resolution plans, and parent company recovery plans.³ Much of this information and analysis would be directly relevant to Banks' recovery planning. As a result, the Associations' welcome the recognition in the Proposed Guidelines that Banks generally should "leverage," "coordinate," and "integrate" other planning conducted by the Bank or its parent when preparing the Bank's recovery plan.⁴ In this context, the Associations believe it would be helpful for the final Guidelines to clarify more specific aspects of this ability to leverage content in other plans to ensure that a Bank can take the most effective advantage of these other planning processes to produce the best possible recovery plan for the Bank. To understand better why these clarifications would be helpful, set forth below is a description of the other planning regimes and the extent to which they are likely to be directly relevant and useful for Bank recovery planning.

A. Overview of Related Contingency Planning Exercises

1. Capital Plans

Any bank holding company with total consolidated assets of \$50 billion or more ("Large Bank Holding Company") is required to develop and maintain a capital plan.⁵ Such capital plans include analyses that would be directly relevant to a subsidiary Bank's recovery plan, such as how the parent company will:

- maintain capital under stressful conditions;
- serve as a source of strength to its subsidiary depository institutions;
- maintain ready access to funding;

³ For a foreign-owned Bank, U.S. regulatory requirements to develop these plans generally apply to the top-tier U.S. holding company of the Bank.

⁴ 80 Fed. Reg. at 78,683 (col. 1) ("We do not intend for the recovery planning required by these Guidelines to duplicate [strategic, operational, contingency, capital (including stress testing), liquidity and resolution planning], and we encourage covered banks to leverage their existing planning."); *id.* at 78,684 n. 10 (col. 2) ("A covered bank can use information included in its resolution plan to prepare its recovery plan."); *id.* at 78,686 (col. 2) ("[A] covered bank may be able to leverage certain elements in [parent company recovery and resolution] plans."); *id.* at 78,688 (col. 3) ("The covered bank also should coordinate its recovery plan with its strategic; operational (including business continuity); contingency; capital (including stress testing); liquidity; and resolution planning. To the extent possible, the covered bank also should align its recovery plan with any recovery and resolution planning efforts by the covered bank's holding company.").

⁵ 12 C.F.R. § 225.8.

- meet its obligations to creditors and other counterparties; and
- continue to serve as a credit intermediary.

2. Contingency Funding Plans

A Large Bank Holding Company is also required to establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events.⁶ Contingency funding plans identify liquidity stress scenarios, trigger events, available funding sources, and alternative funding sources, many of which would be directly relevant to a Bank's recovery plan.

3. Resolution Plans

Large Bank Holding Companies are also required to develop detailed resolution plans that describe how they can be resolved in a rapid and orderly manner.⁷ These resolution plans often contain extensive content that is likely to overlap with the information the Proposed Guidelines would require for Bank recovery plans, including an overview of the parent company and its subsidiaries, the company's strategy to protect its insured depository institution subsidiaries, actions to be taken to mitigate stress, resources available to mitigate stress, impediments to resolution, impact assessments, and corporate governance of the risk management process.

Large insured depository institutions are also required to develop resolution plans ("IDI plans") to describe how the IDI can be resolved in a cost-effective and timely manner.⁸ Content included in a Bank's IDI plan substantially overlaps with the content that would be included in the Bank's recovery plan under the Proposed Guidelines, such as:

- descriptions of the Bank's legal and functional structures, core business lines, critical services, major counterparties, balance sheet, off-balance sheet exposures, collateral management processes, derivatives activities, payment, clearing, and settlement systems, and management information systems;
- the elements of the Bank's parent company organizational structure or interconnectedness; and

⁶ 12 C.F.R. § 252.34(f).

⁷ For foreign banking organizations, resolution plan requirements apply only to their U.S. operations.

⁸ 12 C.F.R. § 360.10. The IDI plan requirement applies to insured depository institutions as defined under the Federal Deposit Insurance Act, including insured banks, savings associations, and branches and agencies of foreign banking organizations, with \$50 billion or more in total assets.

- a description of the Bank’s process for executing any sales, divestitures, restructurings, or recapitalizations.

