Regulatory Notice 24-13

Retrospective Rule Review: Day Trading

FINRA Requests Comment on the Effectiveness and Efficiency of its Requirements Relating to Day Trading

Comment Period Expires: January 28, 2025

Summary

Day trading broadly refers to an overall trading strategy where a customer effects both buy and sell transactions in the same security in the same day to profit from movements in the price of the security. FINRA has had longstanding rules designed to limit the potential losses from day trading for both customers and members, and to ensure the risks of day trading are disclosed to customers. These include special requirements that apply to day trading in margin accounts; account approval requirements for customers that intend to use day-trading strategies; and risk disclosures that members that promote day-trading strategies must provide to customers.

FINRA is conducting a retrospective review of its requirements governing day trading to assess their effectiveness and efficiency. This *Notice* outlines the general retrospective rule review process and seeks comment on all aspects of these requirements, from members, investors and other interested parties. The *Notice* includes questions seeking comment on the public's experiences with the requirements; in addressing the requirements, commenters should not feel limited to these questions.

Questions regarding this *Notice* should be directed to:

- Carrie Jordan, Principal Counsel, Office of General Counsel, at (212) 858-4210 or by email; or
- Dror Kenett, Senior Economist, Regulatory Economics and Market Analysis, at (202) 728-8208 or by email.

Action Requested

FINRA encourages all interested parties to submit comments. Comments must be received by January 28, 2025.

FINRA®

October 29, 2024

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Legal
- Margin Department
- Operations
- Retail
- Risk Management
- Senior Management
- Systems
- Trading

Key Topics

- Account Opening
- Day Trading
- Margin
- Pattern Day Trader
- Risk Disclosure

Referenced Rules & Notices

- FINRA Rule 0160
- FINRA Rule 2130
- FINRA Rule 2270
- FINRA Rule 4110
- FINRA Rule 4210
- FINRA Rule 4511
- FINRA Rule 4512
- Regulatory Notice 24-11
- Regulatory Notice 21-24
- Regulatory Notice 21-13
- Notice to Members 01-26
- Notice to Members 00-62
- Notice to Members 99-32

Comments must be submitted through one of the following methods:

- Online using FINRA's comment form for this *Notice*;
- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

  Jennifer Piorko Mitchell
  Office of the Corporate Secretary
  FINRA
  1700 K Street, NW
  Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment.

Important Note: All comments received in response to this *Notice* will be made available to the public on FINRA's website. In general, FINRA will post comments as they are received.[1]

Background & Discussion

Day trading is a trading strategy where a customer buys and sells the same security in an account in the same day to profit from intra-day movements in the price or value of the security. As discussed further below, FINRA has previously noted certain risks associated with day trading. For example, day trading can be risky and may not be appropriate for customers with limited resources, limited investment or trading experience or low risk tolerance. If done on margin, day trading may involve additional risks that can result in losses beyond a customer's initial investment. Day trading on margin may also expose members to losses due to customers' positions in speculative and volatile securities.

To help address the risks associated with day trading, FINRA rules set forth requirements that must be followed by members that promote day-trading strategies when opening and approving customer[2] accounts. These include making a determination that day trading is appropriate for the customer and delivery to the customer of a disclosure statement discussing the unique risks of day trading. In addition, FINRA rules apply special requirements for day trading in customer margin accounts.

Some customers may be unaware of the applicable day trading requirements, while others have complained to their firms when the requirements were applied to their margin accounts. In addition, some market participants have suggested modernizing the FINRA rule requirements for day trading to better reflect market developments and developments in risk monitoring technology since the requirements were originally implemented. Further, in recent years, FINRA Foundation research has identified changes in investor demographics, preferences and attitudes toward investments, all suggesting that the profile of the investing public has evolved.[3] For example, research has shown that younger investors are joining the market in large numbers, are more likely to use a mobile app for placing trades, and are more comfortable with risky investments. Further, they are more likely to rely on social media as a source of investment information, as opposed to a finance professional.[4]

FINRA believes that it is appropriate, after a reasonable period of time, to look back at its significant rulemakings to determine whether a FINRA rule or rule set is meeting its intended investor protection objectives by reasonably efficient means, taking into consideration changes in technology, business models, investor trends, products and services, and other relevant developments. These retrospective reviews look at the substance and application of a rule or rule set, including any gaps or unintended consequences, as well as FINRA's processes to administer the rules.

