

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81078; File No. SR- IEX-2017-22)

July 5, 2017

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Proposed Rule Change to Introduce a New Market Maker Peg Order

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 30, 2017, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),⁴ and Rule 19b-4 thereunder,⁵ Investors Exchange LLC (“IEX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to introduce a new Market Maker Peg Order, designed to simplify market maker compliance with IEX Rule 11.151 (Market Maker Obligations), and make a conforming change regarding connectivity within the Exchange System. In addition, the Exchange proposes to amend paragraph (d) of Rule 11.340 to describe how Market Maker Peg Orders in a Pilot Security⁶

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ Pilot Security has the meaning specified in the Tick Pilot Plan.

would be priced in order to comply with the Plan to Implement a Tick Size Pilot Program (“Tick Pilot Plan”).⁷

The text of the proposed rule change is available at the Exchange’s website at www.iextrading.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 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

Background

IEX Rule 11.151 (Market Maker Obligations) requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid (“NBB”) and National Best Offer (“NBO”),⁸ as appropriate. In addition to the market maker quoting and pricing obligations set forth in the Exchange’s rules,

⁷ See Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4-657) (“Tick Plan Approval Order”). See also Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4-657), 80 FR 70284 (File No. 4-657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016.

⁸ As defined by Regulation NMS Rule 600(b)(42). 17 CFR 242.600.

market makers must meet their obligations under Rule 15c3-5 under the Act (the “Market Access Rule”)⁹ and Regulation SHO.¹⁰

The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. These controls must be reasonably designed to ensure compliance with all regulatory requirements, which are defined as “all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.”¹¹

In addition to the obligations of the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking sell orders, obtaining a “locate” for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.¹² While there are certain exceptions to some of the requirements of Regulation SHO where a market maker is engaged in bona-fide market making activities,¹³ the availability of those exceptions is distinct

⁹ 17 CFR 240.15c3-5.

¹⁰ 17 CFR 242.200 through 204.

¹¹ See supra note 5.

¹² See supra note 6.

¹³ See 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO’s “locate” requirement for market makers engaged in bona fide market making that may need to facilitate customer orders in a fast moving market without being subject to the possible delays associated with complying with such requirement. See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute bona-fide market making for purposes of claiming the exception to Regulation SHO’s “locate” requirement). See also Exchange

and independent from whether a market maker submits an order that is a Market Maker Peg Order.

Proposed Rule

The Exchange is proposing to introduce a new Market Maker Peg Order type, designed to simplify market maker compliance with the continuous quoting and pricing obligations, as well as market maker compliance with the requirements of the Market Access Rule and Regulation SHO. The Market Maker Peg Order, as proposed, is substantially similar to equivalent order types offered by other market centers, including Bats BZX Exchange, Inc. (“Bats”), Nasdaq Stock Market LLC (“Nasdaq”), and Bats EDGX Exchange, Inc. (“EDGX”).¹⁴ Specifically, the Market Maker Peg Order would be a one-sided limit order and, similar to other peg orders available to market participants, priced in reference to or “pegged” to the NBB or NBO,¹⁵ but is distinguishable in that it would always be displayed.

The Exchange believes that this order-based approach would provide an effective compliance tool to facilitate market makers compliance with the requirements of the Market

Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698-9 (October 17, 2008) (providing guidance regarding what is bona-fide market making for purposes of complying with the market maker exception to Regulation SHO’s “locate” requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, market makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 11.190(b)(13) for eligibility for the bona-fide market making exception to the “locate” requirement based on the criteria set forth by the Commission. It should also be noted that a determination of bona-fide market making is relevant for the purposes of a broker-dealer’s close-out obligations under Rule 204 of Regulation SHO. See 17 CFR 242.204(a)(3).

¹⁴ See e.g., Bats Rule 11.9(c)(16), Nasdaq Rule 4702(b)(7), and EDGX Rule 11.8(e).

¹⁵ See Rule 11.190(a)(3).

Access Rule and Regulation SHO while also providing quotation adjusting functionality to its market makers. Market makers would have control of order origination, as required by the Market Access Rule, while also allowing market makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, market makers using Market Maker Peg Orders would be fully able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order, while also facilitating compliance with their Exchange market making obligations. In this regard, the Market Maker Peg Order does not by itself ensure that the market maker is satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirements of Rule 203(b)(1) or an exception thereto. It is expected that market makers will perform the necessary checks to comply with Regulation SHO, prior to entry of a Market Maker Peg Order.

