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.* Please include File Number SR–NYSEARCA–2023–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–07. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSEARCA–2023–07 and should be submitted on or before February 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–01401 Filed 1–24–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Advisers Act Release No. 6221/File No. 803–00256]

Calmwater Asset Management, LLC

January 19, 2023.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the ''Act'') and rule 206(4)–5(e) under the Act.

APPLICANT: Calmwater Asset Management, LLC (''Applicant'' or ''Adviser'')

SUMMARY OF APPLICATION: Applicant requests that the Commission issue an order under Section 206A of the Act and rule 206(4)–5(e) under the Act exempting them from rule 206(4)–5(a)(1) under the Act to permit Applicant to receive compensation from a government entity for investment advisory services provided to the government entity within the two-year period following a contribution by a covered associate of Applicant to an official of the government entity.

FILING DATES: The application was filed on October 17, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 13, 2023 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicant: Calmwater Asset Management, LLC, 11755 Wilshire Blvd., #1425, Los Angeles, CA 90025.

FOR FURTHER INFORMATION CONTACT: Juliet Han, Senior Counsel, at (202) 551–5213 or Kyle R. Ahlgren, Branch Chief, at (202) 551–6857 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website at *http://www.sec.gov/rules/iareleases.shtml* or by calling (202) 551–8090.

Applicant's Representations:

1. Applicant is a Delaware limited liability company registered with the Commission as an investment adviser under the Act. Applicant provides discretionary investment advisory services to private funds (the ''Funds'').

2. One of Applicant's clients is a government entity as defined in rule 206(4)–5(f)(5) in the State of Colorado (the ''Client''). The Client is a state pension fund with a board of trustees (the ''Board'') that consists of 16 trustees. The Colorado State Treasurer serves on the Board as an *ex officio* voting member, and the Board has the authority to select the investment adviser.

3. The individual who made the campaign contribution that triggered the two-year compensation ban (the ''Contribution'') is Larry Grantham (the ''Contributor''). At the time of the Contribution, the Contributor was the Managing Principal of the Adviser, a position he has held since the Adviser's founding in 2015. Thus, the Contributor was at all relevant times an executive officer of Applicant and a ''covered associate,'' as defined in rule 206(4)–5(f)(2)(i) under the Act. When a new fund is in a fundraising cycle, a placement agent generally introduces the Adviser to the potential investor and sets up meetings between them. The Contributor has historically attended such meetings with prospective investors, including occasionally government entities, *e.g.,* the Client, on behalf of the Adviser.

4. The recipient of the Contribution was Brian Watson (the ''Recipient''), an entrepreneur who owns and operates a commercial real estate firm and a private citizen who unsuccessfully campaigned for the office of Colorado State Treasurer in 2018. The Candidate did not hold a public office at the time

[16] 17 CFR 200.30–3(a)(12).

of the Contribution and, to Applicant's knowledge, has never held a public office before or after the Contribution nor served in any role that was directly or indirectly responsible for, or could influence the outcome of, the hiring of an investment adviser by a government entity. Nevertheless, because the Candidate was seeking the office of Colorado State Treasurer at the time of the Contribution, an office that includes a position as an *ex officio* voting member of the sixteen-member Board, the Candidate is an ''official'' of the Client as defined in rule 206(4)–5(f)(6)(i). The Contribution that triggered rule 206(4)–5's prohibition on compensation under rule 206(4)–5(a)(1) was made on November 6, 2018 for the amount of $250. The Contributor did not solicit or coordinate any other contributions for the Candidate. The Contribution was made for personal reasons based on the Contributor's friendship with the Candidate, which grew out of the professional relationship in commercial real estate lending and their shared interests in the outdoors, wildlife and environmental conservation. Applicant represents that the Contributor had no intention to seek, and no action was taken either by the Contributor or Applicant to obtain, any direct or indirect influence from the Candidate or any other person regarding the Client's decision-making.

5. The Client made its initial investment commitment to one of the Funds in May 2017, approximately 18 months before the November 6, 2018 Contribution Date, which is also the date that the Candidate lost the election. In March 2021, approximately 27 months after the Contribution Date and approximately 14 months after the return of the Contribution to the Contributor, the Client made a subsequent investment commitment to a new Fund. Applicant represents that at no point did the Candidate hold public office or have direct or indirect influence with the Board regarding the Client's selection of investment advisers, and at no point did the Contributor intend to influence the Candidate regarding the Client's investments in the Funds.