Retrospective Reviews

The review process typically consists of an assessment phase and an action phase. During the assessment phase, FINRA will review the efficacy and efficiency of the rule or rule set as currently implemented. To that end, FINRA will seek input from interested parties, including industry members, investors, trade groups and the public. FINRA will also consult, as appropriate, its advisory committees and subject-matter experts inside and outside of the organization.

The subsequent action phase considers whether and how to implement any recommendations arising from the assessment, which could include, among others, changes to the rule or its administration, guidance or, where applicable, technology enhancements. However, not every assessment will result in rule changes; the assessment may conclude that the rule remains relevant and appropriately tailored to meet its objectives. FINRA will separately engage in its usual rulemaking process to propose any amendments to the rules, which may include seeking authority from the FINRA Board of Governors, input from FINRA's advisory committees and an opportunity for comment on specific proposed revisions in a *Regulatory Notice* or rule filing with the Securities and Exchange Commission (SEC), or both. Before becoming effective, a proposed rule change must be approved by the FINRA Board and filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[5]

Current Day Trading Requirements

The following FINRA rules address day trading: FINRA Rules 2130 (Approval Procedures for Day-Trading Accounts), 2270 (Day-Trading Risk Disclosure Statement) and, under Rule 4210 (Margin Requirements), paragraphs (b)(4), (f))(8)(B) and (f)(10)(G)).[6] These provisions generally took their current form through several rulemakings that the SEC approved in 2000[7] and 2001.[8]

Day trading first drew attention in the 1990s with the growing popularity of online trading. NASD expressed concern with unique investor protection concerns arising from the increased popularity of day trading and began development of new rules to clarify and enhance the responsibilities of members that recommend day trading to individuals.[9] In proposing the new rules, NASD noted day trading generally requires a significant amount of capital, a sophisticated understanding of securities markets and trading techniques, and high risk tolerance.[10] NASD further noted that even experienced day traders with in-depth knowledge of the securities markets may suffer severe and unexpected financial losses. Day trading was also the subject of Congressional investigations, culminating in a report by the Senate's Permanent Subcommittee on Investigations.[11] The Senate's report expressed, among other things, concern with evidence suggesting that a majority of day traders lose some or all of their investments with borrowed money that they can ill-afford to lose.[12] At about the same time, the NYSE formed a special subcommittee to recommend potential changes to the margin rules to address the risks associated with day trading in customer accounts.[13]

These efforts resulted in two rule sets addressing day trading. First, the NASD adopted rules that require members that promote day-trading strategies to approve a customer's account for day trading and to deliver to the customer a specified risk disclosure statement.[14] In approving the rule change, the SEC noted that requiring a member "to disclose the risks of day trading to non-institutional customers when the firm promotes a day-trading strategy should help alert individuals who are new to day trading to the risks associated with that strategy."[15] Further, the SEC noted that requiring a member "to determine whether a day-trading strategy is appropriate for a customer should help to assure that individuals who are unable to bear the risks of day trading, or who have investment objectives incompatible with day trading, are not approved for day trading."[16]

Second, the NYSE and NASD adopted[17] special maintenance margin requirements for customers that engage in day trading, including specific minimum equity requirements and buying power limitations for customers that demonstrate a pattern of day trading. These requirements were designed to help ensure that day traders have an appropriate amount of equity for the potential losses that may be incurred from sudden and substantial adverse movements in the intra-day prices of securities popular among day traders or in the markets as a whole.[18] The SEC noted in approving the NYSE and NASD pattern day trading requirements that these are "not designed to prevent day trading, but to reduce the risk of financial losses by Pattern Day Traders and their firms." The SEC found that the requirements were designed "to protect Pattern Day Traders, the firms where those traders have their accounts, and the markets on which they trade."[19]

Since these requirements were implemented, the financial markets have undergone significant changes, including broadened access by retail investors; expansion of the types of products available, some of which are designed for short-term trading; and rapid technological advancements. Other market developments that are relevant for this review, for example, include greater availability of self-directed retail accounts and zero commission trades; the introduction of trading in fractional shares; the shortening of the standard settlement cycle; and improvements in risk management technology. Some market participants have suggested in particular that the pattern day trading requirements need to be modernized to better reflect the current market environment.[20]

The key provisions of the day trading requirements under FINRA rules are summarized below. These are divided into the day-trading account approval and risk disclosure rules (Rules 2130 and 2270), and the pattern day trading requirements under Rule 4210.