4. Parent Company Recovery Plans

The holding companies of the eight U.S. global systemically important banks (“G-SIBs”) are required to prepare and update annually detailed holding company recovery plans, including detailed recovery options for remedying financial weaknesses, an execution plan for each option, an impact assessment of each option, and a description of the governance framework for how the plan is developed, approved, updated, and carried out.⁹ Such holding company recovery plans include precisely the type of analysis for the holding company (including its bank subsidiaries) that the Proposed Guidelines would require for Banks. The Federal Reserve has also issued a supervision framework for Large Bank Holding Companies that outlines components of holding company recovery plans.¹⁰

B. Clarification of Specific Instances Where the Bank Recovery Plan May Use or Adapt Content From Other Plans

In recognition of the directly relevant content of these other planning exercises, and consistent with the general intent of the Proposed Guidelines, the Associations request that the final Guidelines confirm the following specific instances and formats in which using or adapting content from other planning exercises may be used in preparing a Bank’s recovery plan.

1. Role of Stress Scenarios in Recovery Planning

The Proposed Guidelines would require each Bank’s recovery plan to consider the Bank’s ability to recover from bank-specific and market-wide severe stresses. As stated earlier, the Associations believe that the focal point of recovery plans should be identifying the comprehensive list of recovery actions available to the Bank in a stress event and evidencing the Bank’s governance and readiness to execute those actions. The Proposed Guidelines reference stress scenarios, and the Associations believe that the reference to stress scenarios should be clarified. For instance, Comprehensive Capital Analysis and Review (“CCAR”) and Dodd-Frank Act Stress Test (“DFAST”) supervisory stress scenarios are already required stress scenarios. The Associations do not believe further stress tests should be required but that

⁹ Board of Governors of the Federal Reserve System, Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies, SR 14-8 (Sept. 25, 2014), *available at* <http://www.federalreserve.gov/bankinforeg/srletters/sr1408.htm>. The eight U.S. G-SIBs are (1) Bank of America Corporation; (2) Bank of New York Mellon Corporation, PLC; (3) Citigroup, Inc.; (4) Goldman Sachs Group, Inc.; (5) JPMorgan Chase & Co.; (6) Morgan Stanley; (7) State Street Corporation; and (8) Wells Fargo & Company.

¹⁰ Board of Governors of the Federal Reserve System, Consolidated Supervision Framework for Large Financial Institutions, SR 12-17 (Dec. 17, 2012), *available at* <http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm>.

these existing stress scenarios could be levered in determining the appropriate triggers and escalation processes as well as contribute to considerations for recovery actions available to a Bank.

Importantly – and helpfully – the preamble to the Proposed Guidelines acknowledges that Banks are required to conduct supervisory stress tests and states that, “[w]hile the scenarios used to conduct those tests may be appropriate for purposes of identifying triggers under these Guidelines, a covered bank should evaluate the appropriateness of those scenarios on a case-by-case basis.”¹¹ The Associations believe that the final Guidelines should acknowledge that a Bank can use these scenarios in its recovery plan, thereby permitting a Bank to leverage its existing, rather than requiring it to develop new or additional, stress tests.

2. Use of a Single, Integrated Recovery Plan for Both the Holding Company and its Subsidiary Bank

The Associations recognize that the fundamental purpose of the Proposed Guidelines is to ensure that recovery planning focuses on the Bank, rather than on the consolidated holding company of which the Bank is a part. Nevertheless, the two exercises are clearly interrelated, because, for example, the same systemwide stress scenarios may have overlapping effects on both the holding company and the Bank, and there is likely to be significant consistency and overlap in the appropriate recovery options for such stresses as well. In order to facilitate the most effective planning and avoid unnecessary regulatory burden, it should be confirmed that the banking organization may incorporate both planning exercises into a single document – but only so long as the bank-specific parts of the plan satisfy all the elements of the Guidelines to ensure effective recovery planning for the Bank.

3. Use of the Same Recovery Plan Where a Holding Company and Its Subsidiary Bank are Substantially the Same

In some cases the asset and risk profile for a Bank are substantially the same as for its parent holding company, for example, where substantially all of the assets of the holding company are in the Bank. In such circumstances, the Bank should be allowed to use its holding company’s recovery plan to satisfy the Guidelines. That is, if the Bank can demonstrate that the risk profile of the parent company and the Bank are substantially the same, and that the parent company plan meets the requirements of the Guidelines, then the parent company recovery plan should be deemed to satisfy those Guidelines as the Bank’s recovery plan as well. Moreover, such a banking organization should be permitted to continue using its existing corporate governance processes for reviewing and approving the recovery plan.

