associated with how each chooses to submit transactions to FICC for clearance and settlement.

Accordingly, the proposed changes would be consistent with Rule 17ad–22(e)(23)(ii) because they should enhance the ability of Netting Members and indirect participants to identify and evaluate the costs to access FICC's clearance and settlement services.[182]

I. Other Comments Received

Commenters submitted several comments that were not related to the Proposed Rule Change. Commenters stated that FICC should publish a roadmap and/or expedite their plans with the Chicago Mercantile Exchange (''CME'') for expanding their cross-margining framework.[183] The Proposed Rule Change does not address the cross-margining agreement between FICC and CME. The current cross-margining agreement between FICC and CME is part of FICC's rulebook, and therefore any changes to the agreement would have to be filed with the Commission pursuant to Section 19(b)[184] of the Exchange Act.[185] Therefore, the Commission cannot approve or disapprove any changes related to the cross-margining agreement at this time. Cross-margining is not required by the recently adopted Treasury Clearing Rules.

However, the Commission historically has supported and approved cross-margining at clearing agencies and recognizes the potential benefits of cross-margining systems, which include freeing capital through reduced margin requirements, reducing clearing costs by integrating clearing functions, reducing clearing agency risk by centralizing asset management, and harmonizing liquidation procedures.[186] The Commission continues to believe that market participants can benefit from cross-margining arrangements and encourages U.S. Treasury CCAs to consider the potential of such benefits. FICC states, in its response letter regarding the Proposed Rule Change, that it is actively pursuing an end-user level cross-margining arrangement with CME. The Commission would consider any proposal arising from such pursuit in due course, if such a proposal were to be filed with the Commission.

Several commenters requested that FICC provide a legal analysis on the enforceability of the proposed changes, including the protection of segregated customer margin in the event of a Netting Member default.[187] In response, FICC states that it has prepared an analysis on the treatment of Segregated Customer Margin in the event of a FICC or Netting Member insolvency and that this analysis confirmed that, as long as customers and their Netting Members make clear that their relationship is a custodial one, Segregated Customer Margin would be reserved for customers and would not form part of FICC's or the Netting Member's general estate upon either institution's insolvency.[188] FICC states that it has made this analysis available to indirect participants upon request on a non-reliance basis.[189] This analysis addresses the commenters' request, and the Commission does not believe that any further action is necessary to respond to the commenters, who can use this analysis to inform their consideration whether to utilize a segregated account.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and in particular with the requirements of Section 17A of the Exchange Act[190] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act[191] that proposed rule change SR–FICC–2024–007, be, and hereby is, APPROVED.[192]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[193]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–27763 Filed 11–26–24; 8:45 am]

BILLING CODE 8011–01–P

[182] 17 CFR 240.17ad–22(e)(23)(ii).

[183] *See* AIMA Letter at 5; FIA PTG Letter I at 15; MFA Letter I at 10; MFA Letter II at 5–6; SIFMA AMG Letter at 10.

[184] 15 U.S.C. 78s(b)(1).

[185] *See supra* note 3 at 2751.

[186] Treasury Clearing Adopting Release, at 2751 at n. 362 and accompanying text.

[187] *See* AIMA Letter at 7; MFA Letter I at 8–9; SIFMA AMG Letter at 11.

[188] FICC Letter at 41.

[189] *Id.*

[190] 15 U.S.C. 78q–1.

[191] 15 U.S.C. 78s(b)(2).

