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INFORMATION SERVICES DIVISION

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

Re: Savings and Loan Holding Companies Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy 65 FR 64392 (October 27, 2000); Docket No. 2000-91

Dear Sir or Madam:

Dime Bancorp, Inc. ("Dime"), the parent holding company of The Dime Savings Bank of New York, FSB ("Dime Savings"), wishes to offer the following comments on the above captioned proposed regulation (the "Proposed Rule").

Dime is a unitary savings and loan holding company with assets of $25.7 billion. Its principal subsidiary, Dime Savings, is a Federal savings bank with deposits of $14.0 billion, serving consumers and businesses throughout the greater New York City metropolitan area through 125 branches. Directly and through its mortgage banking and other subsidiaries, Dime Savings also provides consumer loans, insurance products, broker dealer services and mortgage banking services throughout the United States.

We are concerned that the Proposed Rule presents significant obstacles to the ability of holding companies and savings associations such as Dime and Dime Savings to efficiently operate and compete in the modern financial environment. We believe that the OTS currently has sufficient tools to protect the safety and soundness of savings associations from any overreaching by an association's parent holding company. Therefore, we respectfully suggest that the OTS withdraw the Proposed Rule.

Need for the Proposed Rule.

Dime believes that the OTS currently has sufficient regulatory authority to protect the safety and soundness of savings associations from risks presented by parent holding companies without expanding the regulatory burdens placed on those holding companies. In our opinion, the preamble to the Proposed Rule gives short shrift to the existing authorities, placing them in footnoted citations without explaining the breadth of the authority.

- The OTS Capital Distribution regulation (12 C.F.R. §§ 563.140 to 563.146) already requires any savings association that is a subsidiary of a holding company to file a notice to the OTS at least 30 days prior to a proposed capital distribution to the holding company *regardless of the association's or holding company's financial condition or the size of the distribution*. Capital distributions include not only dividends paid to the holding company but, among other things, any other distribution charged against the savings association's capital account (if the association would not be well capitalized following such distribution) and any other transaction that the OTS determines to be in substance a distribution of capital. The OTS is authorized to prohibit a proposed capital distribution under the regulation if the savings association, among other things, would be undercapitalized following the distribution or if the distribution raises safety and soundness concerns.

- The OTS Prompt Corrective Action regulation (12 C.F.R. Part 565) prohibits a savings association from making any capital distribution if, after making the distribution, the association would be undercapitalized. This *prohibition* becomes applicable if the proposed distribution would reduce total risk-based capital to less than 8.0% or Tier 1 risk-based capital to less than 4.0% or leverage capital to less than 4.0% (or 3.0% if the association has been rated "1" in its most recent safety and soundness examination). Furthermore, the OTS is authorized to apply this restriction to an adequately capitalized savings association based on a finding of an unsafe or unsound condition or practice, even if the distribution would not reduce the association's capitalized below these standards.

- The OTS Affiliate Transaction regulation (12 C.F.R. § 563.41) significantly limits the amount of loans and covered transactions that a savings association can make to its parent holding company and other affiliates. It also *prohibits* a savings association from: making any loans or entering into other covered transactions with a parent holding company or affiliates engaged in activities not authorized for bank holding companies; purchasing or investing in the securities of its holding company parent or affiliates; and purchasing "low-quality assets" from its parent holding company or affiliates (unless the savings association committed to purchase the asset prior to the holding company acquiring the asset).

- Also, the Prompt Corrective Action provisions of § 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) authorize the OTS to take a number of actions against a holding company that has a savings association subsidiary that is significantly undercapitalized (or that is undercapitalized but failed to submit and implement a capital restoration plan). For example, the OTS can require the holding company to *divest or liquidate* any affiliate if the OTS determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the savings association or is likely to cause a significant dissipation of the association's assets or earnings. Also, under these provisions the OTS can require the holding company to *divest the savings association* if the OTS determines that divestiture would improve the association's financial condition and future prospects.

Therefore, the ability of a holding company to call upon the association's capital to fund transactions, service debt or restore the capital of the holding company or an affiliate is already subject to strict OTS scrutiny and limitations. Any holding company planning to issue debt securities or to engage in significant transactions must take these limitations into account in assessing its ability to service the debt, pay for a significant transaction or support the operations of the holding company or affiliate. Furthermore, investors in debt securities of publicly traded holding companies are routinely advised of such limitations.

Dime believes that the impact of existing authority on the operations of holding companies and subsidiary savings associations makes the Proposed Rule's prior notice requirement unjustified. In addition, we are concerned that the prior notice requirement will not actually accomplish the intended objective of allowing the OTS to identify the risks to a savings association, since longer-term negative impacts of a transaction, if they are to materialize, are seldom readily apparent or ascertainable at the outset. Rather, the notice requirement may, we fear, be used as a vehicle for the OTS to substitute its business judgement for that of the management of the holding company. The notice requirement will also impose significant delays that will make savings association holding companies less competitive than they currently are.

