

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62052; File No. SR-NYSEArca-2010-38)

May 6, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. to Clarify, Eliminate, Revise, or Delete Certain Out-Dated or Obsolete Rules

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 April 28, 2010, NYSE Arca, Inc. (“NYSE Arca” or “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

The Exchange proposes to revise its rules by clarifying existing provisions, eliminating superfluous provisions, and revising or deleting certain out-dated or obsolete rules. The text of the proposed rule change is available on the Exchange’s Website at www.nyse.com, at the principal office of the Exchange, on the Commission’s Web site at <http://www.sec.gov>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 this filing is to revise certain Exchange rules in order to clarify existing provisions, eliminate superfluous provisions, delete certain out-dated or obsolete rules and to incorporate current policies and procedures applicable to existing rules. A description of each of the proposed rules changes is shown below.

Rule 2.12 – OTP Holders and OTP Firms

Rule 2.12(a) requires that each OTP Firm and OTP Holder shall be fully qualified to do business in California. This rule dates back to when NYSE Arca (f/k/a The Pacific Exchange) was headquartered in California and all business on the Exchange was conducted on the physical trading floor.

While the Exchange still operates a trading floor in California, OTP Holders and OTP Firms are not required to have a floor presence. OTP Holders and OTP Firms are able to conduct business from remote locations throughout the country.

NYSE Arca proposes to remove this outdated and obsolete requirement that OTP Holders and OTP Firms be fully qualified to conduct business in California.

Rule 2.24 – Floor Employees of OTP Firms

Rule 2.24(d) states that an OTP Firm or OTP Holder with an employee on the options trading floor of the Exchange must have at least one OTP Holder or nominee present on the floor at all times, and that such OTP Holders or nominees shall be responsible for all floor employees

of the OTP Firm. The rationale for this rule is to help ensure that there is adequate supervision of all firm employees while on the options trading floor.

With the advent of remote market making and electronic access, NYSE Arca no longer requires that all OTP Holders, or nominees thereof, be physically present on the floor. However, there could be occasions where an OTP Firm does have employees on the floor, but the actual person designated as the OTP Holder works from a remote location. These employees would typically operate in a trade support, technical or clearing capacity, but would not be directly involved in the trading of options.

Pursuant to Rule 11.18, OTP Holders or OTP Firms must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and the rules [sic] of NYSE Arca. In addition, OTP Holders and OTP Firms must designate a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the OTP Holder or OTP Firm. In addition, the OTP Holder or OTP Firm must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

The Exchange now proposes to revise Rule 2.24 so that an OTP Holder or OTP Firm with employees on the options trading floor, none of which are directly involved in the trading of options, will no longer be required to have an OTP Holder, or Nominee thereof, present on the options trading floor at all times. Instead, the Exchange proposes that in keeping with the supervisory obligations contained in rule 11.18, OTP Holders and OTP Firms with non-trading employees on the options floor, must have at least one employee with supervisory

responsibilities present on the trading floor. Each OTP Holder or OTP Firm must designate and specifically identify to the Exchange one or more persons who will be responsible for supervision and control of the activities of the associated persons of the OTP Holder or OTP Firm.

This rule change does not in any way affect the obligation of OTP Holders and OTP Firms to properly supervise their floor employees. The proposed rule change is simply designed to offer flexibility to OTP Holders and OTP Firms when establishing their supervisory systems in accordance with Rule 11.18.

Rule 3.1 – Overview

Rule 3.1 Commentary .01 contains an outdated provision related to the demutualization of The Pacific Exchange (n/k/a NYSE Arca). Commentary .01 states that rule changes regarding demutualization in SR-PCX-2004-08 would become effective once the appropriate federal and state regulatory approvals were received and NYSE Arca filed the applicable documentation with the State of Delaware. All approvals pertaining to the demutualization of the Pacific Exchange were received, and all applicable documentation was filed with the State of Delaware. The Exchange now proposes to delete Rule 3.1 Commentary .01, in its entirety.

Rule 6.17 – Verification of Compared Trades and Reconciliation of Uncompared Trades

Rule 6.17 Commentary .01 states that OTP Holders and OTP Firms that are clearing members of the Options Clearing Corporation must have a representative physically present on the trading floor to reconcile uncompared trades. In addition, Rule 6.17 Commentary .01 contains guidelines for how long such representative must remain on the floor after the close of trading.