Day-Trading Account Approval and Risk Disclosure

Members Promoting a Day-Trading Strategy

The day-trading account approval requirements apply only to members that are promoting a day-trading strategy.[21] Though the term "promoting a day-trading strategy" is not expressly defined under Rule 2130, Supplementary Material .01(a) to Rule 2130 identifies several activities that would be deemed to promote a day-trading strategy, including a member affirmatively endorsing a day-trading strategy, as defined under the rule, through advertising, its website, trading seminars or direct outreach programs. For example, the rule provides that a member generally is deemed to be promoting a day-trading strategy if its retail communications address the benefits of day trading, rapid-fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader. A member also is deemed to be "promoting a day-trading strategy" if it promotes its day-trading services through a third party. The rule provides, moreover, that the fact that many of a member's customers are engaging in a day-trading strategy will be relevant in determining whether a member has promoted itself in this way.

On the other hand, Supplementary Material .01 to Rule 2130 also addresses activities that would not, of themselves, be deemed to be promoting a day-trading strategy:

- promoting efficient execution services or lower execution costs based on multiple trades;
- providing general investment research or advertising the high quality or prompt availability of such general research; and
- having a website that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities.

Day-Trading Account Approval Process

Paragraph (a) of Rule 2130 provides that no member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer,[22] unless, prior to opening the account, the member has furnished to the customer the risk disclosure statement set forth in Rule 2270, as discussed further below, and has either:

- approved the customer's account for a day-trading strategy in accordance with the procedures set forth in paragraph (b) of Rule 2130 and prepared a record setting forth the basis on which the member has approved the customer's account; or
- received from the customer a written agreement that the customer does not intend to use the account for the purpose of engaging in a day-trading strategy, except that the member may not rely on such agreement if the member knows that the customer intends to use the account for the purpose of engaging in a day-trading strategy.[23]

Paragraph (b) of Rule 2130 provides that, in order to approve a customer's account for a day-trading strategy, a member must have reasonable grounds for believing that the day-trading strategy is appropriate for the customer. In making this determination, the member must exercise reasonable diligence to ascertain the essential facts relative to the customer, including:

- investment objectives;
- investment and trading experience and knowledge (*e.g.,* number of years, size, frequency and type of transactions);
- financial situation, including estimated annual income from all sources, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other);
- tax status;
- employment status (name of employer, self-employed or retired);
- marital status and number of dependents; and
- age.

Records

Paragraph (d) of Rule 2130 requires that any record or written statement prepared or obtained by a member pursuant to the rule must be preserved in accordance with Rule 4511, FINRA's general books and records rule.

Review by FINRA's Advertising Regulation Department

Supplementary Material .02 to Rule 2130 provides that a member may submit its retail communications to FINRA's Advertising Regulation Department for review and guidance on whether the content of the retail communications constitutes "promoting a day-trading strategy" for purposes of the rule.

Risk Disclosure Under Rule 2270

Rule 2270 was designed to work in tandem with the day-trading account approval process by requiring a member to disclose the risks of day trading to non-institutional customers when the member promotes a day-trading strategy.[24] As discussed above, this was to help alert individuals who were new to day trading to the risks associated with that strategy.[25] Paragraph (a) of Rule 2270 provides that, with one exception noted below, no member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer[26] unless, prior to opening the account, the member has furnished to each customer, individually, in paper or electronic form, the disclosure statement specified under the rule. In addition, any member that is promoting a day-trading strategy, directly or indirectly, must post such disclosure statement on the member's website in a clear and conspicuous manner. For convenience, the complete text of Rule 2270 with the specified disclosure is reproduced as Attachment A to this *Notice*. In short, the disclosure includes several points, stated more fully in the text reproduced in Attachment A, that a customer should consider before engaging in a day-trading strategy. For example:

- day trading can be extremely risky;
- a customer should be cautious of claims of large profits from day trading;
- day trading requires knowledge of securities markets;
- day trading requires knowledge of a firm's operations;
- day trading will generate substantial commissions, even if the per trade cost is low;
- day trading on margin or short selling may result in losses beyond the customer's initial investment;
- persons providing investment advice for others or managing securities account for others may trigger registration requirements under the Investment Advisers Act, the Securities Exchange Act and state law.

Paragraph (b) under Rule 2270 provides that, in lieu of providing the disclosure statement specified in paragraph (a) of the rule, a member that is promoting a day-trading strategy may provide to the customer, individually, in paper or electronic form, prior to opening the account, and post on its website, an alternative disclosure statement, provided that:

- the alternative disclosure statement must be substantially similar to the disclosure statement specified in paragraph (a) of Rule 2270; and
- the alternative disclosure statement must be filed with FINRA's Advertising Department for review at least ten days prior to use (or such shorter period as the department may allow in particular circumstances) for approval and, if changes are recommended by FINRA, must be withheld from use until any changes specified by FINRA have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, FINRA approval. The member must provide with each filing the anticipated date of first use.

