MEMO# 4218

October 28, 1992

FINAL FCC TELEMARKETING RULES

October 28, 1992 TO: BROKER/DEALER ADVISORY COMMITTEE NO. 32-92 COMPLIANCE COMMITTEE NO. 21-92 DIRECT MARKETING COMMITTEE NO. 42-92 OPERATIONS MEMBERS NO. 42-92 SEC RULES MEMBERS NO. 54-92 SALES FORCE MARKETING COMMITTEE NO. 43-92 SHAREHOLDER COMMUNICATIONS COMMITTEE NO. 34-92 UNIT INVESTMENT TRUST MEMBERS NO. 54-92 RE: FINAL FCC TELEMARKETING RULES ____ As you may know, the FCC recently announced its adoption of rules and regulations to implement the Telephone Consumer Protection Act of 1991 ("Act"). (The Act required the FCC to adopt rules to protect residential telephone subscribers’ privacy rights from unwanted telephone solicitations.) The FCC’s Report and Order containing the text of the new rules is attached. The rules prohibit the initiation of a "telephone solicitation" to a residential telephone subscriber (1) before 8 a.m. or after 9 p.m. local time at the called party’s location and (2) unless the caller has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations from that caller. Such procedures must include, among other things, a written policy for maintaining a do-not-call list, training of personnel involved in any aspect of telephone solicitation with respect to the existence and use of the do-not-call list and requirements regarding recording of do- not-call requests and disclosure of such requests to others. The Act and the new rules define "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 FCC rules define "established business relationship" as "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a 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 such person or entity, which relationship has not been previously terminated by either party." Based on the Institute’s efforts, the legislative history of the Act contains language to the effect that calls by a mutual fund manager to existing shareholders or follow-up calls to investors who may have written to a fund or responded to an ad requesting additional information fall within the established business relationship exclusion. Although calls not meeting the definition of a "telephone solicitation" (e.g., because they are made to persons with whom the caller has an existing business relationship) are not subject to the restrictions contained in the FCC rules, the attached Report and Order emphasizes that even persons with whom the caller has an established business relationship can revoke consent to future solicitations by requesting that they no longer receive calls from that telemarketer. Such a request terminates the business relationship for purposes of the FCC’s rules, and subjects the caller to the do-not-call requirements. In addition to regulating telephone solicitations to residences made by live persons, the rules adopted by the FCC impose restrictions on the use of automatic telephone dialing machines, prerecorded or artificial voice messages and telephone facsimile machines. The new rules go into effect on

December 20, 1992. Frances M. Stadler Assistant Counsel Attachment