

MEMO# 3805

May 26, 1992

INSTITUTE COMMENT LETTER ON FCC'S PROPOSED RULES TO IMPLEMENT THE TELEPHONE CONSUMER PROTECTION ACT

May 26, 1992 TO: DIRECT MARKETING COMMITTEE NO. 19-92 OPERATIONS COMMITTEE NO. 16-92 SALES FORCE MARKETING COMMITTEE NO. 18-92 SEC RULES COMMITTEE NO. 37-92 BROKER/DEALER ADVISORY COMMITTEE NO. 18-92 SHAREHOLDER COMMUNICATIONS COMMITTEE NO. 17-92 RE: INSTITUTE COMMENT LETTER ON FCC'S PROPOSED RULES TO IMPLEMENT THE TELEPHONE CONSUMER PROTECTION ACT

Attached is a copy of the Institute's comment letter to the Federal Communications Commission in response to the FCC's Notice of Proposed Rulemaking concerning implementation of the "Telephone Consumer Protection Act of 1991" ("Act"). (See Memorandum 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 and Shareholder Communications Committee No. 13-92, dated May 8, 1992.) The Act requires the FCC to prescribe rules implementing methods and procedures to protect the privacy rights of residential telephone subscribers from unwanted telephone solicitations. The Act specifically excludes from the definition of "telephone solicitation" a call to any person with whom the caller has an "established business relationship." In the attached letter, the Institute recommends that the FCC define "established business relationship" to include any prior or current relationship between a business entity and a called party based on a transaction, negotiation, request for information or other inquiry. Such a definition would make it clear (as indicated in the Act's legislative history) 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 are not covered by the Act or rules thereunder. The letter also suggests that the FCC interpret the term "established business relationship" to cover certain situations where separate entities are involved in a common business enterprise, such as a relationship between a mutual fund administrator and customers of the fund's investment adviser. We will keep you informed of developments. Frances M. Stadler Assistant Counsel Attachment