

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67818; File No. SR-EDGX-2012-39)

September 10, 2012

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2012 the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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 self-regulatory organization. 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 its fees and rebates applicable to Members³ of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet website at <http://www.directedge.com>, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As defined in Exchange Rule 1.5(n).

it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to append Footnote 1 to Flag PI, where Flag PI removes liquidity from the EDGX book against the Midpoint Match. This charge would signal a rate change for Flag PI if the conditions for achieving the Mega Tier⁴ are not satisfied. The Exchange also proposes to amend the text of Footnote 1 to add Flags BB and PI to the list of removal flags and to add text to specify that Members that do not meet the thresholds for the Mega Tier in the first paragraph of Footnote 1 will be charged the standard removal rate of \$0.0030 per share.

The Exchange proposes to assess a fee of \$0.0006 per share in lieu of the current rebate of \$0.0003 per share for Members who utilize Flag RA to route orders to EDGA Exchange, Inc. ("EDGA") and add liquidity. The Exchange also proposes to offer a rebate of \$0.0004 per share in lieu of the current charge of \$0.0007 per share for Members who utilize Flag RR to route orders to EDGA using routing strategies IOCX or IOCT on EDGX and remove liquidity from EDGA. These proposed changes represent pass-throughs of the Exchange's rates for routing orders to EDGA via its affiliated routing broker-dealer, Direct Edge ECN LLC d/b/a DE Route ("DE Route"), and these proposed changes are in response to pricing changes in EDGA's filing with the Securities and Exchange Commission (the "SEC").⁵

⁴ The Mega Tier conditions are discussed below in this filing.

⁵ See SR-EDGA-2012-39 (August 30, 2012).

The Exchange proposes to delete Flag RM from the fee schedule. Accordingly, Members that route to the Chicago Stock Exchange (the “CHX”) will be assessed the default charge for routing liquidity of \$0.0029 per share, as represented by Flag X.

The Exchange proposes to increase the rebate and to modify the thresholds associated with the Mega Tier in Footnote 1. The Exchange proposes to offer Members a rebate of \$0.0035 per share for all liquidity posted on EDGX where Members add or route at least 2 million shares of average daily volume (“ADV”) prior to 9:30 AM or after 4:00 PM (includes all flags except 6) and add a minimum of 35 million shares of ADV on EDGX in total, including during both market hours and pre and post-trading hours. Members will continue to also qualify for the Mega Tier but will earn a rebate of \$0.0032 per share for all liquidity posted on EDGX if they add or route at least 4 million shares of ADV prior to 9:30 AM or after 4:00 PM (includes all flags except 6) and add a minimum of .20% of the Total Consolidated Volume (“TCV”) on a daily basis measured monthly, including during both market hours and pre and post-trading hours.

The Exchange proposes to discontinue the Tape B tiers described in Footnote 1 on the Exchange’s fee schedule. Accordingly, the Exchange proposes to delete the following language from its fee schedule: “Members can qualify for the Mega Tape B Tier and be provided a \$0.0034 rebate per share for liquidity added on EDGX in Tape B securities if the Member on a daily basis, measured monthly: (i) posts greater than or equal to .10% of the TCV in ADV more than their January 2012 ADV added to EDGX; and (ii) posts greater than or equal to .10% of the TCV in ADV in Tape B securities more than their January 2012 ADV added to EDGX.” In addition, the Exchange also proposes to delete the following language from its fee schedule: “Members can qualify for the Mini Tape B Tier and be provided a \$0.0030 rebate per share for

liquidity added on EDGX in Tape B securities if the Member on a daily basis, measured monthly: (i) posts greater than or equal to .05% of the TCV in ADV more than their January 2012 ADV added to EDGX; and (ii) posts greater than or equal to .05% of the TCV in ADV in Tape B securities more than their January 2012 ADV added to EDGX.” As a result of the discontinuation of the Tape B tiers in Footnote 1, Tape B securities do not have a specific tier and are subject to the remaining EDGX tier structure, as applicable.