¹¹ 80 Fed. Reg. at 78,684 n. 12 (col. 3).

There is direct precedent for this approach in the OCC's Heightened Standards guidelines. Under the Heightened Standards, a Bank is permitted to use its parent company's risk governance framework in its entirety, without modification, if the framework meets the OCC's minimum standards and the risk profiles of the parent company and the Bank are substantially the same as demonstrated through a documented assessment.¹² The OCC can and should adopt a similar exception in the recovery planning context.

4. Interpreting Undefined Terms Consistently With Resolution Plan Regulations

The preamble to the Proposed Guidelines states that the terms "interconnections" and "interdependencies" are used in the Guidelines in a manner consistent with the use of those terms in the resolution plan regulations.¹³ There are other terms used in the Proposed Guidelines, however, that are also used in the resolution plan regulations – e.g., "core business lines," "material entities," and "critical operations" – yet the Proposed Guidelines make no mention of whether these other terms are also intended to be used consistently with the resolution plan regulations. Accordingly, the Associations request that the final Guidelines confirm that such other terms can also be interpreted consistently with the definitions in resolution plan regulations.

II. Operational Stress Scenarios Should Only be Relevant to Recovery Planning to the Extent They Will Cause Substantial *Financial* Distress to a Bank if Uncorrected, and Recovery Options Should Focus on Restoring the Bank's *Financial* Strength

The Proposed Guidelines suggest that banks consider operational stress scenarios, such as leadership vacancies and significant cyber attacks.¹⁴ Our members actively prepare to respond to operational stress events as part of their overall risk management programs. The Associations believe, however, that it is appropriate to address these types of stresses in a recovery plan only to the extent they would cause a Bank to suffer *financial* distress – that is, to the extent they will cause substantial financial distress on a Bank's capital or liquidity position. For instance, a cyber attack would be a relevant stress event for a recovery plan if it caused liquidity outflows because customers lost confidence in the Bank and withdrew their deposits.

Similarly, recovery options for financial losses associated with operational stresses should be strategic actions designed to restore a Bank's *financial* strength, rather than actions that focus entirely on operational remedies. While the preamble mentions operational stress scenarios such as leadership vacancies and cyber attacks, we do not believe recovery plans should focus

¹² See 12 C.F.R. Part 30 Appendix D, § I.3.

¹³ 80 Fed. Reg. at 78,684 n. 11 (col. 3).

¹⁴ 80 Fed. Reg. at 78,688 (col. 1).

on operational recovery options because such operational issues are otherwise addressed in disaster recovery, business continuity, and other operational resiliency plans.

Viewing operational stresses through this financial lens is consistent with the way that other U.S. and international regulators view recovery plans. The Federal Reserve's SR 14-8 only requires U.S. G-SIBs to address financial weaknesses in their recovery plans, and lists capital and liquidity restoration and asset sales as the primary recovery options.¹⁵ The Financial Stability Board describes the purpose of recovery planning as enabling firms to "maintain or restore financial strength and viability before regulatory authorities see the need to intervene or enforce recovery measures."¹⁶ Likewise, the European Banking Authority's recovery planning guidelines require banks to address stress indicators that are only financial in nature, specifically, capital, liquidity, profitability, asset quality, market-based, and macroeconomic indicators.¹⁷ The OCC Guidelines would be an outlier compared to these other regulatory requirements if the Guidelines were interpreted to require recovery plans to address operational stress scenarios that are likely to cause operational distress, but not financial distress, or to include recovery options that are operational in nature.

The Associations do not necessarily interpret the Proposed Guidelines to change this fundamental understanding of how recovery plans are meant to work. In particular, the examples provided in the Proposed Guidelines of possible recovery options consist of issuing new capital, selling assets or businesses, reducing loan originations, reducing expenses, and accessing the Federal Reserve's discount window – all of which are strategic actions to restore financial strength.¹⁸ At the same time, however, the Proposed Guidelines might be read to

¹⁵ SR 14-8 provides that "Recovery planning should be *complementary to, and linked with*, existing contingency, strategic, and resolution planning efforts to ensure that the firm is prepared to recognize and respond to both financial and operational weakness" (emphasis added). Similarly, SR 12-17 provides that recovery planning should be "integrated with" financial contingency, crisis management, and business continuity planning. These statements make clear that contingency planning and crisis management processes are parallel to, but separate from, recovery planning.