Similar to Supplementary Material .02 to Rule 2130, Rule 2270 contains Supplementary Material providing that a member may submit its retail communications to FINRA's Advertising Regulation Department for review and guidance on whether the content of the retail communications constitutes "promoting a day-trading strategy" for purposes of the rule.

Pattern Day Trading Requirements Under Rule 4210

As discussed above, the pattern day trading requirements were designed to help ensure that day traders have an appropriate amount of equity for the potential losses that may be incurred from sudden and substantial adverse movements in the intra-day prices of securities popular among day traders or in the markets as a whole.[27] The requirements were designed "to protect Pattern Day Traders, the firms where those traders have their accounts, and the markets on which they trade."[28]

Definition of a Pattern Day Trader

For purposes of the pattern day trading requirements, Rule 4210 defines "day trading" as the purchasing and selling or the selling and purchasing of the same security on the same day in a margin account.[29] Broadly, a "pattern day trader" is defined[30] to mean any customer[31] who executes four or more day trades within five business days, in which case the customer becomes subject to the special requirements as set forth under paragraph (f)(8)(B)(iv) of Rule 4210. If the customer's number of day trades is six percent or less of their total trades for a five business day period, the customer will not be considered a pattern day trader and the special requirements of paragraph (f)(8)(B)(iv) will not apply.

Overview of the Special Requirements for Pattern Day Traders

Paragraph (f)(8)(B)(iv)a. of Rule 4210 specifies that the minimum equity required for the accounts of customers deemed to be pattern day traders shall be $25,000.[32] The rule provides that this minimum equity must be deposited in the account before the customer may continue day trading and must be maintained in the customer's account at all times.[33]

In the event that the member at which a customer seeks to open an account or resume day trading in an existing account knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the minimum equity required under paragraph (f)(8)(B)(iv)a. (that is, $25,000) must be deposited in the account prior to commencement of day trading.[34]

Pattern day traders cannot[35] trade in excess of their "day-trading buying power" (a defined term under paragraph (f)(8)(B)(iii) of the rule).[36] In the event a pattern day trader exceeds their day-trading buying power, which creates a special maintenance margin deficiency, the member must take the following actions:

- the account will be margined based on the cost of all the day trades made during the day;
- the customer's day-trading buying power will be limited to the equity in the customer's account at the close of business of the previous day, less the maintenance margin required in paragraph (c)[37] of Rule 4210, multiplied by two for equity securities; and
- "time and tick" (*i.e.*, calculating margin using each trade in the sequence that it is executed, using the highest open position during the day) may not be used.

The rule requires that pattern day traders who fail to meet their special maintenance margin calls as required within five business days from the date the margin deficiency occurs are permitted to execute transactions only on a cash available basis for 90 days or until the special maintenance margin call is met.[38]

Pattern day traders are restricted from using the guaranteed account provision pursuant to paragraph (f)(4) of Rule 4210 for meeting the requirements of paragraph (f)(8)(B).[39] Further, funds deposited into a pattern day trader's account to meet the minimum equity or maintenance margin requirements of paragraph (f)(8)(B) of the rule cannot be withdrawn for a minimum of two business days following the close of business on the day of deposit.[40]

Impact on Net Capital

Paragraph (f)(8)(B)(v) of Rule 4210 provides that in the event a customer does not meet a special margin maintenance call by the fifth business day, then on the sixth business day only, members are required to deduct from net capital the amount of the unmet special margin maintenance call pursuant to the SEC's Net Capital Rule (SEA Rule 15c3-1) and, if applicable, Rule 4110(a).[41]

Security Futures

Paragraph (f)(10) of Rule 4210 addresses customer margin requirements relating to security futures and contains provisions relating to pattern day trading with respect to such products. Subject to specified conditions under the rule, paragraph (f)(10)(B)(i) sets forth the general requirement that minimum initial and maintenance margin levels for each security futures contract, long and short, shall be 20 percent of the current market value of such contract. Paragraph (f)(10)(G)(ii) provides, in part, that day trading of security futures is subject to these minimum requirements. If deemed a pattern day trader, the customer must maintain equity of $25,000. The rule provides that creation of a customer call subjects the account to all the restrictions contained in paragraph (f)(8)(B) of the rule.

