Household International, Inc.
Kenneth H. Robin
Senior Vice President
General Counsel and
Corporate Secretary
2700 Sanders Road
Prospect Heights, IL 60070
847. 564.6688
FAX 847. 205.7452

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Household

VIA FACSIMILE (202) 906-7755
AND FIRST CLASS MAIL

February 9, 2001

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: Docket No. 2000-91

Re: Savings and Loan Holding Companies; Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy (the "Proposal" or "Proposed Rule")

Dear Sir:

Household International, Inc. ("Household") is a unitary, non-diversified savings and loan holding company. Household provides a variety of consumer financial products through its thrift, bank, and state-licensed lending subsidiaries. As of December 31, 2000, Household reported total owned and managed assets of $100 billion.

The Office of Thrift Supervision ("OTS") has indicated that the Proposal is part of a comprehensive strategy to strengthen OTS oversight of thrift holding companies in order to ensure that actions by such companies do not negatively impact subsidiary thrifts. However, the Proposal raises numerous significant issues that outweigh any purported benefit. Of primary concern is the overbroad scope of the notification procedures and the negative impact they will have on many thrift holding companies. As drafted, this notice procedure could apply to numerous transactions engaged in by financially sound thrift holding companies, putting them at a disadvantage in their ability to compete for and execute acquisitions and funding transactions. At the same time, the Proposal may fail to capture transactions initiated by less sound companies that could, in fact, negatively impact an affiliated thrift.

Also problematic is the Proposal's failure to address the OTS' enumerated supervisory concerns. The OTS notes the following issues as support for publishing the Proposal: a growing number of diversified holding companies, highly leveraged companies, companies that engage in "riskier" lines of business (e.g., subprime lending), and highly integrated companies which they believe may

put the subsidiary savings association at risk. While it may be advisable for the OTS to carefully examine and review companies that exhibit these characteristics, it is unclear how the Proposal addresses them. Moreover, many financially sound companies exist that exhibit these factors but pose no increased risk to their subsidiary thrift. For example, while Household is a diversified holding company whose activities include subprime lending, its subsidiary, Household Bank, f.s.b., is a well-capitalized, profitable institution. Regulatory review of every single acquisition or debt transaction engaged in by Household would not add to the safety and soundness of this bank. Rather, it could disadvantage all parts of the company by restricting growth opportunities and thus reducing future earnings. Moreover, by exempting from the Proposal holding companies with a 10% "consolidated capital" ratio, the OTS creates a "one-size-fits-all" capital requirement along the lines of that applicable to bank holding companies.

Finally, at a fundamental level, the procedure required by the Proposed Rule does not appear to be either supported by existing legal authority or even necessitated by existing conditions in the thrift industry. Without a specific statutory directive, the OTS justifies issuance of the Proposal by stating that it seeks to prevent or contain situations at a holding company that may in the future cause unsafe and unsound conditions in a regulated thrift. However, there is little, if any, statutory support for a broad-based rule that governs holding company transactions regardless of whether those transactions have any immediate effect on a subsidiary thrift. Moreover, as all of the situations cited by the OTS in the supplementary information appear to be addressed by existing regulatory controls, it seems unlikely that burdening a large part of the thrift industry with a new regulatory process will force greater compliance by a few companies that apparently already flout existing regulation.

These concerns, as well as Household's more specific comments and suggestions with respect to the Proposal are outlined below.

1. The Rule is Contrary to Public Policy.

The notice requirements of the Proposed Rule are unworkable in today's marketplace and are, therefore, contrary to public policy as they will make thrift holding companies less competitive and devalue the thrift charter. In fact, the proposed notice requirements will create a situation where a financial holding company ("FHC") structure and Federal Reserve Board ("FRB") supervision may become more attractive for thrift holding companies that provide primarily financial services. This would result from the fact that FRB notice requirements for FHC's are significantly less onerous than those proposed for thrift holding companies.

