

Dated: September 11, 2024.

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100994; File No. SR-
NYSEARCA-2024-79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Fees for the NYSE Arca Integrated Data Feed

September 10, 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 September 9, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 certain fees for the NYSE Arca Integrated data feed. The proposed rule change is available on the Exchange’s website at www.nyse.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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend the NYSE Arca Equities Proprietary Market Data Fees Schedule (“Fee Schedule”) to amend certain fees for the NYSE Arca Integrated data feed (“NYSE Arca Integrated Feed”) that would be operative November 1, 2024. Specifically, the Exchange proposes a one-time adjustment to certain of its fees for subscribing to the NYSE Arca Integrated Feed,³ with certain exceptions. The Fee Schedule includes the Exchange’s fees for subscribing to the NYSE Arca Integrated Feed, including an Access Fee, Redistribution Fee, Per User fees for Professional and Non-Professional Users, various categories of Non-Display Fees, a Non-Display Declaration Late Fee and a Multiple Data Feed Fee.⁴ With the exception of the Non-Professional User Fee, the Non-Display Declaration Late Fee and the Multiple Data Feed Fee, the Exchange proposes to increase the remaining fees by up to 8.07% on a one-time basis.⁵

The Exchange currently charges the following fees to subscribe to the NYSE Arca Integrated Feed on a monthly basis: an Access Fee of \$3,000; a Redistribution Fee of \$3,750; a Professional User Fee and Non-Professional User Fee, on a per user

³ The proposed rule change establishing the NYSE Arca Integrated Feed was immediately effective on November 2, 2011. See Securities Exchange Act Release No. 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR-NYSEArca-2011-78) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Offering a Market Data Product to Vendors and Subscribers That Combines Three Existing Market Data Feeds as Well as Additional Market Data From the Exchange Into One Integrated Product, the NYSE Arca Integrated Data Feed).

⁴ See Securities Exchange Act Release Nos. 66128 (January 10, 2012), 77 FR 2331 (January 17, 2012) (SR-NYSEArca-2011-96) (establishing access fee and redistribution fee for NYSE Arca Integrated Feed); 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR-NYSEArca-2013-37) (establishing non-display use fees for NYSE Arca Integrated Feed); and 76914 (January 14, 2016), 81 FR 3484 (January 21, 2016) (SR-NYSEArca-2016-03) (amending fees for NYSE Arca Integrated Feed by adopting a multiple data feed fee and discontinuing fees relating to managed non-display).

⁵ The Exchange proposes to exclude the Non-Display Declaration Late Fee and the Multiple Data Feed Fee from the proposed fee increase because unlike the other fees for subscribing to the NYSE Arca Integrated Feed, the Non-Display Declaration Late Fee and the Multiple Data Feed Fee are administrative fees and are uniform across all of the Exchange’s market data products. The Exchange also proposes to exclude the Non-Professional User fees from the proposed fee increase because these fees are applicable to retail investors.

basis, of \$60 and \$20, respectively; a Non-Display Fee of \$10,500, whether the use is for category 1, category 2 or category 3, with a category 3 cap of \$31,500;⁶ a Non-Display Declaration Late Fee of \$1,000; and a Multiple Data Feed Fee of \$200. The Exchange proposes to increase the aforementioned fees on a one-time basis as follows: the Access Fee, from \$3,000/month to \$3,200/month; the Redistribution Fee from \$3,750/month to \$4,000/month; the Professional User Fee (Per User) from \$60/month to \$64/month; and the Non-Display Fee from \$10,500/month to \$11,300/month, whether the use is for category 1, category 2 or category 3, with a category 3 cap of \$33,900/month. The Exchange’s proposal to adjust fees excludes the Non-Professional User fee, the Non-Display Declaration Late fee and the Multiple Data Feed fee.

The NYSE Arca Integrated Feed was established more than a dozen years ago. Between the last price adjustment for the NYSE Arca Integrated Feed in January 2018 and 2023, there was a remarkable increase in the number of messages processed by the Exchange. The following message rate metrics illustrate this increase in throughput:

- *Peak Rate by Millisecond*: up approximately 59%
- *Average Rate per Millisecond*: up approximately 26%
- *Peak Rate per Second*: up approximately 127%
- *Average Rate per Second*: up approximately 47%
- *Peak Total Messages*: up approximately 31%
- *Average Total Messages*: up approximately 47%
- *Average Daily Volume*: up approximately 42%

With this increase in message traffic the Exchange expended significant resources to improve its market data products to meet customer expectations, including continued investment in all aspects of the technology ecosystem (e.g., software, hardware, and network). During the period between 2018 and 2023, advancements in system performance as measured by latency not only accommodated the high message traffic volumes, but stayed well ahead of