¹⁶ Financial Stability Board, *Recovery and Resolution Planning for Systemically Important Financial Institutions: Guidance on Recovery Triggers and Stress Scenarios*, at 3 (July 16, 2013), available at http://www.fsb.org/2013/07/r_130716c/. See also Financial Stability Board, *Key Attributes of Effective Resolution Regimes for Financial Institutions*, at 16 (Oct. 15, 2014), available at http://www.fsb.org/2014/10/r_141015/ ("Supervisory and resolution authorities should ensure that the firms for which a [recovery and resolution plan] is required maintain a recovery plan that identifies options to restore financial strength and viability when the firm comes under severe stress.").

¹⁷ See European Banking Authority, *Guidelines on the Minimum List of Qualitative and Quantitative Recovery Plan Indicators*, EBA-GL-2015-02 (May 6, 2015), available at <https://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/guidelines-on-recovery-plans-indicators/-/regulatory-activity/consultation-paper;jsessionid=0EC844457DFF71EC59253E6FA86664C4>.

¹⁸ 80 Fed. Reg. at 78,685 (col. 3).

suggest that recovery options *could* include actions that are solely operational in nature.¹⁹ Accordingly, the Associations request that the preamble to the final Guidelines clarify that purely operational stress events and recovery actions are not mandatory elements of a recovery plan.

III. The Guidelines Should Not Require Management and the Board to Recommend Changes to the Bank’s Organizational and Legal Structure Every Year

Language in the preamble of the Proposed Guidelines can be read to suggest that the management and board of directors of a Bank are expected to recommend changes to the Bank’s organizational and legal structure each and every year, even if the management and board make a full assessment and find that such changes are not needed.²⁰ The Associations believe that such a requirement is unwarranted: while a yearly assessment is appropriate, prejudging such an assessment to always require recommended structural changes is not. Accordingly, the Associations request that the final Guidelines clarify that management and the Board should consider the Bank’s structure as part of its annual review of the recovery plan, but that recommendations for structural changes are not required unless they are deemed necessary or appropriate.

IV. The Guidelines Should Not Require the Board of Directors to Take a Management Role or Have Unnecessary Approval Responsibilities

In general, the Associations believe that the standards established in the Proposed Guidelines for directors are appropriate. There are, however, instances where we believe the proposed language could unnecessarily (and perhaps inadvertently) be interpreted to require directors to engage in management activities rather than oversight. We are also concerned that the Guidelines could be interpreted to require director approval of *any* change to the Bank’s recovery plan, which would unnecessarily add to the long list of matters that boards of directors of banking organizations are required by law or regulation to review and approve.²¹

1. Involvement in “Development and Execution” of the Recovery Plan

¹⁹ 80 Fed. Reg. at 78,685 (col. 3) (“Options may include the conservation or restoration of liquidity and capital; the sale, transfer, or disposal of significant assets, portfolios, or business lines; the reduction of risk profile; the restructuring of liabilities; the activation of emergency protocols; and succession planning.”).

²⁰ 80 Fed. Reg. at 78,686 (col. 3) (“Management of the covered bank should review the recovery plan at least annually and in response to a material event The board and management should provide justification for the covered bank’s organizational and legal structures and outline changes that would enhance the board’s and management’s ability to oversee the covered bank in times of stress.”).

²¹ See, e.g., Governor Daniel K. Tarullo, Corporate Governance and Prudential Regulation (June 9, 2014), available at <http://www.federalreserve.gov/newsevents/speech/tarullo20140609a.htm> (“We should probably be somewhat more selective in creating the regulatory checklist for board compliance and regular consideration.”).

The preamble to the Proposed Guidelines states that “[a]s part of the board’s oversight of a covered bank’s safe and sound operations, the board also should work closely with the bank’s senior management in developing and executing the recovery plan.”²² As the OCC has recognized on several occasions, the appropriate role for bank’s directors is to engage in oversight, not management.²³ The final Guidelines should clarify that it is management’s role to “develop and execute” the recovery plan, while the board’s role is limited to overseeing that development and execution through its review and approval of the plan.

