INVESTMENT COMPANY INSTITUTE

MEMO# 11620

February 9, 2000

REQUEST FOR COMMENT ON EXPOSURE DRAFT OF THE BOND MARKET ASSOCIATION'S REVISED MASTER SECURITIES LOAN AGREEMENT

1[11620] February 9, 2000 TO: ACCOUNTING/TREASURERS COMMITTEE No. 6-00 SEC RULES COMMITTEE No. 20-00 SECURITIES OPERATIONS SUBCOMMITTEE RE: REQUEST FOR COMMENT ON EXPOSURE DRAFT OF THE BOND MARKET ASSOCIATION'S REVISED MASTER SECURITIES LOAN AGREEMENT

____ The Bond Market Association ("TBMA") and the Securities Industry Association have jointly released for comment an exposure draft of a revised version of TBMA's Master Securities Loan Agreement ("Agreement"), together with guidance notes for use in connection with the revised Agreement. Both the revised Agreement and the guidance notes are attached, and are briefly summarized below. A blacklined version of the Agreement is available on TBMA's website (www.bondmarkets.com). Comments on the proposal are due by March 1, 2000. If there are comments you would like the Institute to consider addressing in its comment letter, please provide them to Barry E. Simmons at 202/326-5923 (phone), 202/326-5827 (fax), or bsimmons@ici.org (email – note: new address) by February 18th. The Agreement was first published in May 1993 in order to provide a basic contractual framework for the rights and obligations of parties to securities loan transactions. The proposed revisions reflect legal developments since that time, including amendments to the Securities Exchange Act of 1934, Regulation T of the Board of Governors of the Federal Reserve System, and Article 8 of the Uniform Commercial Code. The proposed revisions also reflect market developments, such as market participants' recent experiences in exercising liquidation and similar closeout rights in the context of counterparty insolvency. Comments are requested on the revised Agreement and the guidance notes generally, as well as on the following specific topics: Confirmation of Securities Loans – The proposed amendments would broaden the existing confirmation requirement to include loans between market professionals in a manner that preserves sufficient flexibility with respect to the documentation of securities lending transactions. Impossibility and "Act of God" Provisions – The proposed amendments would require documentation for privately negotiated over-the-counter transactions to specify the consequences of events – such as changes in law, changes in tax rules, regulatory changes, or governmental actions – that render performance substantially more difficult or expensive or introduce substantial uncertainty. Consent Payments – The proposed amendments would provide that each party is entitled to receive, with respect to any securities transferred to the other party under the Agreement, any cash or other 2consideration paid or provided by the issuer of such security in exchange for any vote, consent or the taking of any other action (regardless of whether the record date for such vote, consent or other action falls during the term of the loan). Elimination of Certain Representations and Events of Default – The proposed amendments would no longer require each party to represent that the execution, delivery and performance of the Agreement and each loan by it will comply with applicable laws and regulations (including those of applicable regulatory and self-regulatory organizations). Similarly, the revised Agreement would no longer provide that it shall be an event of Default if: (1) a party has been suspended or expelled from membership or participation in a self-regulatory organization; (2) a party has been 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. Barry E. Simmons Assistant Counsel Attachments

---