

MEMO# 3763

May 8, 1992

FCC SEEKS COMMENTS ON PROPOSED RULES TO IMPLEMENT THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

May 8, 1992 TO: BROKER/DEALER ADVISORY COMMITTEE NO. 15-92 DIRECT MARKETING COMMITTEE NO. 14-92 OPERATIONS COMMITTEE NO. 14-92 SALES FORCE MARKETING COMMITTEE NO. 14-92 SEC RULES COMMITTEE NO. 30-92 SHAREHOLDER COMMUNICATIONS COMMITTEE NO. 13-92 RE: FCC SEEKS COMMENTS ON PROPOSED RULES TO IMPLEMENT THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

The Federal Communications Commission has issued for public comment a Notice of Proposed Rulemaking ("NPRM") pursuant to the Telephone Consumer Protection Act of 1991 ("Act"). As we previously informed you, the Act, which was enacted on December 20, 1991, restricts certain telemarketing activities and requires the FCC to propose regulations governing various practices including telemarketing calls made by live persons. (See Memorandum to Broker/Dealer Advisory Committee No. 43-91, Direct Marketing Committee No. 40-91, Operations Committee No. 38-91, Sales Force Marketing Committee No. 38-91, SEC Rules Members No. 58-91, Shareholder Communications Committee No. 35-91, dated December 6, 1991.) A copy of the NPRM is attached; the section relating to telemarketing calls made by live persons begins on page 9. As you may recall, the Act directs the FCC to adopt regulations to implement methods and procedures to protect residential telephone subscribers' privacy rights from unwanted telephone solicitations. Specifically excluded from the term "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. Although the term "established business relationship" is not defined in the legislation, the Act's legislative history contains language to the effect that the Act's provisions are not intended to apply to calls by a mutual fund manager to existing shareholders or follow-up calls to investors who have previously written to a fund or responded to an ad requesting additional information. The attached NPRM requests comments on the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations. In this regard, please consider whether the Institute should propose that the FCC adopt rules interpreting the term "established business relationship" and further defining what constitutes a telephone solicitation, to make explicit that the types of calls described above would be excluded from any restrictions the FCC ultimately may adopt. The NPRM notes that unsolicited calls generated \$435 billion in sales in 1990 and states that the FCC "tentatively concludes that it is not in the public interest to eliminate this option for consumers." It discusses and requests comments on five possible regulatory methods for restricting telephone solicitations including, among others, the establishment of a national database of persons who object to receiving telephone

solicitations. Comments on the NPRM must be filed by May 26. If you have any concerns about the proposal or there are positions you would like the Institute to consider including in a comment letter, please contact me at (202) 955-3514 by Wednesday, May 20. Frances M. Stadler Assistant General Counsel Attachment

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