The Market Maker Peg Order would be limited to registered market makers¹⁶ and would have its price automatically set and adjusted by the System, both upon entry and any time thereafter, in order to comply with the Exchange's rules regarding market maker quoting and pricing obligations.¹⁷ Specifically, upon entry or at the beginning of the Regular Market Session, as applicable, the entered bid or offer is automatically priced by the System at the Designated Percentage (as defined in Rule 11.151(a)(6)) away from the then current NBB or NBO, as applicable, or if there is no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for market makers set forth in Rule 11.151(a). Market makers may submit Market

¹⁶ See Rule 11.150.

¹⁷ The Market Maker Peg Order is one-sided, and thus a market maker seeking to use Market Maker Peg Orders to comply with the Exchange's continuous two-sided quotation requirements would need to submit both a bid and an offer using the order type.

Maker Peg Orders to the Exchange starting at the beginning of the Pre-Market Session, but the order will not be executable or automatically priced until the beginning of the Regular Market Session, and will expire at the end of the Regular Market Session.

Upon reaching the Defined Limit (as defined in Rule 11.151(a)(7)), the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current NBB or NBO, or, if there is no NBB or NBO, the order will, by default, be the Designated Percentage away from the last reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage towards the then current NBB or NBO, which number of percentage points will be determined and published in a circular distributed to Members from time to time, the price of such bid or offer will be adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as applicable. If there is no NBB or NBO, as applicable, the order will be adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that pricing a Market Maker Peg Order at the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor, would result in the order exceeding its limit price, the order will be cancelled or rejected. The limit price entered on a Market Maker Peg Order is designed to allow a market maker to specify a price at which the initial pricing and any subsequent repricing of the order to the Designated Percentage will be constrained.

If, after entry, the Market Maker Peg Order is priced based on the last reported sale from the single plan processor and such Market Maker Peg Order is established as the NBB or NBO,

the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last sale, or a new NBB or NBO is established by a national securities exchange.

Market Maker Peg Orders are not eligible for routing pursuant to Rule 11.230(b) and are always displayed on the Exchange. In addition, a new timestamp is created for the order each time that it is automatically adjusted in accordance with the proposed rule. Market Maker Peg Orders may only be entered by a registered Market Maker, pursuant to IEX Rule 11.150.

In addition, the Exchange proposes to amend paragraph (d) of Rule 11.340 to describe changes to System functionality with respect to Market Maker Peg Orders in order to comply with the Tick Pilot Plan. Specifically, the Exchange proposes to add new subparagraph (d)(1)(A) to Rule 11.340 to specify that if, pursuant to proposed Rule 11.190(b)(13), a Market Maker Peg Order in a Pilot Security would be priced at an increment other than \$0.05, the System will round such order to buy (sell) up (down) to the nearest permissible increment. This approach, which is substantially similar to Bats Rule 11.27(c)(5), is designed to ensure that Market Maker Peg Orders for Pilot Securities are appropriately priced in \$0.05 increments by rounding such order to the nearest permissible increment, that is also compliant with the minimum market maker quoting obligations set forth in IEX Rule 11.151. In addition, if the rounding methodology results in a Market Maker Peg Order being priced to a price below \$0.05, the order will be cancelled back to the market maker that entered the order.

The Exchange notes that notwithstanding the availability of the proposed Market Maker Peg Order functionality, a market maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 11.151.

As proposed, the Exchange will apply the Designated Percentage and Defined Limit as

set forth in Rules 11.151(a)(6) and (7), respectively, subject to the following exception: for all NMS stocks with a price less than \$1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, the Exchange will use the Designated Percentage and Defined Limit applicable to NMS stocks equal to or greater than \$1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products.

The System will be available for entry, modification, and cancellation of Market Maker Peg Orders under proposed Rule 11.190(b)(13) only via the POP pursuant to Rule 11.510(b), and thus are subject to the Inbound and Outbound POP Latency upon entry, accordingly.¹⁸ Furthermore, each time a Market Maker Peg Order is automatically adjusted by the System thereafter in accordance with proposed Rule 11.190(b)(13), all inbound and outbound communications related to the modified order instruction would traverse an additional POP between the Market Maker Peg Order repricing logic, and the Order Book, which is subject to an equivalent 350 microseconds of latency pursuant to proposed Rule 11.510(c)(1).¹⁹ This approach is designed so that a market maker using a Market Maker Peg Order to facilitate compliance with the Exchange's continuous quoting and pricing obligations is in the same position as a market maker updating its own quote, whose orders would need to traverse a POP.