2. Requirement for Board Approval of “Any” Change to Plan

The Proposed Guidelines could be read to require a Bank’s board of directors or a board committee to review and approve **any** change to the Bank’s recovery plan, no matter how minor the change may be. Such a requirement would impose a substantial burden on the board – and make it difficult for management to make incremental changes to the plan – if all changes needed to be approved by the board or a board committee. The final Guidelines should state that the board or a committee thereof need only review and approve a significant change to the Bank’s recovery plan. This clarifying change would make the Guidelines consistent with the OCC’s Heightened Standards, which only require the board or risk committee of a Bank to approve significant changes to the Bank’s risk governance framework.²⁴

V. The Final Guidelines Should Be Tailored for Smaller and Less Complex Banks

The Associations strongly support the statement in the Proposed Guidelines that each Bank should develop a recovery plan “appropriate for its individual risk profile, size, activities, and complexity, including the complexity of its organizational and legal entity structure.” Non-G-SIB banking organizations tend to be smaller, engage in fewer activities, operate in fewer foreign jurisdictions, and have simpler organizational and risk profiles than G-SIB organizations. Accordingly, while we welcome the language in the Proposed Guidelines, we believe that it would be helpful for the final Guidelines to include additional language elaborating on this point.

²² 80 Fed. Reg. at 78,686 (col. 3).

²³ See, e.g., 79 Fed. Reg. 54,518, 54,537 (col. 2) (Sept. 11, 2014) (scaling back the board’s duties under Heightened Standards guidelines, as the “OCC did not intend to impose managerial responsibilities on the board of directors”); Thomas J. Curry, Comptroller of the Currency, Remarks Before the Prudential Bank Regulation Conference (June 9, 2015), available at <http://www.occ.treas.gov/news-issuances/speeches/2015/pub-speech-2015-82.pdf> (“We don’t expect directors to manage the bank, but we do expect the board to look at high level issues.”).

²⁴ In the Heightened Standards rulemaking, the OCC initially proposed that the board or risk committee approve any changes to a Bank’s risk management framework, 79 Fed. Reg. 4,282, 4,300 (Jan. 27, 2014) (col. 2), but in the final rule, changed the approval requirement to cover only significant changes in order to “reduce the operational burdens placed on the board of directors,” 79 Fed. Reg. at 54,537 (col. 2).

For example, Banks that primarily focus on providing traditional retail and commercial banking products and services may have limited trading and capital markets operations and/or limited foreign operations; they should therefore be able to focus on a more tailored set of stress scenarios, triggers, and recovery actions than more complex and global institutions. There would be little value in the recovery plans of such Banks including a “wide range” of scenarios, triggers, and recovery actions related solely to their limited trading or capital markets activities or their limited foreign operations, as stresses solely in those areas could have limited effects on the covered institution as a whole. This sort of tailoring would allow Banks’ risk management to focus on developing and maintaining practical and actionable recovery plans

Therefore, we respectfully recommend that the final Guidelines acknowledge that a Bank should focus its recovery plan on stress scenarios that would have a material impact on the Bank, taking into account the Bank’s business model, scope of operations, risk profile, size, activities, and complexity, among other factors. The triggers, escalation procedures, and recovery actions under the recovery plan would necessarily be tailored to reflect those scenarios.

VI. The Final Guidelines Should Clarify That Recovery Plans Are Not Expected to Be as Detailed or Lengthy as Resolution Plans

The Associations believe that the final Guidelines should set reasonable expectations about the level of detail and length of Bank recovery plans. Resolution plans can and often do run into thousands of pages, in part because they must address aspects of the failure and resolution process that simply would not be relevant to recovery planning, such as descriptions of the bankruptcy process and the treatment of third party creditors. As a result, resolution plans require enormous amounts of time and dedicated resources. While the Associations recognize that Banks’ recovery plans must be robust, we believe the preamble to the final Guidelines should clarify that they are not expected to include the voluminous detail now required for resolution plans.

VII. Each Bank Should Have the Discretion to Determine When During the Calendar Year its Recovery Plan Should be Finalized, Approved by its Board, and Made Available to Examiners

As described above, banking organizations’ management personnel work on a number of parallel processes throughout the year, including business-as-usual planning, capital planning, contingency funding planning, CCAR, DFAST, resolution planning, and parent company recovery planning. Each organization’s schedule for these processes may be different, depending on the submission dates that may be required by regulation for some of these requirements, as well as

the Bank's internal review schedule.²⁵ A Bank would be able to dedicate more time and resources to a new recovery planning requirement – and its board would be able to provide a more meaningful review – if the Bank were able to determine when in the yearly cycle its recovery plan needed to be ready for board approval and examiner review. Accordingly, the Associations believe that a Bank should be afforded the flexibility to make this timing determination as it deems most appropriate for its circumstances, so long as it satisfies the annual requirement.

