

award or retention of investment advisory business.

11. Applicant submits that neither the Adviser nor the Contributor sought to interfere with the Client's selection or retention process for advisory services, nor did they seek to negotiate higher fees or greater ancillary benefits. Applicant further submits that there was no violation of the Adviser's fiduciary duty to deal fairly or disclose material conflicts given the absence of any intent or action by the Adviser or the Contributor to influence the Client's selection process. Applicant contends that in the case of the Contribution, the imposition of the two-year prohibition on compensation does not achieve rule 206(4)-5's purposes and would result in consequences disproportionate to the mistake that was made.

### Applicant's Conditions

Applicant agrees that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The Adviser will appoint an independent compliance consultant to annually review and test its compliance program and compliance systems, including the Adviser's Policy, to ensure that they are reasonably designed to prevent violations of the Act and the rules thereunder. The Adviser will maintain records regarding such testing, which will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Adviser, and be available for inspection by the staff of the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96707; File No. SR-ICC-2023-001]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ICC's Fee Schedules

January 19, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that

on January 5, 2023, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to modify ICC's fee schedules to implement reduced fees for credit default index swaptions ("Index Options") for the remainder of calendar year 2023. These revisions do not require any changes to the ICC Clearing Rules.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

##### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (a) Purpose

The proposed changes are intended to modify ICC's fee schedules to implement reduced fees for Index Options for the remainder of calendar year 2023.<sup>5</sup> ICC maintains a Clearing Participant ("CP") fee schedule<sup>6</sup> and

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> Pursuant to an Index Option contract, one party (the "Swaption Buyer") has the right (but not the obligation) to cause the other party (the "Swaption Seller") to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Options that may be cleared by ICC, the underlying index credit default swap is limited to certain CDX and iTraxx index credit default swaps that are accepted for clearing by ICC, and which would be automatically cleared by ICC upon exercise of the Index Option by the Swaption Buyer in accordance with its terms.

<sup>6</sup> CP fee details available at: [https://www.theice.com/publicdocs/clear\\_credit/ICE\\_Clear\\_Credit\\_Fees\\_Clearing\\_Participant.pdf](https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf).

client fee schedule<sup>7</sup> (collectively, the "fee schedules") that are publicly available on its website, which ICC proposes to update. Clearing fees are due by CPs and clients in accordance with the product, amount and currency set out in the fee schedules and subject to any incentive program described in the fee schedules. The proposed changes to the fee schedules are set forth in Exhibit 5A and Exhibit 5B and described in detail as follows. ICC proposes to make such changes effective January 5, 2023 (the "Effective Date"), subject to the completion of any applicable regulatory review process.

The amended CP fee schedule would reduce Index Option fees to \$1.5/million or €1.5/million for the remainder of calendar year 2023. Under the regular CP fee schedule, Index Option fees are \$3/million or €3/million, subject to an incentive program that provides a tiered discount schedule based on U.S. Dollar equivalent, non-discounted Index Option fees billed since the start of the year.<sup>8</sup> ICC also discounted CP Index Option fees for a portion of 2022, which expired at the end of calendar year 2022.<sup>9</sup> Under the proposed changes, in addition to updating the fee table, ICC would include a footnote to indicate that the listed fees of \$1.5/million or €1.5/million are applicable from the Effective Date through calendar year 2023 and reflect a discount from ICC's regular Index Option fees of \$3/million or €3/million. On the first business day of 2024, ICC would remove this discount and the listed fees would revert to ICC's regular Index Option fees on this schedule dated January 2024.

The amended client fee schedule would reduce Index Option fees to \$2/million or €2/million for the remainder of calendar year 2023. Under the regular client fee schedule, Index Option fees are \$4/million or €4/million. ICC also discounted client Index Option fees for a portion of 2022, which expired at the end of calendar year 2022.<sup>10</sup> Under the proposed changes, in addition to updating the fee table, ICC would

<sup>7</sup> Client fee details available at: [https://www.theice.com/publicdocs/clear\\_credit/ICE\\_Clear\\_Credit\\_Fees.pdf](https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees.pdf). As specified, all fees are charged directly to a client's CP.

<sup>8</sup> A description of this incentive program is included in a prior filing, SEC Release No. 34-90524 (November 27, 2020) (notice), 85 FR 78157 (December 3, 2020) (SR-ICC-2020-013).

<sup>9</sup> A description of the 2022 CP Index Option fee discount is included in prior SEC filing Release No. 34-94330 (February 28, 2022) (notice), 87 FR 12508 (March 4, 2022) (SR-ICC-2022-001).

<sup>10</sup> A description of the 2022 client Index Option fee discount is included in prior SEC filing Release No. 34-94330 (February 28, 2022) (notice), 87 FR 12508 (March 4, 2022) (SR-ICC-2022-001).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

indicate in a footnote that the listed fees of \$2/million or €2/million are applicable from the Effective Date through calendar year 2023 and reflect a discount from ICC's regular Index Option fees of \$4/million or €4/million. On the first business day of 2024, ICC would remove this discount and the listed fees would revert to ICC's regular Index Option fees on this schedule dated January 2024.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of the Act, including Section 17A of the Act<sup>11</sup> and the regulations thereunder applicable to it. More specifically, the proposed rule change establishes or changes a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. ICC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(D),<sup>14</sup> which requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

ICC believes that the proposed discounts in the fee schedules have been set at an appropriate level. In determining the appropriate discount level, ICC considered factors such as volume, revenue, and market participation in the clearing service, including based on different fee levels. ICC also considered costs and expenses in offering clearing of Index Options, taking into account the investments that ICC has made in clearing such products and the level of investment and development needed for this clearing service at this time. In ICC's view, the fees are reasonable as the discounts correspond with anticipated volumes, costs and expenses, and revenues, and they consider current and past market activity as well as anticipated market activity with respect to clearing Index Options at ICC.<sup>15</sup> Furthermore, the proposed discounts are in line with past Index Option incentive programs that ICC offered, which similarly temporarily reduced Index Option fees without any further action required by CPs or clients. Under the proposed changes, the same percentage discount (*i.e.*, 50%) from

ICC's regular Index Option fees would apply to both CPs and clients. These reduced fees are designed to incentivize the clearing of Index Options by CPs and clients to grow this clearing service.