While, as noted by the Proposal, financial holding companies may be subject to uniform capital standards, they must file only after-the-fact notices for most acquisitions.[1] For a company that engages solely in financial activities, the certainty provided by the simple, after-the-fact notices may render the FRB capital requirements preferable to the proposed OTS scheme of holding company regulation.[2]

From an acquisition perspective, the Proposal as currently structured is wholly impractical. Acquisitions move quickly and are often negotiated and consummated in much less than 30 days from any "commitment to engage" in the transaction. In reviewing several major transactions executed by Household and its non-thrift subsidiaries, the 30-day notice requirement (if measured backwards from the closing date) would have required filing with the OTS in some cases prior to due diligence being performed and in others prior to a definitive agreement being signed. Thus, compliance with the Proposed Rule's notice provisions would have required either filing before a company "committed to engage" or risking delaying consummation of the transaction.

The notice procedure also creates costs and burdens on a less tangible level. Each layer of regulatory review that a purchase transaction is subjected to decreases the certainty that the purchaser will be able to execute the transaction. This uncertainty will either result in the purchaser being required to pay a higher price for the assets in question or being simply excluded from the bidding process. Both of these consequences may have a negative effect on a company, as opportunities for growth and income generation will be lost. For transactions that do make economic sense despite these hurdles, any additional regulatory delays can have a negative effect on business operations. These delays can increase transition time, which results in lost employees and customers, as well as decreased employee productivity. As a result, holding company growth may be restricted by the Proposal's notice requirement for acquisitions as profitable opportunities may go to non-thrift competitors.

Also of concern is the potential for the OTS to consider unnecessarily risky (and thus condition or disapprove) an acquisition transaction that would be beneficial to

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[1] Moreover, while the OTS states that it is submitting the Proposal in lieu of an FRB-type capital standard, the 10% capital exemption would become exactly that, as companies would need to meet that threshold in order to avoid submission to the application process.

[2] For example, an FHC that qualifies for expedited FRB review would file notice of purchasing a limited-purpose national bank within 10 days after closing, or would file notice of purchasing an insurance company within 30 days after closing. 12 CFR §§ 225.22, 225.23, and 225.87. The information required by these filings is quite limited. In addition, no FRB notice would be required for a debt transaction.

a holding company. For example, non-bank subsidiaries of a holding company may purchase subprime or delinquent portfolios. While those non-thrift companies may have the experience to manage the risks inherent in those portfolios according to profit hurdles established by their management, such purchases may involve assets that the OTS views as unduly risky. Thus, based upon its own experience and expertise, a company may consider a certain portfolio purchase as well-priced and beneficial to the corporation, but the OTS may question that value and require conditions that render it less profitable. The execution risk created by this perception could impact the competitiveness of thrift holding companies in such transactions. While the OTS will develop expertise in various industries over time, this begs the question of what purpose is served by establishing the OTS as an umbrella regulator that may second-guess non-thrift management.

The 12-month "plan" suggested by the Proposal does not present a realistic solution to these problems. The Proposed Rule would permit companies to file a schedule of anticipated transactions for a specific period of time, not to exceed twelve months. In theory, while this procedure is intended to provide flexibility and reduce regulatory oversight, its adoption would raise a number of issues regarding a holding company's ability to consummate acquisition as well as to effectively meet future funding requirements.

From purely a funding perspective, the 12-month plan would require full documentation of each debt transaction prior to issuance. In addition to discussing the intended use of the funds, the holding company would also have to provide an analysis of the impact of each separate issuance on consolidated earnings, capital and the subsidiary thrift. While well intended, this format is impractical because in today's markets the lowest cost funding structure available is constantly changing. Funding programs change regularly to accommodate these market adjustments. The OTS could consider certain unanticipated changes to a funding program to be a material change to the plan, requiring the filing and 30-day approval of a new schedule of transactions. Such changes could include shifting from a debt issuance to a securitization, or changing the size or maturity of a new debt issue. The impact of these filing requirements could be substantial. Excluding its thrift subsidiary, Household is planning to issue $13 billion of debt during 2001. If a schedule for these issuances had been filed, one material change to the plan could have subjected in excess of $2.5 billion in funding to the vagaries of the market pending OTS approval. As a result, any negative impact on our ability to issue debt increases its cost. Additionally, any loss of issuance flexibility will negatively impact liquidity as the opportunities to issue longer term (10-year) debt are limited, and thus require the ability to act quickly.

