MEMO# 11754

March 22, 2000

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

* See Memorandum to Accounting/Treasurers Committee No. 9-00, SEC Rules Committee No. 28-00, and Securities Operations Subcommittee, dated March 1, 2000. [11754] March 22, 2000 TO: ACCOUNTING/TREASURERS COMMITTEE No. 12-00 SEC RULES COMMITTEE No. 47-00 SECURITIES OPERATIONS SUBCOMMITTE RE: INSTITUTE COMMENT LETTER ON EXPOSURE DRAFT OF A REVISED VERSION OF TBMA'S MASTER SECURITIES LOAN AGREEMENT ______________________________________________________________________ The Institute has submitted the attached comment letter to The Bond Market Association ("TBMA") regarding TBMA's exposure draft of a revised version of TBMA's Master Securities Loan Agreement ("Agreement"). The exposure draft was a joint release of TBMA and the Securities Industry Association. The Institute's letter is substantially the same as the draft letter previously circulated to you.* The Institute's letter generally supports TBMA's initiative to revise the Agreement so that it reflects important legal and market developments. Our letter urges TBMA, however, to preserve some of the key features of the Agreement that have worked well for the mutual fund industry since the Agreement was first published in 1993. For example, the letter disagrees with the proposed change in Section 1 of Annex III of the exposure draft, which would establish a default rule that provides that all loans of securities other than equity securities shall be designated as "term loans." Instead, the letter recommends that loans of fixed income securities should 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. In addition, the Institute's letter disagrees with the proposed change to the collateralization obligation provision in Section 9.1 of the exposure draft, which would obligate only those borrowers with respect to loans in which the lender is a customer of the borrower to provide additional collateral if the market value of the collateral falls below 100% of the value of the loaned securities. 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. Moreover, the Institute's letter disagrees with the exposure draft's proposed elimination of certain current events of default under the Agreement, such as 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 license to conduct a material portion of its business has been withdrawn,

suspended or revoked. The 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 recommends various technical modifications to help clarify certain of the exposure draft’s proposed revisions. Barry E. Simmons Assistant Counsel Attachment