Recovery Planning Guidelines for Certain Large Banks


SUMMARY

On December 16, 2015, the Office of the Comptroller of the Currency (the “OCC”) solicited public comment, through a Notice of Proposed Rulemaking (the “NPR”), on proposed guidelines to establish standards for recovery planning by certain large insured national banks, insured Federal savings associations and insured Federal branches of foreign banks (the “Guidelines”).

The Guidelines would apply to FDIC-insured national banks, insured Federal savings associations and insured Federal branches of foreign banks with average total consolidated assets of $50 billion or more, as well as those with total consolidated assets less than $50 billion that the OCC determines are highly complex or otherwise present a heightened risk warranting application of the Guidelines (together, “banks,” and each, a “bank”).

The Guidelines would require each bank to develop and maintain a recovery plan that sets forth the bank’s plan for the actions necessary to remain a going concern when the bank is experiencing considerable financial or operational stress, but has not yet deteriorated to the point where liquidation or resolution is imminent. Pursuant to the Guidelines, such recovery plans must contain: a detailed overview of the bank, including analysis of interconnections and interdependencies within the bank, among its affiliates and with critical third parties; identification of tailored “triggers”, *i.e.* quantitative or qualitative indicators of the risk or existence of severe stress that should be escalated to management or the board for response; a wide range of credible options for recovery; impact assessments for each recovery option; procedures for escalating decision-making to senior management or the board;
SULLIVAN & CROMWELL LLP

discussion of management reports necessary to provide senior management or the board with the information to make timely decisions and monitor progress of responses in stress scenarios; and communication procedures for notifying internal and external parties of recovery responses. Further, the Guidelines require that management and the board of directors review recovery plans at least annually and as needed to address certain material changes or events.

Notably, the Guidelines provide that the recovery plans should be integrated into a bank’s existing risk management and corporate governance functions and coordinated with its strategic, operations, contingency, capital, liquidity and resolution planning, as well as, to the extent possible, aligned with any recovery and resolution planning efforts at the parent holding company level. In addition, the OCC specifically noted that the Guidelines are not intended to duplicate a bank’s existing risk mitigation planning efforts and encouraged banks to leverage their existing planning efforts in complying with the Guidelines. As set forth in the NPR, the Guidelines share marked similarities with the recovery planning requirements of the Board of Governors of the Federal Reserve System (the “Federal Reserve”) for certain large financial institutions, including bank holding companies, and thus application of the Federal Reserve’s requirements at the parent holding company level may provide insight into application of the proposed Guidelines.

The Guidelines would be issued and enforceable under section 39 of the Federal Deposit Insurance Act (the “FDI Act”), which authorizes the OCC to prescribe safety and soundness standards. The OCC would issue the Guidelines as an appendix to its safety and soundness standards regulations, similar to how the OCC implemented its heightened standards guidelines in September 2014. The Guidelines would appear as a new Appendix E to Part 30 of the OCC’s rules.

Comments on the NPR must be submitted to the OCC by February 16, 2016.

APPLICATION OF THE GUIDELINES

According to the NPR, the Guidelines are intended to provide a comprehensive framework for evaluating how severe stress may affect a bank and set forth credible options for responding to stress events in a manner that preserves the bank’s financial and operational strength and viability. As set forth in the NPR, the Guidelines would apply to a bank with average total consolidated assets equal to or greater than $50 billion, a threshold that aligns with the threshold at which the resolution planning requirement pursuant to Section 165(d) of the Dodd-Frank Act applies. The OCC has also reserved the authority to apply the Guidelines in whole or in part to a bank with average total consolidated assets less than $50 billion if it determines that the bank is highly complex or otherwise presents a heightened risk, which determination would be based on the bank’s risk profile, size, activities and complexity. Nonetheless, the OCC noted that it expects to apply the Guidelines to banks with average total consolidated assets less than $50 billion infrequently and that it does not intend to apply the Guidelines to community banks.
The Guidelines would be issued pursuant to section 39 of the FDI Act, which authorizes the OCC to prescribe, by regulation or guidelines, safety and soundness standards for the insured depository institutions it regulates. If a bank fails to meet standards prescribed by these guidelines, the OCC has discretion to require the bank to submit a plan specifying the steps the institution will take to comply. If, after a bank is notified that it is in violation of a safety and soundness standard, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan, the OCC may issue a formal, public enforcement action under section 39, which would take the form of an order under section 8(b) of the FDI Act. The OCC may enforce the order in Federal court or through the assessment of civil money penalties.