Acquisitions raise similar issues with respect to filing a plan in advance. Acquisition opportunities arise ad hoc, and companies must have the flexibility to be a successful acquirer. Thus, as noted previously, it would be difficult enough to create an advance filing that would provide specific information even 30 days in advance, let alone up to twelve months in advance.

Moreover, as drafted, the Proposal is even more problematic because once a company meets the triggering thresholds, all acquisitions in a 12-month period - large or small - are subject to the notice requirement.[3] Simply tracking all of these transactions will be costly at a large company, not to mention the time and labor costs involved in preparing all of the filings.

Restricting growth and income opportunities at a holding company level could easily result in a weakening of the holding company and affiliates. Such weakening could limit the holding company's ability to support the thrift or aid in its development. Moreover, as the holding company has a responsibility to its shareholders, the cost imposed by the uncertainty of the OTS rule may outweigh the value of retaining the thrift. Thus, a holding company potentially subject to this rule must consider moving thrift activities to banks, state-licensed affiliates, or third party marketing/servicing/sourcing arrangements.

2. Existing Regulatory Restrictions are Sufficient.

Not only is the Proposal tremendously burdensome and problematic, it is redundant and unnecessary as significant restrictions on thrifts and their affiliates already exist.[4] In the preamble to the Proposed Rule, the OTS provides three examples of actions by thrift affiliates that could negatively impact a thrift and relies on these examples to support "safety and soundness" as a legal basis for the Proposal. The preamble also notes that "few" existing tools exist to control such situations. As a thrift holding company that spends considerable resources complying with the numerous restrictions outlined below, we disagree with this characterization. To the extent that poorly managed companies will not abide by such restrictions, we agree with the OTS position that such restrictions do not prevent problems before they happen. However, the argument that a new regulation is necessary to prevent violation of existing regulations does not justify the costly new regime that has been proposed.

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[3] In fact, in some cases it will likely be easier to file a bulk purchase notice and have the thrift make the initial purchase. This, we presume, is not the result the OTS was trying to achieve.

[4] It is also worth noting that many of these existing restrictions on thrifts are already more restrictive than similar provisions that apply to most banks. The Proposal would thus increase an existing disparity in regulatory treatment.

One example provided to support the Proposal is a situation where a holding company "double leverages" its capital. This, according to the preamble, "can generate the need for additional regulatory oversight." While this could be true, depending upon the specific circumstances involved, alternative means are available to the OTS to address what we suggest is a limited practice that does not warrant placing significant regulatory burden on the large portion of the thrift industry that does not engage in it. To our knowledge, until publishing the Proposal (and issuing statements surrounding its publication), the OTS had never formally expressed its objection to this practice. It is even possible that by making such a statement (as the OTS effectively has done in the preamble to the Proposal) the OTS will discourage companies from engaging in double leveraging.

Also to support the Proposal the OTS states that a holding company that takes on certain risks "can exert undue pressure on the thrift to meet the demands of its obligations" or, if the holding company grows too fast without sufficient capital to support its operations, it may look to the thrift to fund those operations (or help it pay its debt obligations). However, these situations (addressed in current OTS guidance as "adverse transactions") are already subject to substantial regulatory restrictions.[5] See Handbook, at 4.

The ability of a thrift to fund its parent's debt obligations through dividends is governed by 12 USC § 1467a(f), which requires all thrifts that are subsidiaries of a holding company to file 30-day notice of any capital distribution with the OTS. Twelve CFR §§ 563.140-563.146 implements section 1467a(f). According to this regulation, such capital distributions may include a thrift's payment of cash or other property to its parent, the thrift's repurchase of stock from its parent, or any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. 12 CFR § 563.141(a). The OTS may disapprove such distributions if they would render the association undercapitalized, if they raise safety and soundness concerns, or if they would violate any law, regulation, or condition imposed in writing. 12 CFR § 563.146. In addition, 12 USC § 1831o prevents a thrift from making a capital distribution that would render it undercapitalized. Thus, management of a federal thrift cannot authorize and execute a capital distribution to the thrift's parent without (i) explicit OTS knowledge and consent or (ii) blatantly violating the law.

