MEMO# 11683

March 1, 2000

INSTITUTE DRAFT COMMENT LETTER ON EXPOSURE DRAFT OF A REVISED VERSION OF TBMA'S MASTER SECURITIES LOAN AGREEMENT

* See Memorandum to Accounting/Treasurers Committee No. 6-00, SEC Rules Committee No. 20-00, and Securities Operations Subcommittee, dated February 9, 2000. 1 [11683] March 1, 2000 TO: ACCOUNTING/TREASURERS COMMITTEE No. 9-00 SEC RULES COMMITTEE No. 28-00 SECURITIES OPERATIONS SUBCOMMITTEE RE: INSTITUTE DRAFT COMMENT LETTER ON EXPOSURE DRAFT OF A REVISED VERSION OF TBMA'S MASTER SECURITIES LOAN AGREEMENT ____ As we previously reported to you, The Bond Market Association ("TBMA") and the Securities Industry Association jointly released for comment an exposure draft of a revised version of TBMA's Master Securities Loan Agreement ("Agreement").* Attached for your review, and summarized briefly below, is the Institute's draft comment letter on the exposure draft. Please provide me any comments on the attached draft no later than Friday, March 10, 2000. You may reach me at (202) 326-5923 (phone), (202) 326-5827 (fax), or bsimmons@ici.org (email). The Institute's draft letter notes that Section 1 of Annex III of the exposure draft establishes a default rule that provides that all loans of securities other than equity securities shall be designated as "term loans." The draft letter disagrees with this approach and recommends instead that loans of fixed income securities not be deemed to be term loans unless the parties otherwise agree. The letter explains that parties should have the flexibility to affirmatively agree that particular loans or types of loans would constitute term loans. The Institute's draft letter also notes that Section 9.1 of the exposure draft obligates borrowers to mark to market the loaned securities daily and provide additional collateral if the market value of the collateral falls below 100% of the value of the loaned securities. That section, however, would only impose the additional collateral requirement on borrowers with respect to loans in which the lender is a customer of the borrower. The Institute's letter recommends retaining the current provision in the Agreement, which obligates all borrowers to provide additional collateral automatically, any time the market value of the collateral falls below 100% of the value of the loaned securities, without the need for a demand from the lender to do so. The Institute's draft letter disagrees with the exposure draft's proposed elimination of certain current events of default under the Agreement, including where (1) a party has been suspended or expelled from membership or participation in a self-regulatory organization, (2) a party is suspended from dealing in securities by any applicable federal or state governmental authority, or (3) a party's 2license to conduct a material portion of its business has been withdrawn,

suspended or revoked. The Institute's letter notes that these default provisions have proven very beneficial as early indicators of current or impending financial problems and should be retained. Finally, the letter makes various technical recommendations to help clarify certain proposed revisions. Barry E. Simmons Assistant Counsel Attachment