

**MEMO# 6699**

February 27, 1995

## **FTC PROPOSES TELEMARKETING RULES - SEC MUST ACT WITHIN SIX MONTHS OF EFFECTIVE DATE**

1 See Memorandum to Compliance Committee No. 16-94, Direct Marketing Committee No. 28-94, Sales Force Marketing Committee No. 38-94, SEC Rules Members No. 65-94 and Unit Investment Trust Members No. 37-94, dated September 19, 1994. February 27, 1995 TO: COMPLIANCE COMMITTEE No. 12-95 DIRECT MARKETING COMMITTEE No. 11-95 SALES FORCE MARKETING COMMITTEE No. 11-95 SEC RULES COMMITTEE No. 31-95 UNIT INVESTMENT TRUST COMMITTEE No. 21-95 RE: FTC PROPOSES TELEMARKETING RULES - SEC MUST ACT WITHIN SIX MONTHS OF EFFECTIVE DATE

As we previously advised you, last summer legislation was enacted that requires the Federal Trade Commission to prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.<sup>1</sup> The FTC has issued a release seeking comment on proposed rules to implement the legislation. A copy of the proposing release is attached for your information. As indicated previously, the legislation specifically exempts certain entities regulated by the Securities and Exchange Commission (including, among others, investment companies and investment advisers) from any rules adopted by the FTC thereunder. It provides, however, that within six months after the effective date of rules promulgated by the FTC, the SEC must promulgate "substantially similar" rules governing the entities it regulates. The legislation specifies that the SEC need not act if: (1) existing federal securities laws or rules provide protection from abusive or other deceptive telemarketing practices substantially similar to that provided by the FTC's rules; or (2) the SEC determines that the promulgation of such rules is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets. If the SEC determines that one of the above exceptions applies, it must publish that determination and the reasons for it in the Federal Register. The attached proposed rules prohibit certain specified acts and practices that are defined under the rules to be deceptive or abusive, impose time of day limitations on telephone solicitations, require certain oral and written disclosures and impose recordkeeping requirements on telemarketers. Of particular note is the proposed expansion of the definition of "telemarketing" to include, among other things, "calls initiated by persons in response to postcards, brochures, advertisements, or any other printed, audio, video, cinematic or electronic communications by or on behalf of the seller." (See proposed section 310.2(v).) The proposed rules also include, among other things, a definition of and specific requirements relating to "investment opportunities." (See, e.g., proposed sections 310.2(k) and 310.4(e).) The proposing release notes that the application of the proposed rule to investment opportunities is limited by the exemption for SEC-regulated entities

described above. Comments on the proposed rules must be filed by March 31st. Frances M. Stadler Associate Counsel Attachment

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