Any ability of a thrift to fund its parent's or affiliate's operations through the purchase of assets from them, the loan of money to them, or the payment of fees

[5] As described in the Handbook, such transactions would involve: "declaring excessive cash dividends," "paying more than market rates and terms for services," and "purchasing low-quality assets" – all ways that a thrift could support a parent or affiliated company.

for services rendered is substantially limited by 12 USC § 1468, which renders all thrifts subject to sections 23A and 23B of the Federal Reserve Act. These provisions dramatically curtail what payments a thrift can make to its parent or sister companies. For example, a thrift may not purchase any low-quality asset from any affiliate, any purchases of assets from or loans to non-bank affiliates are limited to an amount equivalent to 10% of the thrift's capital, and thrift transactions with any affiliates must be at arms' length terms and pricing. 12 USC §§ 371c (Section 23A) and 371c-1 (Section 23B). In order to exceed either the qualitative or quantitative restrictions of section 23A, written approval must be obtained from the FRB. In addition, thrifts are prohibited from extending credit to any affiliate that engages in any activity, such as insurance or securities underwriting, that is not permissible for a bank holding company (note that banks that are part of a financial holding company structure can make such loans). 12 USC § 1468(a)(1)(A). So once again, in order to fund the operations of its affiliates to any meaningful extent, a thrift must either obtain regulatory approval or risk violating existing statutes.

An alternate way that a thrift parent or affiliate could harm the thrift would be to force the thrift to purchase certain assets from a third party. However, thrifts (as compared to banks) are required to provide 30-day notice to the OTS of any "bulk purchase" of assets "not made in the ordinary course of business." 12 CFR § 563.22(c). Such transfers include the following: "transfers of assets or savings account liabilities, purchases of assets, and assumptions of deposit accounts or other liabilities, and combinations with a depository institution other than an insured depository institution." 12 CFR § 563.22(c). Thus, it would also be difficult for a holding company to force a questionable purchase onto its subsidiary thrift.

As a result, for the detrimental scenarios listed above to take place, a thrift need not only be part of a weakened or highly leveraged company, but it also must violate the laws and regulations that would otherwise prohibit the adverse transactions. In other words, the basis for the regulatory burdens imposed by the prior notice requirements of the Proposal appears to be an assumption that thrift or holding company management will intentionally violate existing statutes and regulations, subjecting themselves, the thrifts, and/or their holding companies to fines, penalties, and various types of regulatory action under 12 USC §§ 1818 and 1467a. This argument does not justify promulgation of the Proposed Rule.

3. OTS Legal Authority to Issue the Proposed Rule.

While described as a "notice" provision, the Proposed Rule actually is drafted as an application process. This is evident from section 584.140, which provides a

series of completely discretionary conditions under which the OTS may "disapprove" or "condition" a notice.[6] Thus, any transaction subject to the proposed "notice" process may only be consummated if approved by the OTS. As applied to acquisitions by thrift affiliates, this process is unprecedented and its statutory support questionable. As applied to debt issuances, such an application process was previously authorized by a law that has now been repealed. In sum, we suggest that the OTS' statutory authority to issue the Proposal is questionable at best.