The Exchange realizes that it is no longer necessary for a representative of an OTP Holder or OTP Firm to be physically present on the trading floor in order to reconcile uncomparated trades. Thus, the Exchange proposes to revise Rule 6.17, Commentary .01 by adding language stating that in addition to being physically present on the floor, such representative may be accessible via telephone or e-mail.³ In addition, the Exchange proposes to remove the specific guidelines for how long a representative must remain available after the close of trading and instead state that a representative of an OTP Holder or OTP Firm must be available to resolve unmatched trades until the final trade transmission is sent to The Options Clearing Corporation (“OCC”).⁴

Rule 6.17 also states that OTP Holders and OTP Firms, that are clearing members of the Options Clearing Corporation, must have a representative present on the floor each Saturday immediately following expiration, and that it is the responsibility of the Exchange staff member to determine that such representative is present. The Exchange now proposes to add language stating that an alternative to being physically present on the floor, such representative may be accessible via telephone or e-mail.

In addition, Exchange staff will no longer make a determination as to whether representatives are present on the Trading Floor, or otherwise accessible. However, it will be considered a violation of Rule 6.17 if the responsible OTP Holder or OTP Firm is not available to reconcile an uncomparated trade when contacted by NYSE Arca Trade Processing Department.

Currently, OTP Holders that fail to remain accessible for a specified amount of time after trade processing are subject to disciplinary action pursuant to the NYSE Arca Minor Rule Plan.

³ OTP Holders and OTP Firms are required to keep a current email address on file with the Exchange. In addition, the NYSE Arca Trade Processing Department maintains contact names and phone numbers for all OTP Holders.

⁴ This requirement is based on Rule 6.61(a) of The Chicago Board Options Exchange.

The Exchange proposes to revise the text in Rule 10.12(h)(9) and Rule 10.12(k)(9) of the Minor Rule Plan to state that it will be a violation if an OTP Holder is not available when contacted by the Exchange to reconcile an uncomparated trade.

Rule 6.29 – Payment for Floor Brokerage Services

When an OTP Holder acts as a Floor Broker for another OTP Holder they may receive remuneration for such brokerage services. Rule 6.29 states that payment of brokerage commissions to Floor Brokers shall be made no later than the thirtieth day of the month provided that an invoice detailing the brokerage charges for the services performed is delivered to the OTP Holder or OTP Firm receiving such brokerage services no later than the tenth day of that month.

The terms of floor brokerage remuneration is a generally spelled out in a contractual agreement between OTP Holders. The Exchange does not set commissions rates for brokerage services, nor is the Exchange a party to any contractual agreements between OTP Holders, nor is the Exchange involved in the billing and collecting of such commissions. All terms related to the payment of brokerage commissions are between OTP Holders, and do not in any way involve the Exchange.⁵ Therefore, NYSE Arca does not believe there is cause for an Exchange rule that specifies when payment for brokerage services is payable by OTP Holders.

The Exchange proposes to delete the text of Rule 6.29 in its entirety and reserve the rule number for future use.

Rule 6.32 – Market Maker Defined
6.32A – Market Maker Defined – OX

Rule 6.32(a) defines a Market Maker as an individual who is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the

⁵ The Exchange notes that books and records pertaining to brokerage commissions may be requested by the Exchange during the course of an examination or investigation of OTP Holders and OTP Firms.

Exchange *or* for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system.

Rule 6.32A defines a Market Maker as an OTP Holder or OTP Firm that is registered with the Exchange for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the OX trading platform from on the trading floor or remotely from off the trading floor.

Both 6.32(a) and 6.32A also contain additional descriptive language regarding Market Makers, and Lead Market Makers. This language is virtually identical in both rules. In addition, Rule 6.32A contains a provision that states that a Market Maker submitting quotes remotely is not eligible to participate in trades effected in open outcry except to the extent that such Market Maker's quotation represents the BBO.

Given that the two rules described above are vastly similar, the Exchange now proposes to delete Rule 6.32A in its entirety while incorporating a portion of it into Rule 6.32(a). Since most of Rule 6.32A is already included in Rule 6.32(a), Rule 6.32(a) will remain virtually unchanged except for the addition of a new subsection (2) which will contain the provision from Rule 6.32A regarding a remote Market Maker's ability to participate in trades effected in open outcry.

This proposal is intended to simplify existing rules regarding the definition of a Market Maker by deleting the duplicative text contained Rule 6.32A, while incorporating the still relevant portions into Rule 6.32(a). This rule change will not in any way affect the rights or obligations of Market Makers.

The Exchange also proposes to make technical revisions to rule reference contained in Rule 6.1A(a)(8) and Rule 6.87 Commentary .05 to reflect the proposed change to Rule 6.32A.

Rule 6.36 – Letters of Guarantee

Rule 6.45 – Letters of Authorization

Rule 6.36(c) addresses Letters of Guarantee for Market Makers and states that a Letter of Guarantee shall remain in effect until a final written notice of revocation has been filed with the Exchange and posted on the bulletin board of the Options Trading Floor. If such final written notice has not been posted for at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day.

Rule 6.45(c) addresses Letters of Authorization for Floor Brokers and states that a Letter of Authorization shall remain in effect until a written notice of revocation has been filed with the Exchange and posted on the bulletin board of the Options Trading Floor. If such written notice has not been posted for at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day.