**RECOVERY PLAN REQUIREMENTS**

A recovery plan, as defined by the Guidelines, is a plan that identifies “triggers” and options for responding to a wide range of severe internal and external stress scenarios in order to restore a bank to financial and operational strength and viability in a timely manner without extraordinary government support, while maintaining market confidence. A complement to resolution plans, which are designed to address liquidation or resolution scenarios, recovery plans are designed to address stress situations ranging from those that cause significant disruption to a bank to those that would result in a bank being driven close to, but short of, resolution.

The Guidelines require that each bank develop and maintain a recovery plan appropriate for its individual risk profile, size, activities and complexity, including the complexity of its organizational and legal entity structure. The requirement for a tailored approach applies to each aspect of recovery planning, including: the identification of qualitative and quantitative “triggers”, defined as indicators of the risk or the existence of severe stress such that escalation to management or the board of directors would be appropriate for purposes of initiating a recovery plan response; the development of credible options for recovery, including identification of any obstacles that may impede the execution of such options and mitigation strategies for addressing such obstacles; and the assessment of the impact on the bank of each potential recovery option.

### 1. Bank Overview

The Guidelines require that a bank set forth a detailed overview of its organizational and legal structure, identifying material entities, critical operations, core business lines and core management information systems, as well as interconnections and interdependencies (1) across business lines within the bank, (2) with affiliates within the bank’s parent holding company structure, (3) with the bank’s foreign subsidiaries and (4) with the bank’s critical third parties. In so doing, the OCC noted that banks may leverage existing resolution planning efforts – for example, by utilizing the mapping of critical operations performed for resolution planning purposes to identify areas of interconnectedness and interdependency.
2. Identification of Triggers

In order to identify appropriate “triggers”, or indicators of the risk or existence of severe stress that should always be escalated to management or the board, as appropriate, for purposes of initiating a response, the OCC noted that each bank should consider a range of bank-specific and market-wide stress scenarios, individually and in the aggregate, that are immediate and prolonged, that would result in capital shortfalls, liquidity pressures or other significant financial losses. Triggers may be qualitative, such as the unexpected departure of senior leadership or an adverse legal ruling or regulatory development, or quantitative, such as the loss of liquidity below a particular threshold or the downgrade of a bank’s ratings. A bank may consider utilizing scenarios from its supervisory stress tests to identify appropriate triggers, although the OCC noted that applicability of all potential triggers should be assessed on a case-by-case basis.

Recovery plans should set forth tailored operational and governance actions in response to various triggers, which may or may not require proceeding with a designated recovery option. Particularly, a bank must clarify the process for escalating triggers to senior management and the board of directors, including a discussion of the management reporting systems in place that would provide management or the board with the necessary information to respond in a timely manner to triggers, and describe the decision-making process (protocols, critical persons or departments, etc.) for determining appropriate responses. In addition, the bank should provide details regarding the management reporting systems in place that would allow management or the board to monitor the progress of any responsive actions taken.

3. Credible Options for Recovery and Impact Assessment

Recovery plans must set forth “a wide range” of credible options for a bank to restore financial and operational strength and viability and avoid liquidation or resolution in various severe stress scenarios. The Guidelines require that such recovery options may not assume or rely on the provision of extraordinary government support and must be capable of execution within the time frames required for viability in the various stress scenarios.

The discussion of credible recovery options must clearly describe the necessary actions, critical persons and decision-making process for implementation. This discussion must also identify obstacles to successfully executing the recovery options, including any legal or regulatory approvals for certain actions, and strategies for overcoming identified obstacles.

For each recovery option, a bank must also provide an impact assessment setting forth how the recovery option would affect the bank. These impact assessments should be comprehensive, addressing impact on the bank's material entities, critical operations, core business lines and key interdependencies. They should also address the effect of each recovery option on the bank's capital, liquidity, funding and profitability.
4. Role of Management and the Board of Directors

The Guidelines require that a bank’s management develop and execute the bank’s recovery plan in close consultation with the board of directors. Management is required to review the recovery plan on an annual and as needed basis in response to significant changes in the bank’s organizational or legal structure, risk profile, size, activities or other factors relevant to the recovery plan. The board of directors (or a board committee) must review and approve the recovery plan on an annual basis and as needed to address adjustments to the plan made by management’s review.