The Proposed Rule cites as a statutory basis sections 10(g) and 3 of the Home Owners' Loan Act ("HOLA"), but these statutory provisions do not support the Proposal in its current form. The preamble to the Proposal overstates the breadth of these laws when it describes them as giving the OTS "extensive" statutory authority over savings and loan holding companies. Section 10 of HOLA generally spells out the authority of the OTS to examine holding companies, identifies the activities that both diversified and non-diversified holding companies can engage in, and the actions that the OTS can take if such activities create a threat to the safety and soundness of a subsidiary savings association. See 12 USC §§ 1467a(b) (examination of holding companies), (c) (activities), (g)(5) and (p) (restriction of holding company activities that pose a serious risk to a thrift). Throughout these provisions, it is clear that the purpose of HOLA (including Section 10), and of the OTS in general, is to protect the safety and soundness of thrift institutions and not to regulate thrift holding companies on their own merits. This focus is clearly expressed in the existing OTS holding company exam approach. See, generally, Regulatory Handbook, Holding Companies (the "Handbook"). For example, while stating that "[h]olding companies can provide financial strength to savings associations in a variety of ways," the Handbook notes that "the OTS examination focus should not be evaluating the holding company's financial condition as a stand alone entity," but rather that staff should be "alert to situations where the holding company's financial condition creates strong incentives to engage in transactions that could adversely affect the thrift." Handbook at 95. This existing regulatory approach is consistent with the statutory enforcement provisions provided by Section 10 of HOLA. As discussed further below, the provisions of HOLA that provide the OTS with jurisdiction over activities engaged in by holding companies and other affiliates pertain solely to ongoing activities that present an immediate threat to the financial condition of a thrift. 12 USC §§ 1467a(g)(5) and (p). Rather than recognizing HOLA's purpose and these enforcement sections as a limit to OTS authority, the Proposal implies in a footnote that the new application process is necessary because no statutory

[6] If the OTS is truly only seeking information through the Proposal, section 584.140 could be eliminated and any final rule should clarify that a notice cannot be "disapproved" or "conditioned."

authority exists to allow prior approval of holding company debt transactions or acquisitions. See 65 FR 64,393 (October 27, 2000), at note 6. We disagree.

Contrary to the language of HOLA, the Proposed Rule will apply to a wide range of transactions that will have absolutely no effect on an affiliated thrift. A review of HOLA clearly indicates that Congress did not intend to provide the OTS with oversight of thrift holding company acquisitions or debt issuances that have no negative impact on a subsidiary thrift. Specifically, while HOLA does provide the OTS with the authority to examine holding companies (12 USC §1467a(b)), it only provides explicit authority to restrict holding company activities under certain prescribed circumstances. Thus, HOLA provides that where:

> [T]here is reasonable cause to believe that the continuation by a savings and loan holding company of any activity constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association, the Director may impose such restrictions as the Director determines to be necessary to address such risk. Such restrictions shall be issued in the form of a directive to the holding company and any of its subsidiaries, limiting -
>
> (A) the payment of dividends by the savings association;
> (B) transactions between the savings association, the holding company, and the subsidiaries or affiliates of either; and
> (C) any activities of the savings association that might create a serious risk that the liabilities of the holding company and its other affiliate may be imposed on the savings association.

12 USC § 1467a(p)(1). The fact that Congress provided this explicit authority to the OTS to take action with respect to existing activities at a savings and loan holding company that actually present risk to the subsidiary thrift does not provide authority for the OTS to take such action simply because it believes that a proposed transaction could possibly lead to a situation where those conditions develop. In other words, if Congress had intended to imbue the OTS with the authority necessary to carry out the Proposal, it is likely that that the section quoted above would not contain the term "continuation." Thus, as HOLA is drafted, the statute requires that a holding company activity pose an actual threat to the subsidiary savings association before the OTS can take action to restrict that activity.

This lack of authority is further evidenced by the fact that, at one time, the OTS did have specific statutory authority to require advance notice of holding company and affiliate debt issuances such as that included in the Proposal. Until 1989, 12 USC

§ 1730a(g) prohibited non-diversified savings and loan holding companies from issuing, selling, renewing, or guaranteeing any debt security without prior OTS approval. This provision was repealed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Twelve USC § 1730a(g) was implemented by 12 CFR § 584.6, which the OTS eliminated when the statute was repealed. 54 FR 49,411 (November 30, 1989). Recently, Congress considered various types of holding company supervision in the context of its passage of the Gramm-Leach-Bliley Act of 1999. Despite its concern for the safety and soundness of insured institutions that are affiliated with various types of financial and non-financial companies, in enacting this statute Congress took no action that would in any way expand the OTS authority over savings and loan holding companies. We suggest that such congressional action would be necessary to support a rulemaking as broad as the one proposed.