NYSE Arca believes that the posting of notices of revocation on a bulletin board is simply an administrative function of the Exchange and should not actually define when a notice of revocation should be effective. The Exchange does not believe that it is necessary to require the actual posting of notices of revocations in order for them to be effective, provided the Exchange does receive notification at least one hour prior to the opening of trading.

The Exchange now proposes to revise Rule 6.36(c) and Rule 6.45(c) by removing the requirement that the Exchange post the Letter of Revocation on the bulletin board on the floor one hour before the opening of business in order for the revocation to be effective. Instead, pursuant to the proposed rule change, Letters of Guarantee and Letters of Authorization will remain in effect until a final written notice of revocation has been filed via e-mail with the Exchange. If such final written notice has not been received via e-mail by the Exchange at least

one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day.

Making notices of revocation, filed one hour before the opening of trading, effective without posting on a bulletin board is consistent with rules regarding notices of revocation presently in place at NASDAQ OMX PHLX, and NYSE Amex.⁶

The Exchange recognizes that posting notices on the bulletin board also serves as a way to communicate membership information to OTP Holders. Accordingly, NYSE Arca will continue to publish the names of all terminated Market Makers and Floor Brokers in the Weekly Bulletin. The Weekly Bulletin is distributed via e-mail to all OTP Holders and is also posted on the Exchange website.⁷

Rule 6.37 – Obligations of Market Makers

Rule 6.37A – Obligations of Market Makers – OX

NYSE Arca proposes to amend Rules 6.37 and 6.37A by eliminating provisions in each rule that provide for bids/offers to be no higher/lower than the last preceding transaction plus or minus the aggregate change in the last sale price of the underlying security (“one point rule”).

Specifically, Rule 6.37(b)(2) and Rule 6.37A(b)(6) both provide that Market Makers are expected ordinarily not to bid more than \$1 lower or offer more than \$1 higher than the last preceding transaction price for the particular option contract plus or minus the aggregate change in the last sale price of the underlying security since the time of the last preceding transaction for the particular option contract.

The Exchange now proposes to eliminate the one point rule. The one point rule was first established when NYSE Arca (f/k/a The Pacific Exchange) started trading listed options in 1976.

⁶ See NASDAQ PHLX OMX Rule 1062(c), NYSE Amex Rule 924NY(c).

⁷ NYSE Arca Weekly Bulletins can be found at www.nyx.com/regulation, under “Public Information.”

Since that time various market changes have rendered the rule obsolete and unnecessary. For example, market makers are now subject to various quotation requirements, including bid/ask quote width requirements contained elsewhere in Rules 6.37 and 6.37A. The Exchange also has an obvious error rule that contains provisions on erroneous pricing errors (e.g., Rule 6.87). In addition, the NYSE Arca automated trading system has in place certain price check parameters that will not permit the automatic execution of certain orders if the execution would take place at prices inferior to the national best bid/offer.

The text of Rule 6.37(b)(2) and Rule 6.37A(b)(6) will be deleted; however the Exchange proposes to designate the rule numbers as “reserved” for possible future use.

The elimination of the NYSE Arca one point rule is consistent with similar rule changes by the Chicago Board Options Exchange (“CBOE”) and the International Securities Exchange (“ISE”).⁸

NYSE Arca is also proposing to make non-substantive changes to certain provisions of Rules 6.37 and 6.37A containing references to the proposed rule deletions.

Rule 6.60 – Order Service Firms

An Order Service Firm is an OTP Holder or OTP Firm that is registered with the Exchange for the purpose of accepting orders for the purchase or sale of stocks or commodity futures contracts from Market Makers on the Floor of the Exchange, and forwarding such orders for execution.

Prior to the advent of electronic access to the equities markets, Market Makers on the floor of the Exchange would use Order Service Firms to place stock orders used in hedging

⁸ See Securities Exchange Act Release No. 60295 (July 13, 2009), 74 FR 35215 (July 20, 2009) (SR-CBOE-2009-49) and Securities Exchange Act Release No. 60897 (October 28, 2009) 74 FR 57217 (November 4, 2009) (SR-ISE-2009-85).

options trades. All Market Makers now have electronic access to the equities markets, rendering the use of an Order Service Firm obsolete. There are presently no Order Service Firms operating on the floor,⁹ nor does the Exchange anticipate ever having the need for them in the future.

Therefore, NYSE Arca proposes to delete the language from Rule 6.60 in its entirety, and reserve the rule number for possible future use.

Rule 6.66 – Order Identification

Rule 6.66 deals with order identification and a Floor Broker's responsibility to disclose certain information pertaining to the party for whom they are acting as agent.

Rule 6.66 Commentary .01 requires a Floor Broker, when requesting a market and size, to disclose the name of the OTP Holder or OTP Firm for whom he is acting. Commentary .01 goes on to say a Floor Broker must, upon request, disclose the name of such OTP Holder or OTP Firm immediately upon effecting any transaction.

