

**MEMO# 15526**

January 8, 2003

# **ICI DRAFT COMMENT LETTER ON THE SEC'S PROPOSAL TO EXEMPT CERTAIN RESEARCH & DEVELOPMENT COMPANIES FROM THE DEFINITION OF INVESTMENT COMPANY**

[15526] January 8, 2003 TO: SEC RULES COMMITTEE No. 4-03 RE: ICI DRAFT COMMENT LETTER ON THE SEC'S PROPOSAL TO EXEMPT CERTAIN RESEARCH & DEVELOPMENT COMPANIES FROM THE DEFINITION OF INVESTMENT COMPANY As we previously informed you, in November, the Securities and Exchange Commission proposed for comment Rule 3a-8 under the Investment Company Act of 1940, which would provide a nonexclusive safe harbor from the definition of investment company for certain bona fide research and development companies.\* Attached for your review is a copy of the Institute's draft comment letter on the proposed rule, which is briefly summarized below. Comments on the proposed rule must be filed with the SEC by Wednesday, January 15, 2003. Please provide any comments you may have on the Institute's draft letter by Monday, January 13 to Anu Dubey by phone (202-326-5819), fax (202-326-5827) or e-mail (adubey@ici.org). SUMMARY OF THE INSTITUTE'S COMMENTS The Institute's draft letter generally supports the Commission's proposal, but recommends several modifications to it to ensure that the rule serves its purpose of providing a safe harbor only for those companies that are, in fact, bona fide research and development companies. In summary, the Institute's letter recommends that: 1. The rule be revised to include an objective standard to replace the proposed requirement that a company's research and development expenses be a "substantial percentage" of its total expenses over the relevant period. 2. The rule's definition of "capital preservation investments" be clarified to prevent possible misuse of the safe harbor. We also recommend that the rule require that a research and development company's board of directors adopt investment guidelines designed to assure that such investments are consistent with capital preservation and liquidity. \* See ICI Memorandum No. 15410 (Dec. 2, 2002). 2 3. The rule specify that the value of a company's assets that may consist of "other investments" may at no time exceed a certain overall percentage limitation. Anu Dubey Assistant Counsel Attachment (in .pdf format)