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February 9, 2001

Via E-Mail
public.info@ots.treas.gov

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G. Street N.W.
Washington, DC 20552

Attention: Docket No. 2000-91

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

Dear Sir or Madam:

Our firm serves as counsel to BankUnited Financial Corporation ("BankUnited") and its subsidiary, BankUnited, FSB, and hereby submits these comments on their behalf. BankUnited opposes adoption of the Proposed Rule, because it is an unnecessary impediment to the conduct of reasonable business activities by federal savings association holding companies in an increasingly competitive industry. There is no compelling reason for adopting the Proposed Rule, because existing regulations, thrift safety and soundness examinations and OTS reviews of holding company capital adequacy, when properly enforced and conducted, adequately protect against holding company transactions that might risk a subsidiary thrift's safety.

Existing regulations already provide a mechanism for OTS notice and oversight of transactions by savings association holding companies which may adversely affect their subsidiary thrifts. Regulations requiring prior notice or approval of distributions from a subsidiary thrift to its holding company and of expansion into new activities enable federal banking regulators to assess the soundness of proposed transactions in advance. Regulations requiring transactions between a thrift and its affiliates to adhere to specific quantitative and qualitative standards, and, in some circumstances, to notify the OTS prior to engaging in such transactions, further protect the thrift.

In addition, and perhaps most important, the OTS already receives prompt and continuous updates of information upon which risk to a subsidiary thrift may be determined, in the form of financial and other information submitted each quarter in thrift financial reports and holding company H-(b)11 reports. H-(b)11 reports include copies of all filings made with the Securities and Exchange Commission, such as quarterly 10-Q reports containing financial statements, notes and discussion of the holding company and its subsidiaries, and information required by the OTS on holding company investments, borrowings, capital stock and changes related thereto, dividend and tax payments by the thrift to or on behalf of the holding company, pledges of thrift stock by the holding company for debt purposes, material legal proceedings and other materially important events which may affect the subsidiary thrift. In fact, in most cases H-(b)11 reports currently provide the OTS with advance notice of debt offerings, significant acquisitions, and other material events or transactions by or affecting public holding companies, when filings with the Securities and Exchange Commission are made, because an H-(b)11 report must be filed simultaneously with each SEC filing. Even prior to performing thrift and holding company examinations, therefore, existing regulations require that substantial information about thrift and holding company activities be provided to the OTS in the form of notices, requests for approval and ongoing reports. Combined with the detailed scrutiny exercised by the OTS in performing examinations, these existing communications provide sufficient and timely information for regulatory assessment of whether a thrift is at risk, without the imposition of additional and unnecessary burdens of notice and approval of transactions proposed by the holding company. The purpose for which the Proposed Rule is intended would be better accomplished by closer and more comprehensive analysis of publicly available and reported information.

The Proposed Rule would significantly impede a holding company's ability to engage in reasonable financing activities beneficial to its subsidiary thrift. Financial markets will not stand still for a holding company to comply with notice timeframes, and a notice requirement may prevent a holding company from maximizing its interests, which include the interests of its subsidiary thrift, in the financial markets. At a time when federal laws have been made more flexible and less burdensome for commercial banks, this proposal would hamper the ability of thrift holding companies to compete.

In recent years, there has been a positive movement at the legislative and regulatory levels to eliminate unnecessary requirements which burden the ability of thrifts and other financial institutions to do business. This movement has modernized and streamlined the regulatory framework and helped to improve the efficiency of thrift operations without endangering safety and soundness. The

proposed rule steps backwards from that progress. The OTS's discussion of the Proposed Rule speculates upon transactions which could lead to circumstances that might threaten the safety and soundness of subsidiary thrifts. The proposal, however, neither presents compelling evidence that actual events necessitate the Proposed Rule, nor establishes the Proposed Rule as necessary to correct a significant lack of reported information which prevents the agency from determining that a thrift is at risk from its holding company's activities. In the absence of such compelling circumstances, our client must disagree with the proposal as an unreasonable and anti-competitive burden on reasonable business activities.

Sincerely,

/s/ Marsha D. Bilzin
Marsha D. Bilzin