⁶ Category 1 Fees apply when a data recipient’s Non-Display Use of real-time market data is on its own behalf as opposed to use on behalf of its clients. Category 2 Fees apply when a data recipient’s Non-Display Use of real-time market data is on behalf of its clients as opposed to use on its own behalf. Category 3 Fees apply when a data recipient’s Non-Display Use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient’s own behalf and/or on behalf of its clients.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

it. The following latency metrics⁷ illustrate the increase in message processing speed, despite the significant message traffic growth:

- *Median*: down approximately 76%
- *Average*: down approximately 84%
- *Max*: down approximately 42%

The Exchange continues to invest heavily in enhancing its technology for the benefit and often at the behest of its customers, and these investments have increased the performance of the NYSE Arca Integrated Feed. Yet the Exchange has not adjusted any of the fees included in this proposal since 2018, to even partially offset the costs of maintaining and enhancing its market data offerings.

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 2018 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.⁸ 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.⁹ About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹⁰ 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.¹¹ 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 prices billed for the selected service contract."¹²

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 proprietary market data 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 Pillar, 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 2018 to December 2023. The Data PPI had a starting value of 106.7 in

January 2018 and an ending value of 115.312 in December 2023, an 8.07% 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 8.07% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase by up to 8.07% for the NYSE Arca Integrated Feed, which reflects an increase covering the entire period since the last adjustment was 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.¹³

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.¹⁴

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and

¹³ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁴ See *supra* discussion of system performance advancements. 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).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4), (5).

⁷ These measurements compare the time difference between events on the NYSE Arca matching engine and the time these events are published on the NYSE Arca Integrated Feed.

⁸ See <https://fred.stlouisfed.org/series/PCU51825182#0>.

⁹ See <https://www.bls.gov/ppi/overview.htm>.

¹⁰ *Id.*

¹¹ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹² See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

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 2018. However, in the years following the last fee increase the Exchange has made significant investments in upgrades to Exchange systems, enhancing the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered.

Between 2018 and 2023, the inflation rate is 3.93% per year, on average, producing a cumulative inflation rate of 21.28%.¹⁷ Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 8.07%. 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, which based on the definition adopted by BLS would include the Exchange's market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over six 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 market data 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.¹⁸ The goal of the enhancements discussed above, among

¹⁷ See <https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1>.

¹⁸ See, e.g., Securities Exchange Act Release No. 99713 (March 12, 2024), 89 FR 19381 (March 18, 2024) (SR-NYSEARCA-2024-22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Arca Aggregated Lite Market Data Feed).

other things, is to provide faster and more consistent market data products, while ensuring quicker processing time. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its market data products.

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 data recipients that choose to subscribe to the NYSE Arca Integrated Feed. Any subscriber that chooses to subscribe to the NYSE Arca Integrated Feed would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Additionally, the fee increase would be applied uniformly to subscribers 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 subscribe to the NYSE Arca Integrated Feed, which would remain available for purchase by all market participants.

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 subscribers of the NYSE Arca Integrated Feed in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to subscribe to the feed 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.

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 the NYSE Arca Integrated Feed. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for NYSE Arca Integrated Feed to recoup the Exchange's investment in maintaining and enhancing its market data products 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 solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁹ of the Act and paragraph (f) thereunder. 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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

¹⁹ 15 U.S.C. 78s(b)(3)(A).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2024-79. 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 10:00 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. 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-NYSEARCA-2024-79, and should be submitted on or before October 7, 2024.

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

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100992; File No. SR-GEMX-2024-33]

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

September 10, 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 August 30, 2024, Nasdaq GEMX, LLC (“GEMX” 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/gemx/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 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-GEMX-2024-05). On April 29, 2024, the Exchange withdrew that filing and submitted SR-GEMX-2024-09. On June 27, 2024, the Exchange withdrew SR-GEMX-2024-09 and submitted SR-GEMX-2024-15. The instant filing replaces SR-GEMX-2024-15, which was withdrawn on August 26, 2024.

Section 6 by 5.5%, 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 5.5%, with the exception that for Remote Hands Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 6, which relate to the Testing Facility. Options 7, Section 6(H) 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 6(H) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to

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. 34-99129 (December 11, 2023), 88 FR 87017 (December 15, 2023) (SR-GEMX-2023-17). 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. 34-100210 (May 22, 2024), 89 FR 46476 (May 29, 2024) (SR-GEMX-2024-11).

⁵ The term “Remote Hands Services” refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning defective equipment to the manufacturer or customer.

²⁰ 17 CFR 200.30-3(a)(12).