COMPARISON TO FEDERAL RESERVE RECOVERY PLANNING GUIDELINES

In 2012, the Federal Reserve published a consolidated supervision framework for large financial institutions that included recovery planning requirements for large financial firms. The Federal Reserve framework was supplemented in 2014 with further guidance regarding recovery planning for certain large bank holding companies.\(^3\)

The Guidelines share fundamental similarities with the Federal Reserve’s recovery planning requirements for certain large bank holding companies, including the requirement for identification of qualitative and quantitative triggers, consideration of a broad range of stress scenarios up to, but not including, resolution, and integration of recovery planning efforts into existing resolution planning, capital and liquidity planning and other contingency planning, as well as integration of recovery plan corporate governance measures into existing governance frameworks. Similarly, both the Federal Reserve framework and the Guidelines require development of recovery plans premised on the lack of extraordinary governmental support and the maintenance of market confidence.

There are differences between the respective recovery planning requirements. For example, the Federal Reserve requires certain large bank holding companies to also address potential effects on the stability of the U.S. financial system. Nonetheless, any additional detail that the Federal Reserve may publish regarding recovery plan requirements at the parent holding company level may provide insight into application of the Guidelines at the bank level. Moreover, as suggested by the OCC, recovery planning efforts at the parent level may be leveraged to significantly reduce the burden and inform application of recovery planning standards at the bank level.

Copyright © Sullivan & Cromwell LLP 2015
ENDNOTES

1 See 80 FR 78681 (Dec. 17, 2015).


SULLIVAN & CROMWELL LLP

ABOUT SULLIVAN & CROMWELL LLP
Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 800 lawyers on four continents, with four offices in the United States, including its headquarters in New York, three offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP
This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers listed below, or to any other Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future related publications from Stefanie S. Trilling (+1-212-558-4752; trillings@sullcrom.com) in our New York office.