Coverage of the Proposed Rule.

The Proposed Rule would exclude from its notice requirements any holding company whose consolidated savings association subsidiaries comprise less than 20% of the holding company's total assets. Contrary to the suggestion in the preamble to the Proposed Rule, Dime believes such holding companies may be *more* likely to ignore the best interests of its savings association because of the savings association's minimal impact on the holding company's assets. In contrast, a holding company whose consolidated savings association subsidiaries comprise 90% or more of its total assets is more likely to view the financial condition of the savings association as essential to the performance of the holding company. In fact, it is likely that there is an identity of interests, as well as an identity of management, between a holding company and a savings association that comprises 90% or more of the holding company's assets. Such holding

companies, if publicly traded like Dime, are primarily judged by the market on the financial performance of the savings association subsidiary. Therefore, while we continue to believe that a notice requirement is unnecessary, in the event the OTS decides to adopt one or more provisions of the Proposed Rule, we suggest that it exclude from coverage any holding company whose consolidated savings association subsidiaries comprise 90% or more of its total assets.

The Proposed Rule would also exclude from the notice requirement any holding company with "consolidated tangible capital" of 10% or more. There are technical problems with this requirement because it is not identical to any other capital requirement imposed on savings associations and also includes an undefined term ("deferred policy acquisition costs"). Despite the statements to the contrary in the Preamble, given the importance to some holding companies of avoiding the costs and delays that would be imposed by the Proposed Rule, this does create a *de facto* capital requirement. Furthermore, this capital requirement is well beyond any capital requirement imposed on the savings association itself. For example, the highest "leverage ratio" (Tier 1 capital to total assets excluding intangible assets) under the OTS Prompt Corrective Action regulation is 5.0%, while "the tangible capital" requirement of the OTS Capital Regulation is merely 1.5% of adjusted total assets. Assuming that the consolidated tangible capital measure of the Proposed Rule is the equivalent of these two measures, which is not clear to us, the Proposed Rule effectively places a capital requirement on holding companies that is two times the requirement for well capitalized status and 6.6 times the basic capital requirement. We suggest that this is not an exclusion at all, but rather another capital requirement in addition to the tangible capital, leverage ratio, risk-based capital, and prompt corrective action requirements already in place.

We are also concerned that these and other exclusions from the notice requirement can be overridden by the OTS Regional Director by notifying the holding company that a transaction or activity will require a notice. This authority removes any predictability from the notice requirement of the Proposed Rule. The exercise of this authority by the OTS Regional Director could cause a holding company to be required to breach an agreement not submitted for review (since a transaction or activity not subject to the notice requirement need not be filed before engaging or committing to engage in the transaction or activity). To avoid this possibility, a holding company may decide to routinely submit transactions or activities that would not otherwise require notice to the Regional Direct prior to engaging or committing to engage in the transaction or activity, thereby imposing a *de facto* notice requirement on transactions and activities that fall within the stated exclusions. This discretion makes the Proposed Rule burdensome.

The notice requirement is also troubling because it requires a holding company to combine a proposed transaction with all other transactions conducted during the prior twelve months to determine whether the proposed transaction is subject to the notice requirement. This gives holding companies the incentive to delay transactions so as not to be combined with any transactions and activities in the prior 12 months. As a result, the Proposed Rule encourages inefficiencies and will make savings and loan holding companies less competitive than holding companies of other financial institutions.

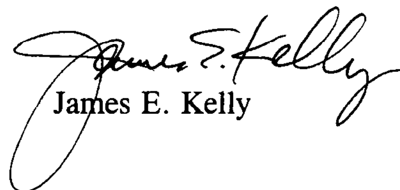
Capital Requirement.

As a general matter, we believe that it is unnecessary for the OTS to impose capital requirements on holding companies to protect the safety and soundness of savings associations. Many of the existing OTS requirements described above adequately protect savings associations from overreaching by their parent holding companies.

Furthermore, we believe that it is inappropriate to propose a capital requirement without setting forth specific terms in the form of a proposed regulation or policy statement. We normally appreciate the opportunity to submit comments on general concepts through an "Advance Notice of Proposed Rulemaking," if followed (as necessary) by a "Notice of Proposed Rulemaking" with specific regulatory language and requirements. However, in this instance the Proposed Rule appears to combine these two steps, leading us to be concerned that this general request for comments will lead immediately to a Final Rule adopting specific requirements. We suggest that if the OTS intends to pursue this issue, the OTS issue a separate Notice of Proposed Rulemaking for comment with specific proposed capital requirements.

Dime appreciates this opportunity to comment on the Proposed Rule. If you have any questions regarding this comment letter, please feel free to contact me at (212) 326-6104.

Very truly yours,



James E. Kelly