

**MEMO# 3054**

August 29, 1991

## **PROPOSED TELEMARKETING LEGISLATION**

August 29, 1991 TO: BROKER/DEALER ADVISORY COMMITTEE NO. 29-91 DIRECT  
MARKETING COMMITTEE NO. 30-91 OPERATIONS COMMITTEE NO. 26-91 SALES FORCE  
MARKETING COMMITTEE NO. 30-91 SEC RULES COMMITTEE NO. 51-91 SHAREHOLDER  
COMMUNICATIONS COMMITTEE NO. 26-91 RE: PROPOSED TELEMARKETING LEGISLATION

The Institute is currently monitoring several bills pending before Congress that concern telemarketing activities. We bring these items to your attention because they could result, for example, in restrictions on telephone calls to fund shareholders or potential investors who have not expressly requested to be called. In addition, certain types of investment company marketing activities might be subjected to regulation by the Federal Communications Commission and/or the Federal Trade Commission. Set forth below are brief descriptions of certain provisions of these bills that may affect the activities of Institute members. Copies of the complete bills are attached for your review. H.R. 1304, the "Telephone Advertising Consumer Rights Act," provides for the regulation of certain telemarketing activities by the Federal Communications Commission. The proposed legislation requires the 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 specifically mentioned in the bill is the possible establishment of a national database containing a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. The legislation provides that if the FCC determines to require a database of objecting persons, 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 bill defines "telephone solicitation" 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 (A) without that person's prior express invitation or permission, or (B) with whom the caller does not have an established business relationship." It is not clear whether this definition would encompass, for example, a follow-up call made to a person who has called or written previously to request a fund prospectus. A similar bill on the Senate side, S. 1410, would prohibit the use of a telephone to make any "unsolicited telephone solicitation" in violation of regulations issued by the FCC pursuant to a required rulemaking proceeding "concerning the need to protect residential subscribers' privacy rights to avoid receiving unsolicited telephone solicitations to which they object." The term "unsolicited telephone solicitation" is defined as "a telephone call by a live person for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, or for other commercial purposes, which is transmitted to any person without that person's prior express invitation

or permission." This definition is narrower than the definition of "telephone solicitation" contained in H.R. 1304 as discussed above. Thus, under S. 1410, even a call to a person with whom the caller has an established business relationship could be deemed an "unsolicited telephone solicitation" absent the prior express invitation or permission of the person called. The legislation directs the FCC through its rulemaking proceeding to further define "unsolicited telephone solicitation." Based on an informal survey, we believe that the telemarketing activities of our members generally are directed at existing shareholders or people who have contacted a fund organization by telephone or mail to request information. Please let me know if this is not the case. H.R. 3203, the "Consumer Protection Telemarketing Act," requires the Federal Trade Commission to prescribe rules prohibiting deceptive and abusive telemarketing activities. Among other things, such rules must provide that "telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of a consumer right to privacy." In addition, the FTC must consider requiring that goods or services be shipped or provided within a specified period (or a refund will be required) and permitting persons who order goods or services through telemarketing to cancel their order within a specified period. The bill also contains detailed enforcement provisions. The term "telemarketing" is defined in H.R. 3203 as "a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which involves more than one interstate telephone call." Solicitation of sales through the mailing of a catalog meeting certain conditions is excluded from the definition of "telemarketing." S. 1579, the "900 Services Consumer Protection Act of 1991", provides for regulation of the "pay-per-call" industry by the FTC and the FCC. A pay-per-call service is defined as "any information service, provided by telephone, which receives payment, directly or indirectly, from each person who calls that service by telephone." The bill requires the FCC to adopt regulations specifying the types of information services that are covered. The legislation directs the FTC and the FCC to hold coordinated rulemaking proceedings "to establish a consistent system for oversight and regulation of pay-per-call services." Any rules or regulations adopted pursuant to such proceedings must require, among other things, that a pay-per-call service (1) include an introductory message that describes the service being provided and the maximum charge per minute or per call and other charges, and that informs the caller that the call will begin at the end of such message, (2) allow the caller to hang up before the end of the introductory message without incurring charges and (3) not be aimed at children under age 12 (unless it is a bona fide educational service). The bill provides for the issuance of advertising restrictions that would require that certain disclosures be included in any advertisement for a pay-per-call service. There are also detailed enforcement provisions authorizing the FTC and FCC to assess penalties and authorizing state attorneys general to bring actions for damages on behalf of state residents for alleged violations of rules or regulations under the Act. Finally, the bill calls for an FTC study to identify abuses by providers of pay-per-call services in the acquisition and use of callers' telephone numbers. H.R. 2829, the "Telephone Disclosure and Dispute Resolution Act," directs the Federal Trade Commission to prescribe rules "for any advertisement for services or products procured through the use of a telephone number with a 900 prefix or any other prefix under which liability for the service or product provided attaches to the telephone bill of the individual calling such number." Such rules must require, among other things, disclosure of the cost of using the telephone number. To our knowledge, only one Institute member is currently using a 900 number; however, others may choose to do so in the future. It is difficult to tell exactly what types of activities or services would be covered either intentionally or inadvertently by the proposed legislation. The Institute will be seeking clarification on this point. \* \* \* The proposed legislation described above may move quickly when Congress returns to session after Labor

Day. Therefore, if you have any concerns about the potential impact of the proposed legislation on your business and/or comments as to additional issues that the Institute should consider, please contact me at (202) 955-3514 by Friday, September 13. Frances M. Stadler Assistant General Counsel

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.