MEMO# 3324

December 6, 1991

THE "TELEPHONE CONSUMER PROTECTION ACT OF 1991"

December 6, 1991 TO: BOARD OF GOVERNORS NO. 86-91 BROKER/DEALER ADVISORY COMMITTEE NO. 43-91 DIRECT MARKETING COMMITTEE NO. 40-91 MARKETING COMMITTEE NO. 44-91 OPERATIONS COMMITTEE NO. 38-91 SALES FORCE MARKETING COMMITTEE NO. 38-91 SEC RULES MEMBERS NO. 58-91 SHAREHOLDER COMMUNICATIONS COMMITTEE NO. 35-91 UNIT INVESTMENT TRUST COMMITTEE NO. 44-91 RE: THE "TELEPHONE CONSUMER PROTECTION ACT OF 1991" ____ Last week, Congress passed S.1462, the "Telephone Consumer Protection Act of 1991," which regulates certain telemarketing activities. President Bush is expected to sign the legislation in the near future. A copy of the bill is attached; its main provisions are summarized below. Telemarketing Calls Made by Live Persons The legislation directs the Federal Communications Commission ("FCC") to hold a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights from unwanted telephone solicitations, and to adopt regulations to implement methods and procedures to protect such privacy rights. One such method which the bill requires the FCC to consider is the establishment of a national "do not call" database. The legislation provides that if the FCC determines to require such a database, regulations must be adopted to, among other things, "prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database." The term "telephone solicitation" is defined in the bill as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person." Expressly excluded from the definition of "telephone solicitation" are calls (1) to any person with that person's prior express invitation or permission or (2) to any person with whom the caller has an established business relationship. - 1 - Although the bill does not define the term "established business relationship," the report of the House Committee on Energy and Commerce on the version of the legislation reported by the Committee contains an extensive discussion of this concept. Based on the Institute's efforts, that report specifically states that "[i]n the case of mutual funds, calls by the fund's manager to existing shareholders would not be covered. In addition, if an investor had written to a mutual fund or responded to an ad requesting additional information, the fund's manager could make follow-up calls, which would not be subject to [the bill's] restrictions." A copy of the relevant excerpt from the House Committee report is attached. Automated Calls and Facsimile Advertisements The bill prohibits calls using an automatic telephone dialing system or an artificial or prerecorded voice to emergency telephone lines, hospitals, nursing homes, pagers and cellular phones. Such calls also may not be made to any residential telephone line, except: 1) with the prior express consent of the called party, 2) for emergency purposes or 3) pursuant to an exemption by rule or order of the FCC. The bill prohibits unsolicited facsimile advertisements. Frances M. Stadler Assistant General Counsel