NYSE Arca no longer believes that it is necessarily in the best interest of the marketplace to require Floor Brokers to supply such information when requesting quotations or effecting transactions. The Exchange feels that disclosing the name of the OTP Holder or OTP Firm when asking for a market and size could lead to disparate treatment on the part of trading crowd participants. Furthermore, requiring a Floor Broker to disclose the name of the OTP Holder or OTP Firm participating on a trade is not in keeping with an effort to provide anonymity when trading on NYSE Arca.

While these provisions may have had merit when initially enacted, they have become outdated by today's standards. There are other provisions within Exchange rules requiring a Floor Broker to disclose when they are trading on behalf of a BD or Market Maker, without

⁹ The last Order Service Firm ceased operations on the floor of the Exchange in 2005.

compromising the anonymity of the market. Therefore, the Exchange proposes to eliminate Commentary .01 in its entirety.

Rule 6.68 – Record of Orders

Rule 6.68(a) requires OTP Holder and OTP Firms to maintain and preserve a record of every order and of any other instruction given or received for the purchase or sale of option contracts for the period specified under SEC Rule 17a-4. Rule 6.68(a) also states that the Exchange shall maintain and preserve all electronic orders on behalf of OTP Holders and OTP Firms.

The maintenance and preservation of electronic orders by the Exchange, on behalf of OTP Holders and OTP Firms, came about in 2004 when the Exchange introduced the Electronic Order Capture (“EOC”) System.¹⁰ The EOC system is the Exchange’s electronic audit trail and order tracking system designed to provide an accurate time-sequenced record of all orders and transactions on the Exchange. Prior to the introduction of the EOC system, all orders were written on paper tickets, the maintenance of which was the responsibility of OTP Holders and OTP Firms. The EOC system is an Exchange proprietary system and at the time it was introduced OTP Holders and OTP Firms did not have access to historic order records contained in the system. In order to allow OTP Holders and OTP Firms to remain in compliance with their own books and records requirements, the Exchange preserved and maintained all records of electronic orders on their behalf. In the event an OTP Holder or OTP Firm needed access to these order records, the Exchange would furnish such records upon request.

Beginning in 2007, the Exchange made electronic order records available to OTP Holders and OTP Firms via an electronic file. OTP Holders and OTP Firms are able to download this file

¹⁰ See SR-PCX-2004-122 (December 14, 2004), Securities Exchange Act Release No. 50854 (December 14, 2004), 72 FR 76808 (December 22, 2004).

on a daily basis and store the information on their own proprietary systems. The information contained in the daily report is identical to the information that the Exchange kept of behalf of OTP Holders and OTP Firms. Each daily trade report remains available on-line for a period of thirty days. Since OTP Holders and OTP Firms can now access this information themselves, there is no longer an ongoing need for the Exchange to maintain such records on behalf of OTP Holders and OTP Firms. The Exchange now proposes to remove the provision in Rule 6.68(a) that states that the Exchange shall maintain and preserve all electronic orders on behalf of OTP Holders and OTP Firms.

NYSE Arca notes that this proposed rule change only affects the Exchange's maintenance and preservation of electronic order records on behalf of OTP Holders and OTP Firms. The proposed rule change does not in any way alter the Exchange's obligation to maintain and preserve order records pursuant to its own books and records requirements.

Rule 6.70 – Price Binding Despite Erroneous Report

Rule 6.70 states that the price at which an order is executed shall be binding notwithstanding that an erroneous report in respect thereto may have been rendered, or no report rendered. In addition, Rule 6.70 contains commentary pertaining to erroneous prints and trades in securities underlying options traded on the Exchange.

At the time this rule was adopted in 1999,¹¹ all trading was conducted on the floor of the Exchange via open outcry. Since that time, the Exchange has introduced electronic options trading, along with associated rules governing such trading. Specifically, erroneous transactions in the electronic market are governed by Rule 6.87. The Exchange now proposes to add commentary to Rule 6.70 stating that the rule is applicable only to non-electronic orders and

¹¹ See SR-PCX-1999-44 (October 29, 1999), Securities Exchange Act Release No. 43149 (August 11, 2000), 65 FR 51392 (August 23, 2000) (File No. SR-PCX-99-44).

transactions. The proposed rule change does not alter existing Exchange procedures pertaining to erroneous transactions, but simply serves to offer clarity on the applicability of Rule 6.70 to open outcry transactions only.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular, because 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The changes proposed in this filing are simply designed to eliminate or revise outdated or obsolete rules and practices on NYSE Arca.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

No written comments were either solicited or received with respect to the proposed rule change.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2010-38 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-NYSEArca-2010-38. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 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-NYSEArca-2010-38 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).