The Exchange proposes to codify on the top of its fee schedule the premise that it uses footnotes to provide further explanatory text or, where annotated to flags, to indicate variable rate changes, provided the conditions in the footnote are met. In connection with this premise, the Exchange proposes to delete Footnote 12 that is appended to Flags B, V, Y, 3, 4, HA and MM because the rates for Flags B, V, Y, 3, 4, HA and MM⁶ do not change where a Market Participant Identifier (“MPID”) achieves an add liquidity ratio equal to or greater than 10%. The Exchange will continue to append Footnote 12 to Flags N, W, 6, BB and PI, which denotes that the Exchange will charge a removal rate of \$0.0029 per share where an MPID achieves an add liquidity ratio equal to or greater than 10%. Finally, the Exchange proposes to delete Footnote 6 that is appended to Flag M to also signify that a rate change is not signaled.⁷ These amendments support the Exchange’s efforts to annotate flags with footnotes to signify a potential rate change, rather than annotating every flag to denote which flags contribute towards the volume threshold and/or conditions necessary to achieve a potential rate change.

The Exchange proposes to delete Footnote 1 that is appended to Flags HA and MM in order to specify that these non-displayed order types would not be eligible for the increased

⁶ The Exchange notes that the volume from these flags will count towards achieving the add liquidity ratio in Footnote 12 of the Exchange’s fee schedule.

⁷ The Exchange notes that the volume from Flag M counts toward the tier in Footnote 6, which changes the rate charged on Flag U.

rebates for displayed orders in the tiers in Footnote 1 of the Exchange’s fee schedule. Rather, Flag HA is rebated \$0.0015 per share and Flag MM is charged \$0.0012 per share, regardless of whether the tiers in Footnote 1 are met.⁸

The Exchange also proposes to amend the text of Footnote 12 to include Flag PR, where Flag PR removes liquidity from the EDGX book using the ROUQ routing strategy, as part of the “removal flags.”⁹ These removal flags are used to calculate whether an MPID satisfied the “add liquidity” ratio calculation¹⁰ to qualify for a removal rate of \$0.0029 per share instead of \$0.0030 per share.

The Exchange proposes to implement these amendments to its fee schedule on September 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4),¹² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

⁸ However, the Exchange notes that the volume from these flags will count towards the volume required to earn the rebates associated with the tiered pricing in Footnote 1; the rates for Flags HA and MM do not change.

⁹ See Securities Exchange Act Release No. 67379 (July 10, 2012), 77 FR 41864 (July 16, 2012) (SR-EDGX-2012-26) (introducing Flag PR to the Exchange’s fee schedule for orders that remove liquidity from the EDGX book using the ROUQ routing strategy).

¹⁰ The “add liquidity” ratio is the ratio of the “added” flags/ (“added” flags + “removal” flags) x 100. If the resulting ratio is equal to or greater than 10%, the MPID qualifies for the lower rate.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

The Exchange believes that its proposal to append Footnote 1 to Flag PI, to make changes to the text of Footnote 1 to add Flags BB and PI to the list of removal flags, and to specify the default rate of \$0.0030 per share (if the Mega tier's conditions are not met) will incentivize Members to add liquidity to the Exchange. In turn, by posting liquidity, Members using these flags will achieve the discounted removal charge of \$0.0029 per share for meeting the tier's conditions rather than the default charge of \$0.0030 per share. Such amendment represents an equitable allocation of reasonable dues, fees, and other charges because the resulting increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. In addition, by providing the ability to obtain the lower removal charge, which is a more favorable rate, the Exchange is encouraging posting of liquidity, which benefits the market as a whole by contributing to increased price discovery and market depth. These lower per share costs in turn would allow the Exchange to pass on the savings to Members in the form of lower fees (for example, \$0.0029 per share for Flags BB and PI instead of \$0.0030 per share). The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Discounts based on volume such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. In addition, the Exchange also believes

that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The rates and rebates associated with routing orders to EDGA through DE Route on the Exchange's fee schedule are pass-through rates from DE Route to the Exchange and represent an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to EDGA through DE Route. The Exchange notes that routing through DE Route is voluntary and DE Route is treated like any other Member of EDGA. Currently, for orders yielding Flag RA, EDGA rebates DE Route \$0.0003 per share, which, in turn, is passed through to the Exchange. The Exchange, in turn, rebates its Members \$0.0003 per share as a pass-through. In EDGA's September 1, 2012 fee filing, SR-EDGA-2012-39, EDGA proposed to amend the rate it charges its Members, such as DE Route, for orders that are routed to EDGA and add liquidity to \$0.0006 per share. Therefore, the Exchange believes that the proposed change for Flag RA from a rebate of \$0.0003 per share to a charge of \$0.0006 per share is equitable and reasonable because it accounts for the pricing changes on EDGA. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for routing orders to EDGA via DE Route that add liquidity. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Similarly, for orders yielding Flag RR, EDGA currently charges its Members, such as DE Route, \$0.0007 per share, which, in turn it passes through to the Exchange. The Exchange, in turn, charges its Members \$0.0007 per share as a pass-through. In EDGA's September 1, 2012 fee filing, SR-EDGA-2012-39, EDGA proposed to amend the rate it charges its Members for orders that are routed to EDGA using routing strategies IOCX or IOCT on EDGX and remove

