

**MEMO# 26880**

January 15, 2013

## **CFTC Issues Order to ICE Clear Credit Allowing Portfolio Margining of Swaps and Security-Based Swaps**

[26880]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 7-13  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 8-13  
INVESTMENT ADVISER MEMBERS No. 5-13  
SEC RULES MEMBERS No. 8-13 RE: CFTC ISSUES ORDER TO ICE CLEAR CREDIT ALLOWING PORTFOLIO MARGINING OF SWAPS AND SECURITY-BASED SWAPS<

The Commodity Futures Trading Commission (“CFTC” or “Commission”) issued an order permitting ICE Clear Credit and its clearing members that are dually registered broker-dealers and futures commission merchants (“BDs/FCMs”) to hold in a cleared swaps account customer property used for both cleared swaps and cleared security-based (“SB”) swaps and to provide for portfolio margining of such cleared swaps and cleared SB swaps. [\[1\]](#) As reported previously, the SEC has issued an order granting conditional exemptive relief in connection with the program to commingle and portfolio margin customer positions in cleared credit default swaps (“CDS”). [\[2\]](#)

The CFTC included nine conditions with which ICE Clear Credit and/or its dually registered BDs/FCMs must comply in connection with the portfolio margining program, including monitoring for risk and implementing risk management procedures. Moreover, the order requires the BDs/FCMs to provide notice to customers that customer property used to margin, guarantee, or secure SB CDS will not receive customer protection treatment under the Securities Exchange Act of 1934 or Securities Investor Protection Act of 1970 and will instead receive customer protection treatment under Subchapter IV of Chapter 7 of Title 11 of the United States Code.

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## endnotes

[1] Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps, CFTC Order (Jan. 14, 2013), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/icecreditclearorder011413.pdf>.

[2] For a summary of the conditional exemptive relief, see ICI Memorandum No. 26777 (Dec. 19, 2012), available at [http://www.ici.org/my\\_ici/memorandum/memo26777](http://www.ici.org/my_ici/memorandum/memo26777).

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