In addition, the final Guidelines should confirm that, from year-to-year, a Bank has the flexibility to change the time for producing a final recovery plan. A Bank may need to change this timing for a number of reasons, including, for example, to adjust to changes in the timing that regulators have made to related planning requirements, such as changes to CCAR or resolution planning deadlines.

VIII. The Effective Date of the Guidelines Should Provide Banks With a Reasonable Period of Time to Develop Their Initial Plans, and Should Be Staggered to Facilitate Sound Implementation

Finally, the Associations request appropriate delays in the effective date of the final Guidelines in order to facilitate their sound implementation. First, to achieve effective coordination and integration with other planning activities for a calendar year, we believe that all firms should have substantial advance notice of the final requirements well before the beginning of that calendar year. Accordingly, for Banks that are subsidiaries of U.S. G-SIB organizations, we request that the earliest that the Guidelines become effective should be calendar year 2017, especially since it is unlikely that the final Guidelines will be issued until late in the second quarter of this year, at the earliest. Although U.S. G-SIB organizations have had more experience with firm-wide recovery planning, they still will need a meaningful amount of time to integrate the new requirements with existing planning exercises.

Banks that are not subsidiaries of U.S. G-SIBs should be provided even more time to comply with the Guidelines because their parent organizations have had considerably less experience preparing recovery plans than U.S. G-SIB organizations. Only U.S. G-SIB organizations are subject to the detailed recovery planning requirements of SR 14-8 and its requirement to submit firm-wide recovery plans to examiners for supervisory review.

Accordingly, the Associations request a later effective date for the applicability of the final Guidelines to Banks that are not subsidiaries of U.S. G-SIB organizations than to ones that are subsidiaries of U.S. G-SIBs. Specifically, we request that the Guidelines not become effective until 2018 for these Banks. Adopting a phase-in schedule for institutions that have not yet had

²⁵ For instance, IDI plans are required to be submitted to the FDIC on a staggered basis throughout the year. See 12 C.F.R. § 360.10(c).

to comply with the Federal Reserve’s most prescriptive recovery plan requirements would be consistent with the OCC’s Heightened Standards rulemaking. When the OCC adopted final guidelines for Heightened Standards, it noted that “larger institutions have been subject to the OCC’s heightened expectations program since 2010 and should need less time to comply with the final Guidelines. Other covered banks have been subject to certain aspects of the heightened expectations program and therefore may require additional time to comply with all aspects of the final Guidelines.”²⁶ On this basis, while the Heightened Standards guidelines technically included a single effective date, the application of the Standards was staggered based on the size of the Bank up to 18 months after the effective date.

The same principles apply in the context of recovery planning, where only the U.S. G-SIB firms have been subject to the Federal Reserve’s prescriptive recovery planning requirements. Therefore, the OCC should adopt a staggered schedule similar to the schedule it adopted in the Heightened Standards rulemaking. As described above, recovery plans for Bank subsidiaries of U.S. G-SIB firms should not be required until 2017, and recovery plans for all other Banks should not be required until 2018.

* * *

²⁶ 79 Fed. Reg. at 54,522 (col. 2).

Office of the Comptroller of the Currency
February 16, 2016

The Associations appreciate the opportunity to provide comments on the Proposed Guidelines. Should you have any questions or need further information, please contact John Court at 202-649-4628 (email: john.court@theclearinghouse.org) or Carter McDowell at 202-962-7327 (email: cmcdowell@sifma.org).

Respectfully Submitted,



John Court
Managing Director and Deputy General
Counsel
The Clearing House



Carter McDowell
Managing Director and Associate General
Counsel
Securities Industry and Financial Markets
Association



Rich Foster
Senior Vice President & Senior Counsel for
Regulatory and Legal Affairs
Financial Services Roundtable

Annex A

The Associations

The Clearing House

The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Clearing House is the only private-sector ACH and wire operator in the United States, processing nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. Its affiliate, The Clearing House Association L.L.C. is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

Securities Industry and Financial Markets Association

SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

Financial Services Roundtable

As advocates for a strong financial future™, FSR represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for \$98.4 trillion in managed assets, \$1.1 trillion in revenue, and 2.4 million jobs.