liquidity from EDGA to a rebate of \$0.0004 per share. Therefore, the Exchange believes that the proposed change for Flag RR from a charge of \$0.0007 per share to a rebate of \$0.0004 per share is equitable and reasonable because it accounts for the pricing changes on EDGA. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for routing orders to EDGA using routing strategies IOCX or IOCT on EDGX and that remove liquidity from EDGA. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Exchange Rule 11.9(b)(3) defines the “System routing table” as the proprietary process for determining the specific trading venues to which the System¹³ routes orders and the order in which the System routes to them. Specifically, the Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The Exchange proposes to delete the CHX as a posting destination on the System routing table. The Exchange previously charged no fee nor assessed a rebate to its Members when DE Route routed to the CHX. This was a pass through by the Exchange of the no rebate/fee provided to DE Route by CHX when liquidity was added to CHX. Since CHX is no longer on the System routing table, the Exchange proposes to delete Flag RM from the Exchange’s fee schedule. The Exchange notes that it will continue to comply with its obligations under Regulation NMS; however, it will not continue to offer Flag RM as a routing strategy to post liquidity to the CHX. Rather, the Exchange will now pass back Flag X (\$0.0029 charge per share) as the standard default routing flag should an order be routed to CHX as a result of the Exchange’s Regulation NMS obligations. The Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

¹³ See Exchange Rule 1.5(cc).

The Exchange believes that its proposal to increase the rebate and modify the thresholds associated with the Mega Tier in Footnote 1, where the Exchange proposes to increase the rebate to \$0.0035 per share for all liquidity posted on EDGX and to modify the volume thresholds for Members that add or route at least 2 million shares of ADV during pre and post-trading hours and add a minimum of 35 million shares of ADV on EDGX in total, represents an equitable allocation of reasonable dues, fees, and other charges because it incentivizes Members to add liquidity to the EDGX book. Furthermore, such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs in turn would allow the Exchange to pass on the savings to Members in the form of higher rebates and lower fees. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. In addition, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange also believes that the rebate of \$0.0035 per share and volume thresholds that require Members to add or route at least 2 million shares of ADV during pre and post-trading hours and to add a minimum of 35 million shares of ADV on EDGX in total also represent an

equitable allocation of reasonable dues, fees, and other charges since higher rebates are directly correlated with more stringent criteria.

As proposed, the Mega Tier rebate of \$0.0035 per share will continue to have the most stringent criteria associated with it, and Members will receive \$0.0002 more per share than the next best tiered rebate, the Market Depth Tier (\$0.0033 per share).

For example, in order for a Member to qualify for the Mega Tier rebate of \$0.0035 per share, the Member would have to add or route at least 2 million shares of ADV during pre and post-trading hours and add a minimum of 35 million shares of ADV on EDGX in total, including during both market hours and pre and post-trading hours. The criteria for this tier is the most stringent as fewer Members generally trade during pre and post-trading hours because of the limited time parameters associated with these trading sessions, which generally results in less liquidity. In addition, the Exchange assigns a higher value to this resting liquidity because liquidity received prior to the regular trading session typically remains resident on the Exchange throughout the remainder of the entire trading day. Furthermore, liquidity received during pre and post-trading hours is an important contributor to price discovery and acts as an important indication of price for the market as a whole considering the relative illiquidity of the pre and post-trading hour sessions. The Exchange believes that offering a higher rebate incentivizes Members to provide liquidity during these trading sessions.

In order to qualify for the next best tier after the Mega Tier (at \$0.0035), the Market Depth Tier, a Member would receive a rebate of \$0.0033 per share for displayed liquidity added on EDGX if they post greater than or equal to 0.50% of the TCV in ADV on EDGX, at least 2 million shares of which are Non-Displayed Orders that yield Flag HA on EDGX in total. Assuming a TCV of 8 billion shares for July 2012, this would amount to 40 million shares, at

least 2 million shares of which are Non-Displayed Orders. The criteria for this tier is less stringent than the proposed volume thresholds for the Mega Tier because Members must add a minimum of 35 million shares of ADV in addition to adding or routing at least 2 million shares of ADV during pre and post-trading hours to earn a rebate of \$0.0035 per share. As discussed, the criteria for the Mega Tier is the most stringent as fewer Members generally trade during pre and post-trading hours because of the limited time parameters associated with these trading sessions, which generally results in less liquidity.