Moreover, the proposed fee changes will apply equally to all market participants clearing Index Options. The reduced fees for Index Options for calendar year 2023 apply to all CPs and clients. ICC's fee schedules will continue to be transparent and to apply equally to market participants clearing indexes, single names, and Index Options at ICC. Therefore, the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among participants, within the meaning of Section 17A(b)(3)(D) of the Act.<sup>16</sup> ICC therefore believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>17</sup> and the regulations thereunder applicable to it and is appropriately filed pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and paragraph (f)(2) of Rule 19b-4<sup>19</sup> thereunder.

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. As discussed above, the proposed changes modify ICC's fee schedules to temporarily reduce fees for Index Options and will apply uniformly across all market participants. The implementation of such changes does not preclude other market participants from offering such instruments for clearing or offering incentive programs. Moreover, ICC does not believe that the amendments would adversely affect the ability of market participants to access clearing services. Accordingly, ICC does not believe the amendments impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and paragraph (f) of Rule 19b-4<sup>21</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2023-001 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. All submissions should refer to File Number SR-ICC-2023-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for

<sup>11</sup> 15 U.S.C. 78q-1.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>15</sup> Supporting detail and additional data, including clearing statistics for Index Options is included in confidential Exhibit 3.

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>17</sup> 15 U.S.C. 78q-1.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2023-001 and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96713; File No. SR-NYSECHX-2023-05]

### Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31(i)(2)

January 19, 2023.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 12, 2023, NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31(i)(2) to enhance the Exchange's existing Self Trade Prevention ("STP") modifiers. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 7.31(i)(2) to enhance the Exchange's existing Self Trade Prevention ("STP") modifiers. Specifically, the Exchange proposes to allow Participants the option to apply STP modifiers to orders submitted not only from the same MPID, as the current rule provides, but also to orders submitted from (i) the same subidentifier of a particular MPID; (ii) other MPIDs associated with the same Client ID (as designated by the Participant); and (iii) Affiliates of the Participant.

###### Background

Currently, Rule 7.31(i)(2) offers optional anti-internalization functionality to Participants in the form of STP modifiers that enable a Participant to prevent two of its orders from executing against each other. Currently, Participants can set the STP modifier to apply at the market participant identifier ("MPID") level. The STP modifier on the order with the most recent time stamp controls the interaction between two orders marked with STP modifiers. STP functionality assists market participants by allowing firms to better prevent unintended executions with themselves and to reduce the potential for "wash sales" that may occur as a result of the velocity of trading in a high-speed marketplace. STP functionality also assists market participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange notes that several equities exchanges—including IEX, Nasdaq, Nasdaq BX, Nasdaq Phlx, and MIAX Pearl Equities—have all recently

amended their rules to provide additional levels at which orders may be grouped for the purposes of applying their anti-internalization rules. As such, the proposed changes herein are not novel and are familiar to market participants.<sup>4</sup>

###### Proposed Amendment

The Exchange proposes to amend the Rule 7.31(i)(2) in three ways, each of which would enhance Participants' flexibility over the levels at which orders may be grouped for the purposes of applying the Exchange's existing STP modifiers.

First, the Exchange proposes to amend the rule to permit a Participant to set the STP modifiers to apply at the level of a subidentifier of an MPID. This change would allow Participants to prevent orders sent from the same subidentifier of a particular MPID from executing against each other, but permit orders sent from different subidentifiers of the same MPID to interact.<sup>5</sup>

Second, the Exchange proposes to amend Rule 7.31(i)(2) to permit a Participant to set the STP modifiers to prevent orders from different MPIDs from executing against each other. The proposed amendment would address this by allowing Participants to apply STP modifiers at the level of "Client ID," which would be an identifier designated by the Participant. As proposed, a Client ID would function similarly to an MPID in that it would be a unique identifier assigned to a Participant. The Exchange believes that this proposed enhancement would provide Participants with greater flexibility in how they instruct the Exchange to apply STP modifiers to their orders. The Exchange notes that it is not novel for an exchange to provide its members with multiple methods by

<sup>4</sup> Several other equity exchanges recently amended their rules to allow affiliate grouping for their own anti-internalization functionality. See, e.g., Securities Exchange Act Release Nos. 96187 (October 31, 2022), 87 FR 66764 (November 4, 2022) (SR-IEX-2022-08); 96156 (October 25, 2022), 87 FR 65633 (October 31, 2022) (SR-BX-2022-020); 96154 (October 25, 2022), 87 FR 65631 (October 31, 2022) (SR-Phlx-2022-43); 96069 (October 13, 2022), 87 FR 63558 (October 19, 2022) (SR-NASDAQ-2022-56, implemented by SR-NASSDAQ-2022-60); and 96334 (November 16, 2022), 87 FR 71368 (November 22, 2022) (SR-PEARL-2022-48).

<sup>5</sup> This functionality exists on the Exchange's affiliate exchange Arca Options, and as such is not novel and is familiar to market participants. See Arca Options Rule 6.62P-O(i)(2) ("An Aggressing Order or Aggressing Quote to buy (sell) designated with one of the STP modifiers in this paragraph will be prevented from trading with a resting order or quote to sell (buy) also designated with an STP modifier from the same MPID, and, if specified, any subidentifier of that MPID.")

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.