4. Offsite Monitoring and Other Alternatives.

In light of the OTS' stated desire to more efficiently supervise thrift holding companies, we support the principle of increased offsite monitoring. A wealth of information is or could be available to the OTS that should provide the agency with a substantial background on holding company strategy and performance, obviating any need for an advance notice procedure in most cases. Such information may come from sources such as:

- Form 10K's, Form 8K's, and Form 10Q's filed with the Securities and Exchange Commission;
- An updated, electronically accessible HB-11 filed with the OTS;
- An updated Thrift Financial Report filed with the OTS;
- Rating agency debt ratings and reports;
- Equity and fixed income analyst reports;
- Earnings conference calls;
- Informal contacts and/or meetings with holding company management to obtain information or financial performance and strategic plans and/or goals; and
- Company-specific Websites.

While we recognize that much of this information will only be available for public companies, perhaps that fact in itself supports a less intrusive approach to supervision of such organizations.

Other possibilities short of a formal regulation also exist for the OTS to address situations raised in the Preamble that cause the OTS concern. For example, the

OTS makes clear that it has concerns with respect to companies that "double leverage" their capital. One less burdensome approach the OTS could use to address a perceived problem of "double leveraging" would be to issue regulatory guidance specifically advising against the practice. Such guidance could even require companies that become highly leveraged to sign capital maintenance agreements with the OTS to guarantee that their thrift will remain well capitalized. Moreover, if failure to abide by such guidelines could negatively affect a subsidiary thrift institution, this failure could be deemed an unsafe and unsound practice and possibly authorize enforcement actions. Such specific guidance would encourage the bulk of the thrift industry to factor any such OTS concerns into their consideration of proposed transactions, perhaps more effectively achieving the goal the OTS hopes to achieve.

5. Suggested "Safe Harbor" Provision.

Should the OTS decide to implement the Proposal, we suggest that, at a minimum, it should not apply to publicly rated companies with investment-grade ratings. Specifically, if a savings and loan holding company has an investment grade rating from a major rating agency, that company should not be subject to any notice requirements. This would enable financially sound companies to continue normal operations, while less financially secure entities would be subject to the notice filings.

Reliance on such ratings is already widely accepted for various regulatory purposes. For example, the SEC relies on rating agency assessments to determine whether and to what extent disclosure is necessary for certain required filings. Thus, when a company that has an investment grade rating uses a Form S-3 to register securities, the company is entitled to file an abbreviated form that requires less disclosure. Rating agency involvement has also been accepted by other governmental regulators, including the OTS and the OCC, with respect to disclosure documents and capital requirements for investments. See Handbook at 100.

Rating agency review of an investment grade company is a comprehensive assessment of risk. To assess company risk the rating agency will review the entire entity periodically throughout the year. For example, Household and its most significant subsidiary, Household Finance Corporation, are both subject to rating agency review three times a year. During these reviews the agencies look at virtually all internal and external risk factors that the particular entity is subject to and then either reaffirm, increase or decrease the rating that they have previously given. The agencies apply sophisticated analytical models to all relevant financial

data and then incorporate external factors that impact the company and industry as a whole. Through this process, they provide a rating that is consistent, reliable, continuous and timely.

For a company with an investment grade rating, the maintenance of that rating is critical, as the consequences of a ratings downgrade can be severe, increasing the price of capital. For a financial services provider that needs funds as its "raw materials", this increase in the cost of funding could be devastating. Thus, use of company ratings would be a sensible way to exclude well-managed, financially sound companies from new regulatory requirements.

6. Capital Levels.

The OTS has stated repeatedly that a single capital measure would be inappropriate for purposes of thrift holding company regulation, and we agree. However, under the Proposal, those saving and loan holding companies that have consolidated tangible capital of 10% or greater would be excluded from the notice requirements pursuant to section 584.110(a)(2). As described in the Supplementary Information, this exclusion is not intended as a de facto capital requirement, but rather to be used to exempt the most financially sound holding companies from the notice requirement. However, the ratio fails in this regard. When one equity ratio is utilized without regard to the primary business of the holding company or its access to liquidity, financially sound companies will be required to file notice under this Proposal while lower quality companies will be excluded. This would occur because different levels of risk are inherent in different industries, and thus the market requires different levels of capital for different businesses sectors. For example, to achieve similar credit ratings, industrial companies are required to maintain higher levels of capital than financial services companies.