The Exchange believes that its proposal to discontinue the Tape B tiers described in Footnote 1 on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities because the Exchange notes that the Tape B tiered pricing has not incentivized Members to add liquidity to the EDGX book since its inception in March 2012.¹⁴ Because the Tape B tiers have not satisfied the justifications behind their creation, such as deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection increasing volume, the Exchange proposes to discontinue the Tape B tiers and delete the corresponding text from its fee schedule. The Exchange notes that Members will be subject to the current tiered pricing structure on EDGX as a result, which is reasonable and equitable because more favorable rates are associated with more stringent criteria that are designed to incent increased volume. In addition, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

¹⁴ See Securities Exchange Act Release No. 66558 (March 9, 2012), 77 FR 15432 (March 15, 2012) (SR-EDGX-2012-06).

The Exchange's proposal to add language to the top of its fee schedule to state that it uses footnotes to provide further explanatory text, or where annotated to flags, to indicate variable rate changes, provided the conditions in the footnote are met, provides additional transparency to Members when reading the fee schedule. This is in line with the Exchange's proposal to delete Footnote 12 that is appended to Flags B, V, Y, 3, 4, HA and MM because a rate change is not signified; thus, the rates for Flags B, V, Y, 3, 4, HA and MM do not change where an MPID achieves an add liquidity ratio equal to or greater than 10%. Similarly, the Exchange's proposal to delete footnote 6 that is appended to Flag M also signifies that a rate change is not signaled on Flag M. The Exchange believes these amendments support the Exchange's efforts to achieve consistent application among the flags on the fee schedule. In addition, these amendments support the Exchange's efforts to annotate flags with footnotes to signify a potential rate change, rather than annotating every flag to denote which flags contribute towards the volume threshold and/or conditions necessary to achieve a potential rate change. The Exchange also believes that these proposed amendments are non-discriminatory because they apply to all Members.

The Exchange's deletion of Footnote 1 that is appended to Flags HA and MM in order to specify that these non-displayed order types would not be eligible for the increased rebates for displayed orders in the tiers in Footnote 1 of the fee schedule is reasonable and equitable since non-displayed liquidity is not often eligible for the same rebates that displayed liquidity qualifies for because the Exchange places a higher value on displayed liquidity because displayed liquidity is a public good that benefits investors and traders generally by providing greater price transparency and enhancing public price discovery, which ultimately lead to substantial

reductions in transaction costs.¹⁵ The proposed change is non-discriminatory because it applies uniformly to all Members.

The Exchange also proposes to amend the text of Footnote 12 to include Flag PR, where Flag PR removes liquidity from EDGX book using the ROUQ routing strategy, as part of the “removal flags.”¹⁶ The Exchange notes that the liquidity ratio is intended to capture the PR removal flag as one of several removal flags in the calculation of the “add liquidity” ratio. The Exchange believes this amendment supports the Exchange’s efforts to achieve consistent application and specificity among the flags on the fee schedule and provide transparency for its Members. In SR-EDGX-2011-31, the Exchange included “removal flags” in its calculation of the “add liquidity” ratio.¹⁷ Since Flag PR is a removal flag, the Exchange believes it is appropriate to include the removal volume from Flag PR in its calculation of the “add liquidity” ratio. The Exchange also believes that these proposed amendments are non-discriminatory because they apply to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37516 (June 29, 2005); see also Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577, 10584 n. 53 (February 28, 2000) (SR-NYSE-99-48) (citing academic studies finding that the required display of customer limit orders, by providing greater price transparency and enhancing public price discovery, led to substantial reductions in transaction costs for both retail and institutional investors).

¹⁶ See Securities Exchange Act Release No. 65541 (October 12, 2011), 76 FR 64409 (October 18, 2011) (SR-EDGX-2011-31).

¹⁷ Id.

uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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) of the Act¹⁸ and Rule 19b-4(f)(2)¹⁹ thereunder. At any time within 60 days of the filing of such 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:

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EDGX-2012-39 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-EDGX-2012-39. This file number should be included on the subject line if e-mail 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; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGX-2012-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).