6. Applicant represents that the Contributor attempted to pre-clear the $250 Contribution by: (i) orally requesting pre-approval from the then chief-compliance officer; and (ii) following up via email with a written pre-approval request on November 5, 2018. On December 13, 2018, the Contributor completed and submitted the Adviser's Political Contribution Disclosure Form to disclose the Contribution as required under Applicant's Political Contributions Policy (the ''Policy''). The then-chief compliance officer forwarded the pre-approval request email to a designee, expecting the designee to confirm the permissibility of the Contribution with the Adviser's then-compliance consultant, but the inquiry as to the permissibility was not completed. On November 6, 2018, the Contributor believed that he had received oral pre-approval from the then-chief compliance officer and, when he did not hear otherwise, assumed that the Contribution was approved and made the Contribution. The Contributor did not complete pre-clearance through the Adviser's compliance software tool (the ''Tool'') as required by the Adviser's Policy because the Contributor believed that the then-chief compliance officer had sufficient written pre-clearance information via email.

7. The then-chief compliance officer remained unaware that the Contributor had made the Contribution until December 2018, when the then-compliance consultant discovered the Contribution during an annual review that included the assessment of certain reports generated by the Tool. The then-compliance consultant brought the Contribution to the attention of the then-chief compliance officer. After a review, the then-chief compliance officer determined that, absent an exemption, the Contribution violated the Rule and informed the Contributor. The Contributor requested a return of the Contribution from the Candidate by phone on or about January 11, 2020, and the Contributor received a full refund of the Contribution ($250) on or about January 27, 2020. Applicant created an escrow account on July 14, 2021 and escrowed advisory fees from the Client of $1.6 million. Applicant will continue to deposit fees that accrue from the Client's investments into the escrow account pending the outcome of the Application.

8. Since its registration with the Commission as an investment adviser in 2017, Applicant has maintained and updated the Policy. On the Contribution Date, the Policy required that ''covered associates'' (defined to include all employees), all of whom were aware that they were subject to the Policy, request and receive written pre-approval by the chief compliance officer with respect to all political contributions made by each covered associate and each covered associate's spouse to a state or local political office, political candidate, political party or political action committee. The Policy further stated that all covered associates are required to submit pre-approval requests to the chief compliance officer via the Tool. Between its registration in 2017 and the Contribution Date, the Adviser conducted training sessions regarding the Compliance Manual, including the Policy, and informed the Adviser's employees that they were subject to the Policy's requirements. All employees are required to attend the trainings, initially upon joining the firm and on an annual basis. The Adviser collects acknowledgements from the employees regarding their familiarity and compliance with the Compliance Manual, including the Policy, and their attendance at the training. The Contributor had attended all such required trainings since the Adviser's registration in 2017 and provided all related acknowledgements. Prior to the Contribution, the Adviser had engaged a compliance consultant to annually review and test its compliance program and compliance systems, make recommendations and implement changes, as appropriate, and conduct training for the employees on rule 206(4)–5, the Policy and other compliance topics, as needed.

9. Following the then-compliance consultant's discovery of the Contribution in December 2019, Applicant engaged in reactive and remedial measures including conducting a comprehensive search for any other political contributions by the Adviser's covered associates and hiring a monitoring service to check the names of the Adviser's employees against political contribution databases on a daily basis. The Adviser also updated the Policy to allow for political contribution pre-authorization requests to be sent to the chief compliance officer via email and to add quarterly certifications from employees regarding political contributions. The Adviser installed an upgraded version of the Tool in early May 2021. The Adviser further amended its compliance manual to implement procedures to identify and monitor the political contributions of covered associates including a review conducted on a quarterly basis by the Adviser's compliance department.

Applicant's Legal Analysis

1. Rule 206(4)–5(a)(1) under the Act prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after a contribution to an official of a government entity is made by the investment adviser or any covered associate of the investment adviser. The Client is a ''government entity,'' as defined in rule 206(4)–5(f)(5), the Contributor is a ''covered associate'' as

defined in rule 206(4)–5(f)(2), and the Official is an ''official'' as defined in rule 206(4)–5(f)(6).

2. Section 206A of the Act authorizes the Commission to ''conditionally or unconditionally exempt any person or transaction . . . from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].''

3. Rule 206(4)–5(e) provides that the Commission may conditionally or unconditionally grant an exemption to an investment adviser from the prohibition under rule 206(4)–5(a)(1) upon consideration of the factors listed below, among others:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(2) Whether the investment adviser: (i) before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of the rule; (ii) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (*e.g.,* federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

4. Applicant requests an order pursuant to Section 206A and rule 206(4)–5(e), exempting them from the two-year prohibition on compensation imposed by rule 206(4)–5(a)(1) with respect to investment advisory services provided to the Client within the two-year period following the Contribution.