[192] In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[193] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101687; File No. SR–ISE–2024–52]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

November 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2024, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III 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 the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* 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 Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location

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

[2] 17 CFR 240.19b–4.

services.[3] Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 8 by 10%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,[4] the Exchange proposes to increase its fees throughout General 8 by 10%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 8, which relate to the Testing Facility. Options 7, Section 8(I) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of $1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 8(I) provides that subscribers shall also pay a one-time installation fee of $1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the Testing Facility shall pay a fee of $1,100 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of $1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Nevertheless, and with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since prior to 2017, and many of the fees date back to between 2010 and 2014. For each of the connectivity products and services that pre-date 2017, inflation (as measured using the ''Data PPI'' metric described below) has been between roughly 15–17%, and in no instance has such inflation been less than 10%. Nevertheless, the Exchange proposes to increase its fees only with respect to the 10% inflation that has occurred since 2017.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2010–2017 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (''PPI''), which is a tailored measure of inflation.[5] As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (''CPI''), that measure price change from the purchaser's perspective.[6] About 10,000 PPIs for individual products and groups of products are tracked and released each month.[7] PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (''Data PPI''), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (''BLS'') as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.[8] According to the BLS ''[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual

[3] The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–ISE–2024–09). On April 29, 2024, the Exchange withdrew that filing and submitted SR–ISE–2024–16. The Exchange withdrew that filing on June 27, 2024 and replaced it with SR–ISE–2024–23. The Exchange withdrew SR–ISE–2024–23 and replaced it with SR–ISE–2024–44 on September 10, 2024. On October 11, 2024, the Exchange replaced SR–ISE–2024–44 with SR–ISE–2024–50. The instant filing replaces SR–ISE–2024–50.

[4] The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. *See* Securities Exchange Act Release No. 34–99131 (December 11, 2023), 88 FR 86979 (December 15, 2023) (SR–ISE–2023–33). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. *See* Securities Exchange Act Release No. 34–100209 (May 22, 2024), 89 FR 46512 (May 29, 2024) (SR–ISE–2024–19). Similarly, the Exchange proposes to exclude from the proposed fee increase those fees that the Exchange recently established for services in its new NY11–4 expansion facility. *See* Securities Exchange Act Release No. 34–101266 (October 7, 2024), 89 FR 82654 (October 11, 2024) (SR–ISE–2024–47).

[5] *See https://fred.stlouisfed.org/series/PCU51825182#0.*

[6] *See https://www.bls.gov/ppi/overview.htm.*

[7] *See Id.*

[8] *NAICS appears in table 5 of the PPI Detailed Report and is available at https://data.bls.gov/timeseries/PCU518210518210.*

prices billed for the selected service contract.'' [9]

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its ''own computer systems'' and ''proprietary software,'' *i.e.,* its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 to August 2024. The Data PPI had a starting value of 105.6 in January 2017 and an ending value of 116.022 in August 2024, a 10.422% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 10.422% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of only 10%, which reflects an increase covering roughly the entire period since the last price adjustments to these fees were made.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.[10]

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.[11]

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR–ISE–2024–44 (*i.e.,* pricing reflective of a 5.5% increase from prior fee levels). This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017 or earlier. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.64% per year, on average, producing a cumulative inflation rate of 28.43%.[14] Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 10.422%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over seven years for the subject services. The proposed fee changes represent a modest increase from the current fees. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products and expanded and modernized facilities.[15] The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange's connectivity products and services would be subject to the same Fee Schedule, regardless of what type of business they operate or

[9] *See https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm.*

[10] *See https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changesfrom-1913-to-2008/.*

[11] *See supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, *e.g.,* Securities Exchange Act Release Nos. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012); and 34–100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR–BOX–2024–16)]; Securities Exchange Act Release No. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See https://www.officialdata.org/us/inflation/2017?amount=1.*

[15] *See, e.g.,* Securities Exchange Act Release No.34–101076 (September 18, 2024), 89 FR 77951(September 24, 2024) (SR–ISE–2024–45 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand [the Exchange's] Co-Location Services).

the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR–ISE–2024–44 (*i.e.,* pricing reflective of a 5.5% increase from prior fee levels). This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange's connectivity products and services in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. Likewise, the proposed fee waiver described above will apply to all purchasers of the Exchange's connectivity products and services in the same manner and therefore will not burden competition among them.

Intermarket Competition

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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)(ii) of the Act.[16] 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2024–52 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–ISE–2024–52. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2024–52 and should be submitted on or before December 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–27756 Filed 11–26–24; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).