CONTACTS

<table>
<thead>
<tr>
<th>New York</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Whitney A. Chatterjee</td>
<td>+1-212-558-4883</td>
<td><a href="mailto:chatterjeew@sullcrom.com">chatterjeew@sullcrom.com</a></td>
</tr>
<tr>
<td>H. Rodgin Cohen</td>
<td>+1-212-558-3534</td>
<td><a href="mailto:cohenhr@sullcrom.com">cohenhr@sullcrom.com</a></td>
</tr>
<tr>
<td>Elizabeth T. Davy</td>
<td>+1-212-558-7257</td>
<td><a href="mailto:davye@sullcrom.com">davye@sullcrom.com</a></td>
</tr>
<tr>
<td>Mitchell S. Eitel</td>
<td>+1-212-558-4960</td>
<td><a href="mailto:eitelm@sullcrom.com">eitelm@sullcrom.com</a></td>
</tr>
<tr>
<td>Michael T. Escue</td>
<td>+1-212-558-3721</td>
<td><a href="mailto:escueem@sullcrom.com">escueem@sullcrom.com</a></td>
</tr>
<tr>
<td>Jared M. Fishman</td>
<td>+1-212-558-1689</td>
<td><a href="mailto:fishmanj@sullcrom.com">fishmanj@sullcrom.com</a></td>
</tr>
<tr>
<td>C. Andrew Gerlach</td>
<td>+1-212-558-4789</td>
<td><a href="mailto:gerlacha@sullcrom.com">gerlacha@sullcrom.com</a></td>
</tr>
<tr>
<td>David J. Gilberg</td>
<td>+1-212-558-4680</td>
<td><a href="mailto:gilbergd@sullcrom.com">gilbergd@sullcrom.com</a></td>
</tr>
<tr>
<td>Andrew R. Gladin</td>
<td>+1-212-558-4080</td>
<td><a href="mailto:gladina@sullcrom.com">gladina@sullcrom.com</a></td>
</tr>
<tr>
<td>Wendy M. Goldberg</td>
<td>+1-212-558-7915</td>
<td><a href="mailto:goldbergw@sullcrom.com">goldbergw@sullcrom.com</a></td>
</tr>
<tr>
<td>David B. Harms</td>
<td>+1-212-558-3882</td>
<td><a href="mailto:harmsd@sullcrom.com">harmsd@sullcrom.com</a></td>
</tr>
<tr>
<td>Joseph A. Hearn</td>
<td>+1-212-558-4457</td>
<td><a href="mailto:hearnj@sullcrom.com">hearnj@sullcrom.com</a></td>
</tr>
<tr>
<td>Marion Leydier</td>
<td>+1-212-558-7925</td>
<td><a href="mailto:leydiem@sullcrom.com">leydiem@sullcrom.com</a></td>
</tr>
<tr>
<td>Erik D. Lindauer</td>
<td>+1-212-558-3548</td>
<td><a href="mailto:lindauere@sullcrom.com">lindauere@sullcrom.com</a></td>
</tr>
<tr>
<td>Mark J. Menting</td>
<td>+1-212-558-4859</td>
<td><a href="mailto:mentingm@sullcrom.com">mentingm@sullcrom.com</a></td>
</tr>
<tr>
<td>Camille L. Orme</td>
<td>+1-212-558-3373</td>
<td><a href="mailto:ormc@sullcrom.com">ormc@sullcrom.com</a></td>
</tr>
<tr>
<td>Richard A. Pollack</td>
<td>+1-212-558-3497</td>
<td><a href="mailto:pollackr@sullcrom.com">pollackr@sullcrom.com</a></td>
</tr>
<tr>
<td>Kenneth M. Raisler</td>
<td>+1-212-558-4675</td>
<td><a href="mailto:raislerk@sullcrom.com">raislerk@sullcrom.com</a></td>
</tr>
<tr>
<td>Robert W. Reeder III</td>
<td>+1-212-558-3755</td>
<td><a href="mailto:reederr@sullcrom.com">reederr@sullcrom.com</a></td>
</tr>
<tr>
<td>Rebecca J. Simmons</td>
<td>+1-212-558-3175</td>
<td><a href="mailto:simmonsr@sullcrom.com">simmonsr@sullcrom.com</a></td>
</tr>
<tr>
<td>Donald J. Toumey</td>
<td>+1-212-558-4077</td>
<td><a href="mailto:toumeyd@sullcrom.com">toumeyd@sullcrom.com</a></td>
</tr>
</tbody>
</table>
# Recovery Planning Guidelines for Certain Large Banks

December 21, 2015

SC1:4010807.3A

---

## Marc Trevino
+1-212-558-4239  
trevinom@sullcrom.com

## Mark J. Welshimer
+1-212-558-3669  
welshimerm@sullcrom.com

## Frederick Wertheim
+1-212-558-4974  
wertheimf@sullcrom.com

## Michael M. Wiseman
+1-212-558-3846  
wisemanm@sullcrom.com

### Washington, D.C.

- **Eric J. Kadel Jr.**  +1-202-956-7640  
kadelej@sullcrom.com
- **William F. Kroener III**  +1-202-956-7095  
kroenerw@sullcrom.com
- **J. Virgil Mattingly**  +1-202-956-7028  
mattinglyv@sullcrom.com
- **Robert S. Risoleo**  +1-202-956-7510  
riseor@sullcrom.com
- **Jennifer L. Sutton**  +1-202-956-7060  
suttonj@sullcrom.com
- **Andrea R. Tokheim**  +1-202-956-7015  
tokheima@sullcrom.com
- **Samuel R. Woodall III**  +1-202-956-7584  
woodalls@sullcrom.com

### Los Angeles

- **Patrick S. Brown**  +1-310-712-6603  
brownp@sullcrom.com
- **Stanley F. Farrar**  +1-310-712-6610  
farrars@sullcrom.com

### London

- **George H. White III**  +44-20-7959-8570  
whiteg@sullcrom.com

### Tokyo

- **Keiji Hatano**  +81-3-3213-6171  
hatanok@sullcrom.com

---

-8-

Recovery Planning Guidelines for Certain Large Banks

December 21, 2015

SC1:4010807.3A