¹⁸ See 11.510(b)(1) and (2), respectively, which define the Inbound POP Latency as an equivalent 350 microseconds of latency from the Exchange-provided network interface at the IEX POP to the System at the primary data center; and Outbound POP Latency as an equivalent 350 microseconds of latency from the System at the primary data center to the Exchange-provided network interface at the IEX POP.

¹⁹ The Exchange notes that the same "additional POP" that is used to implement an equivalent 350 microseconds of latency to all routable orders sent by the System to the Order Book pursuant to Rule 11.510(c)(1) will be used to implement such delay to all modified order instructions for Market Maker Peg Orders pursuant to proposed Rule 11.190(b)(13).

As discussed more fully in the Statutory Basis section, the Exchange believes that it is appropriate to treat Market Maker Peg Orders differently in this regard from other pegged orders (which are repriced without traversing a POP) because of substantially distinguishing characteristics.

The Exchange also proposes to make a conforming change to Rule 11.510(c) regarding connectivity, to provide that, pursuant to Rule 11.190(b)(13), each time a Market Maker Peg Order is automatically adjusted by the System, all inbound and outbound communications related to the modified order instruction will traverse an additional POP between the Market Maker Peg Order repricing logic and the Order Book.

The Exchange plans to implement the proposed changes during the third quarter of 2017 pending completion of necessary technology changes and subject to Commission approval. The Exchange will announce the implementation date of the proposed changes by Trader Alert at least 10 business days in advance of such implementation date and within 90 days of approval of this proposed rule change.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b) of the Act in general,²⁰ and further the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public

²⁰ 15 U.S.C. 78f.

²¹ 15 U.S.C. 78f(b)(5).

interest. As noted above, the Exchange believes that the proposed rule is designed to simplify market maker compliance with the minimum continuous quoting and pricing obligations, as well as facilitate market maker compliance with the requirements of the Market Access Rule and Regulation SHO.

Specifically, the Exchange believes that simplifying compliance with this rule will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it will provide a simplified means by which market makers may offer liquidity, even in circumstances where they are not willing to quote at the inside market. As a result, in circumstances where liquidity available at displayed prices closer to the inside than the price of a Market Maker Peg Order is exhausted during an aggressive market wide sweep, the Market Maker Peg Order may nevertheless be available to support executions at prices that are at least within the applicable Designated Percentage or Defined Limit. Moreover, the methodology for repricing Market Maker Peg Orders is consistent with the requirements of the Act because it is designed to ensure that the displayed price of the order is at least within the applicable Designated Percentage or Defined Limit, as applicable.²²

The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act²³ in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that offering the Market Maker Peg Order to market

²² The Exchange notes that in certain scenarios the applicable Designated Percentage or Defined Limit price may be outside of the industry wide limit-up, limit-down price bands, and/or the clearly erroneous parameters. Nevertheless, Market Maker Peg Orders may be less likely to execute at a clearly erroneous price or a price that would trigger a limit-up, limit-down trading pause than other displayed orders that are not subject to the market maker pricing obligations.

²³ 15 U.S.C. 78k-1.

makers exclusively is consistent with fair competition among brokers and dealers in that market makers have chosen to subject themselves to the obligations of Rule 11.151, and the benefit conferred on such market participants by this order type is commensurate with the obligations. Furthermore, all Members are eligible to apply for registration as a market maker under Rule 11.150 on a fair and equal basis.

The Exchange also believes that it is fair and reasonable for all inbound and outbound communications related to the repricing of a Market Maker Peg Order to traverse a POP that is subject to an equivalent 350 microseconds of latency for several reasons. First, as noted in the Purpose section, this approach is designed so that a market maker using a Market Maker Peg Order to facilitate compliance with the Exchange's continuous quoting and pricing obligations is in the same position as a market maker updating its own quote, whose orders would need to traverse a POP. Similarly, price adjustments to Market Maker Peg Orders will experience the same latency as any other displayed order entered on the Exchange.