5. Applicant submits that the exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further submits that the other factors set forth in rule 206(4)–5(e) similarly weigh in favor of granting an exemption to Applicant to avoid consequences disproportionate to the violation.

6. Applicant contends that given the nature of the Contribution, and the lack of any evidence that the Adviser or the Contributor intended to, or actually did, interfere with the Client's process for the selection or retention of advisory services, the interests of the Client are best served by allowing the Adviser and the Client to continue their relationship uninterrupted. Applicant states that causing the Adviser to serve without compensation for the remainder of the two-year period could result in a financial loss of between $3.3 million and $4.2 million, approximately 13,200–16,800 times the amount of the Contribution. Applicant suggests that the policy underlying rule 206(4)–5 is served by ensuring that no improper influence is exercised over investment decisions by governmental entities as a result of campaign contributions, and not by withholding compensation as a result of unintentional violations.

7. Applicant represents that since its registration in 2017, the Adviser adopted and implemented the Policy which it believes was reasonably designed to prevent violations of rule 206(4)–5. Applicant represents that it has amended its Policy to implement enhanced procedures to, among other things, search federal and state campaign contribution databases on a daily basis to seek to identify and monitor any political contributions of covered associates.

8. Applicant asserts that before making the Contribution, the Contributor: (i) orally requested pre-approval from the then-chief compliance officer to make the Contribution, (ii) followed up via email with a written pre-approval request to the then-chief compliance officer on November 5, 2018 to approve of the Contribution, and (iii) made the Contribution of $250 on November 6, 2018. The Contributor did not seek pre-clearance through the Tool, as specified in the Policy, because the Contributor believed that the then-chief compliance officer had sufficient written pre-clearance information via email. The then-chief compliance officer forwarded the pre-approval request email to a designee, expecting the designee to confirm the permissibility of the Contribution with Applicant's then-compliance consultant, but the inquiry as to permissibility was not completed. The then-compliance consultant discovered the contribution during a compliance review in December 2019. Applicant represents that the then-chief compliance officer remained unaware the Contribution had been made until the then-compliance consultant discovered the Contribution during the course of Applicant's annual review in December 2019 and informed the then-chief compliance officer.

9. Applicant asserts that after learning of the Contribution, the then-chief compliance officer consulted outside counsel and undertook remedial measures, including informing the Contributor of the violation. The Contributor promptly requested a return of the Contribution from the Candidate by phone, and the Contributor received a check refunding the full amount on or about January 27, 2020. In addition, Applicant replaced the then-chief compliance officer with a new outsourced chief compliance officer. Applicant states that it also updated the Policy to allow for political contribution pre-authorization requests to be sent to the chief compliance officer via email and to add quarterly certifications from employees regarding political contributions. Applicant states that it has also installed an upgraded version of the Tool in early May 2021. Applicant states it has amended its compliance manual to implement procedures to identify and monitor the political contributions of covered associates.

10. Applicant states that the Client determined to invest with Applicant and established its advisory relationship on an arm's length basis approximately 18 months before the date of the Contribution free from any improper influence as a result of the Contribution. The Client's only subsequent investment with Applicant was approximately 27 months after the Contribution Date and approximately 14 months after the Candidate had returned the Contribution to the Contributor. Applicant also notes that the Candidate lost the election, and is a private citizen who, to Applicant's knowledge, never held public office or had any influence with respect to the Board. Applicant further represents that the Contributor's decision to make the Contribution to the Recipient was based on the Contributor's ideological beliefs and friendship with the Recipient, and not any desire to influence the Client's

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.

[FR Doc. 2023–01397 Filed 1–24–23; 8:45 am]

BILLING CODE 8011–01–P

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 [1] and Rule 19b–4,[2] 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 [3] and Rule 19b–4(f)(2) thereunder,[4] 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.[5] ICC maintains a Clearing Participant (''CP'') fee schedule [6] and client fee schedule [7] (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.[8] ICC also discounted CP Index Option fees for a portion of 2022, which expired at the end of calendar year 2022.[9] 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.[10] Under the proposed changes, in addition to updating the fee table, ICC would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 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.

[6] CP fee details available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf.*

[7] Client fee details available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees.pdf.* As specified, all fees are charged directly to a client's CP.

[8] 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).

[9] 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).

[10] 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).