MEMO# 26741

December 6, 2012

CFTC Issues Clearing Requirement Determination

[26741]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 81-12
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 69-12
INVESTMENT ADVISER MEMBERS No. 49-12
SEC RULES MEMBERS No. 110-12 RE: CFTC ISSUES CLEARING REQUIREMENT DETERMINATION

The Commodity Futures Trading Commission ("CFTC" or "Commission") has adopted regulations to establish a clearing requirement for certain classes of swaps. [1] Specifically, under the new regulations, two classes of credit default swaps and four classes of interest rate swaps must be cleared by a derivatives clearing organization ("DCO") registered with the Commission.

To provide certainty for market participants, the CFTC has established specific dates for compliance. Therefore, Category 1 Entities (e.g., swap dealers, major swap participants, and private funds active in the swaps market) will be required to comply beginning on March 11, 2013, for swaps they enter into on or after that date. Category 2 Entities (e.g., commodity pools, registered fund advisers, and private funds other than active funds) will be required to clear these swaps beginning on June 10, 2013, for swaps entered into on or after that date. [2] Category 3 Entities (including ERISA plans and accounts managed by third party investment managers) will be required to comply by September 9, 2013, for swaps entered into on or after that date. The CFTC has clarified that swaps executed prior to the specific compliance dates discussed above are not subject to the clearing requirement.

New Regulation 50.4 includes tables detailing the classes of interest rate and credit default swaps that must be cleared by a DCO.

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endnotes

[1] Clearing Requirement Determination Under Section 2(h) of the CEA (Nov. 28, 2012), available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister112812.pdf.

[2] With regard to iTraxx, if no DCO offers iTraxx for client clearing by February 11, 2013, the Commission will delay compliance for those swaps until 60 days after an eligible DCO offers iTraxx indices for client clearing.