IEX believes that it is appropriate to treat Market Maker Peg Orders differently in this regard than other pegged order types (which are repriced within the System without traversing a POP) offered by the Exchange because the fundamental characteristics of a Market Maker Peg Order is substantially different from such other peg orders.²⁴ Specifically, the other peg order types offered are non-displayed and designed to generally execute at or within the NBBO. A primary function of the IEX POP access delay, in conjunction with the Exchange's consumption of direct proprietary market data without any such delay, is to protect resting non-displayed orders from adverse selection by latency arbitrage whereby market participants with access to fast market data send orders to trade against resting non-displayed interest at soon to be stale

²⁴ See IEX Rule 11.190(b)(8), (9) and (10) with respect to Primary Peg, Midpoint Peg, and Discretionary Peg Orders respectively.

prices. Subjecting all inbound and outbound communications related to the repricing of such non-displayed orders to POP latency would frustrate the purpose of the IEX POP since the pegged order would be subject to execution at a stale price before the repricing instruction is received. Moreover, market participants entering non-displayed pegged orders to the Exchange are often large institutional investors that do not have the technical capabilities of market makers or other latency sensitive Members to manage their orders to avoid adverse selection. Such market participants entrust the Exchange, pursuant to its design and System architecture, to accurately price and protect such order from adverse selection. In contrast, and by design, a Market Maker Peg Order is a compliance tool for market makers rather than an order type to facilitate trading at the most current pricing. In this regard, Market Maker Peg Orders are designed to reprice significantly outside the NBBO and are thus materially less susceptible to adverse selection. Furthermore, such orders are not “pegged” to the NBBO in the same manner as non-displayed pegged orders, in that Market Maker Peg Orders only reprice to remain in compliance with the Exchange’s quoting and pricing obligations rather than to peg at, close to, or better than the NBBO with each NBBO update.

Accordingly, the Exchange believes that it is consistent with the public interest and the protection of investors to reprice Market Maker Peg Orders through the POP in the interest of ensuring that market makers will not have any unfair advantage over market makers that updates its own quote, as well as with other market participants using displayed orders.

Furthermore, the Exchange believes that it is consistent with the public interest and the protection of investors to apply a new timestamp to a Market Maker Peg Order each time it is repriced so that a Market Maker Peg Order does not achieve execution priority superior to a displayed order entered at that price earlier in time. Accordingly, market makers will not have

any unfair advantage over a market makers updating its own quote, or other market participants using displayed orders on the Exchange.

Additionally, the Exchange believes that its proposed rounding of a buy (sell) Market Maker Peg Order in a Pilot Security that would be priced at an increment other than \$0.05 up (down) to the nearest permissible increment, as well as to cancel such orders if the rounding methodology results in a Market Maker Peg Order being priced to a price below \$0.05, is consistent with the protection of investors and the public interest in that it enables the Exchange to comply with the Tick Pilot Plan. Further, the Exchange believes it is also consistent with the protection of investors and the public interest to cancel or reject (as applicable) a Market Maker Peg Order that would otherwise be priced at a price exceeding its limit price because such price would not be consistent with the market maker's instructions.

Lastly, the Exchange believes that the proposed conforming rule change to Rule 11.510(c)(1) is consistent with the protection of investors and the public interest in that it is designed to provide clarity to market participants regarding Market Maker Peg Order repricing methodology, and make the Exchange's rule more clear and explicit.

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

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposal will enhance the Exchange's competitiveness by providing market makers on IEX with a means to offer liquidity even in circumstances where they are not willing to quote at the inside market. Based on informal discussion with market participants that serve as market maker on other trading centers, the Exchange believes that this functionality will be appealing to potential market makers, and

therefore will make it more likely that market participants will choose to become registered market makers on the Exchange. This may, in turn, increase the extent of liquidity available on IEX and increase its ability to compete with other execution venues to attract orders that are seeking liquidity. The Exchange further notes that the Market Maker Peg Order, as proposed, is substantially similar to equivalent order types offered by other market centers, including Bats, Nasdaq, and EDGX, and therefore will not impair market participants or other market centers from competing, but would in fact allow the Exchange to compete with existing functionality offered by competing market centers.²⁵ Moreover, there is no barrier to other exchanges adopting the same repricing functionality.

With regard to intra-market competition, the Exchange does not believe that the method of repricing Market Maker Peg Orders will result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, as described in the Statutory Basis section, the Exchange's proposed method of repricing is designed in the interest of ensuring that market makers using Market Maker Peg Orders will be in the same position as market makers updating their own quotes, as well as other market participants using displayed orders.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

²⁵ See supra note 9.

the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-IEX-2017-22 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-IEX-2017-22. 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-IEX-2017-22, 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.²⁶

Eduardo A. Aleman
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).