The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 11408

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ICI DRAFT LETTER ON SEC RULE PROPOSAL REGARDING REPURCHASE AGREEMENTS AND REFUNDED SECURITIES

1[11408] November 12, 1999 TO: MONEY MARKET FUNDS ADVISORY COMMITTEE No. 17-99 SEC RULES COMMITTEE No. 97-99 RE: ICI DRAFT LETTER ON SEC RULE PROPOSAL REGARDING REPURCHASE AGREEMENTS AND REFUNDED SECURITIES

_____ Attached for your review is the Institute's draft comment letter on the Commission's proposed new Rule 5b-3 and related rule amendments under the Investment Company Act of 1940 that would permit investment companies to "look through" counterparties to repurchase agreements and issuers of municipal bonds that have been "refunded" with U.S. Government securities and treat the underlying securities comprising the collateral as investments for certain purposes under the Act. Comments are due by Tuesday, November 23rd. Please provide your comments to Barry Simmons by phone at 202/326-5923, by fax at 202/326-5827, or by email at simmonbe@ici.org, or to Amy Lancellotta by phone at 202/326-5824, by fax at 202/326-5827, or by email at amy@ici.org by Thursday, November 18, 1999. The Institute's draft letter supports the Commission's proposal regarding pre-refunded bonds as proposed. It also supports the Commission's proposal regarding repurchase agreement transactions, subject to the following recommendations. First, the letter recommends that the Commission eliminate the creditworthiness determination from proposed Rule 5b-3. We believe that a properly structured repo that is excluded from the automatic stay provision under the federal Bankruptcy Code or other insolvency law would enable a fund to reasonably rely on the underlying collateral rather than the counterparty's creditworthiness. Second, the draft letter recommends that Rule 5b-3 not include minimum quality standards for repo collateral. Such requirements are not necessary in view of the other requirements under the proposed rule, namely that the repo qualifies for preferred treatment under applicable insolvency law and the value of the collateral is sufficient to fully cover the amount payable under the repo. As an additional protection, the draft letter recommends that the collateral be required to be liquid. Third, in response to the Commission's request for comment, the draft letter states that it is not necessary to include a control requirement in the definition of "collateralized fully" in the proposed rule. Such condition is not necessary in view of the condition under the rule that a repo must be excluded from the automatic stay provision of applicable insolvency law. Finally, the draft letter also contains minor technical comments relating to the definition of "collateralized fully" and the proposed modification to Rule 12d3-1 under the Investment Company Act. 2Barry E. Simmons Assistant Counsel Attachment