By way of example, as a financial services provider, Household is considered well capitalized by the financial markets as it has a "consolidated tangible capital ratio" of 9.24% (as calculated pursuant to the Proposal). Household has demonstrated consistent growth in earnings while maintaining a highly liquid balance sheet. This performance supports its Standard & Poor's unsecured debt rating of "A", providing the company with access to the capital markets through a broad range of financial vehicles. By all measures, Household is a financially sound company, yet the use of a single, arbitrary capital measure could require it to file unnecessary notices under the Proposed Rule. In contrast, there are less financially sound holding companies that could be excluded from these prior notice requirements because they maintain a capital ratio in excess of 10%. For example, an actual

thrift holding company in the retail industry has a capital ratio of 26.23%, but inconsistent earnings combined with a less liquid balance sheet have resulted in a debt rating for this company of BBB+. Thus, this company's cost to raise ten-year debt is 80 basis points higher than Household's and its potential pool of investors is substantially smaller.

While we agree that the capital ratio is one important measure in determining financial stability, it should not be used in isolation. Rather, any regulatory capital measure should differentiate between financial and non-financial holding companies. Additionally, the quality of a company's earnings, its access to liquidity and its debt ratings should be considered when determining what level of oversight is required for various types of companies.

7. Reviewing Capital Adequacy for Savings and Loan Holding Companies.

The Proposal was published along with a description of the OTS' current practices for reviewing holding company capital. From statements in the Supplementary Information, it is clear that the OTS is considering publishing a regulation addressing this topic. While the Proposal gives examples of how holding company capital can affect subsidiary thrifts, it does not address why a formal regulation would improve upon the current process that is documented in the Handbook. We see no reason to abandon the flexible, case-by-case approach that is currently utilized by the OTS, and strongly urge the OTS not to consider issuing a regulation, as we believe a formal rulemaking could hamper the flexibility of both holding companies and examiners who must operate in diverse situations. As discussed previously, risks can vary substantially across industries and companies, resulting in a situation where standardization of either capital levels or supervisory actions are counterproductive.

8. Undefined Terms.

We are also concerned that several terms used in the Proposal lack clarity. By creating uncertainty as to when the OTS must review transactions and under what circumstances the OTS will disapprove a notice, the Proposal increases its own burden. For example, when does a company "commit to engage" in a transaction for purposes of section 584.110? Does the Proposal and its tests apply to all mid-tier holding companies or just the ultimate parent corporation? What is a "material risk" for purposes of section 584.140? These and other similar issues should be resolved in any final rule that is issued.

9. Paperwork Reduction Act.

The OTS invites comment on whether the proposed collection of information is necessary or has practical utility. The comments provided above should address these issues. In addition, this section asks for comments regarding the accuracy of the OTS estimate of the burden of the Proposed Rule. The specific estimate provided by the Proposal is five hours annually spent per savings and loan holding company to comply with the rule. This number appears to grossly underestimate compliance costs. As described earlier, once the thresholds in the Proposal are met, all transactions within a 12-month period would be subject to the notice requirements. Household, for instance, is planning 20 term debt transactions during 2001, and could execute an equal number of acquisitions. Each notice filed for such transactions would take at least five hours (probably closer to 20 hours) to prepare. Thus, if Household were subject to the rule, it could spend up to 800 hours annually just preparing the notices. These costs would be in addition to the less tangible costs described previously.

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We appreciate this opportunity to comment on the Proposed Rule. While clearly recognizing the supervisory interest that the OTS has in its regulated thrifts and their affiliates, we caution against new regulatory burdens that could serve only to disadvantage the industry the OTS seeks to strengthen.

If you have any questions regarding this letter, please feel free to contact either Janet Burak, Vice President and General Counsel at (847) 564-6022 or Martha Pampel, Associate General Counsel, Federal Regulatory Coordination at (847) 564-7941.

Sincerely,

Kenneth H. Robin
Senior Vice President
General Counsel and
Corporate Secretary