

MEMO# 4132

September 29, 1992

FCC ADOPTS RULES TO IMPLEMENT THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

September 29, 1992 TO: BROKER/DEALER ADVISORY COMMITTEE NO. 29-92 COMPLIANCE COMMITTEE NO. 17-92 DIRECT MARKETING COMMITTEE NO. 37-92 OPERATIONS COMMITTEE NO. 31-92 SALES FORCE MARKETING COMMITTEE NO. 38-92 SEC RULES MEMBERS NO. 43-92 SHAREHOLDER COMMUNICATIONS COMMITTEE NO. 31-92 UNIT INVESTMENT TRUST COMMITTEE NO. 55-92 RE: FCC ADOPTS RULES TO IMPLEMENT THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

As you may recall, last December, the "Telephone Consumer Protection Act of 1991" (the "Act"), which regulates certain telemarketing activities, was signed into law. The Act required, among other things, that the Federal Communications Commission adopt rules to implement methods and procedures to protect residential telephone subscribers' privacy rights from unwanted telephone solicitations. The FCC recently announced its establishment of procedures for this purpose. The new rules (the actual text of which is not yet available) will be effective on December 20, 1992. Copies of a press release and a question and answer release describing the new rules are attached. According to the attached materials, the FCC considered, but decided against, requiring the creation of a national do-not-call database. Instead, the rules adopted by the FCC will require all telemarketers to maintain company-specific do-not-call lists, to keep track of persons who have requested not to be called at home. In addition, the rules will prohibit telemarketers from making telephone solicitations to residences before 8:00 a.m. or after 9:00 p.m. Consumers will be able to sue telemarketers in state court to enjoin violations of the Act or the rules, or to recover damages of up to \$500. The Act defines "telephone solicitation" to exclude any call made to a person with that person's prior express invitation or permission, or to a person with whom the caller has an established business relationship. The attached question and answer release indicates that the new FCC rules define "established business relationship" to mean "a prior or existing relationship formed by a voluntary two-way communication between the telemarketer and the residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by the telemarketer, which relationship has not been previously terminated by either party." The Institute's comment letter to the FCC recommended that this term be broadly defined. In addition to regulating telephone solicitations to residences made by live persons, the rules adopted by the FCC will impose restrictions on the use of automatic telephone dialing machines, prerecorded or artificial voice messages and telephone facsimile machines. The text of the new FCC rules will be circulated to you as soon as possible. Frances M. Stadler Assistant Counsel Attachment

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