Interpretations

FINRA makes available on its website interpretations that have been published over time to clarify the pattern day trading requirements.[42] For example, in 2021 FINRA issued *Regulatory Notice 21-13*[43] announcing the addition, under Rule 4210(f)(8)(B)(ii), of Interpretation /02 (providing an alternative method to calculate the number of day trades when there are multiple purchases and sales of the same security on the same day) and Interpretation /03 (addressing how to terminate a customer's "pattern day trader" classification if the customer no longer wishes to engage in such trading). That same year, FINRA also issued *Regulatory Notice 21-24*,[44] which included, among others, Interpretation /025 under paragraph (b) (stating the minimum equity requirement for a pattern day trader). Recently, as part of the updates to the set of interpretations under Rule 4210, FINRA added new Interpretation /06 under Rule 4210(f)(8)(B)(iii) (relating to counting of option spreads and combinations as day trades).[45] As discussed above, FINRA is seeking comment on any aspect of the interpretations associated with the pattern day trading requirements as listed in note 6 of this *Notice*.

Request for Comment

FINRA seeks responses to the following questions with respect to the day trading requirements:

1. Have the original purposes of and need for the day trading requirements (including the day-trading account approval and risk disclosure requirements, and the pattern day trading requirements) been affected by changes to technology, types of securities available, firms' capabilities for monitoring and assessing intra-day risk, the business environment, or customer behavior? What are the relevant risks that should be addressed by these requirements in the current environment? Are there alternative or additional ways to protect customers that FINRA should otherwise consider? If so, please explain.

With Regard to the Day-Trading Account Approval and Risk Disclosure Requirements

2. How useful are the day-trading account approval and risk disclosure requirements in addressing risks to customers?
3. How effective is the day-trading account approval process in protecting customers from engaging in day trading that may not be considered appropriate for them based on their resources and risk profiles?
4. How effective are the risk disclosure requirements in communicating the potential risks of day trading to prospective customers? What changes, if any, to the disclosure would be appropriate? Why?
5. Are any changes to the scope of members subject to Rule 2130 appropriate? If so, why? Currently, the rule applies to members that promote day-trading strategies. Should the rule apply to all members? If so, why?
6. What products or trading strategies pose risks similar or comparable to day-trading strategies? In what ways are they similar? Should requirements similar to those under Rules 2130 and 2270 be applied to such products and strategies?
7. What are the economic impacts, including costs and benefits, arising from the account opening and risk disclosure day trading requirements? What are the impacts to different market participants (*e.g.*, customers, members and their counterparties) and different markets? To what extent do the costs and benefits have a varying impact on members based on business attributes, such as size or business model?
8. What changes, if any, should FINRA consider for the day trading account approval or risk disclosure requirements? What changes, if any, should FINRA consider in its administration of these rules?

9. Rules 2130 and 2270 apply to "non-institutional customers," which, in addition to natural persons, could include certain entities with assets under $50 million. Should the rules only apply to natural persons? If so, why?

With Regard to the Pattern Day Trading Requirements

10. How useful are the pattern day trading requirements in addressing risks to individual customers and firms?
11. In what ways have firms' capabilities for monitoring and assessing intra-day risk changed? Have these changes led to the use of new methods of identifying higher risk trading activity in real time? If so, how?
12. Have changes in the business and market environments altered the risks that the pattern day trading requirements are intended to address? For example, have developments such as zero commission trading or narrowing bid-offer spreads in certain securities in the equity markets affected the need for the pattern day trading requirements?
13. What has been your firm's experience with applying the pattern day trading requirements (such as counting day trades, managing the customer's experience when the customer is on the threshold of being designated a pattern day trader and cases when customers claim they inadvertently day traded)?
14. In a margin account, a day trade can count toward a customer's pattern day trading designation regardless of whether the trade uses margin. With T+1 settlement, it is possible that day trading-type activity, without using margin, might move to cash accounts. There are no restrictions on paying for a security and selling it the same day in a cash account, and the proceeds would be available to pay for purchases the next day. What changes in the pattern day trading requirements would be warranted if such trading moves to cash accounts?
15. Would it be appropriate to define what counts as a "day" for purposes of the pattern day trading requirements? For example, should a "day" be defined to mean regular trading hours, or should it include extended trading hours? Alternatively, should a "day" be based on the 24-hour day? If so, why?
16. How have active traders adapted to the current pattern day trading requirements? What changes, if any, should be considered in response to these adaptations?
17. How have customers responded to being designated pattern day traders? Have the customer responses generally increased, decreased or stayed the same over the past five years? To what extent have firms received requests from customers to remove the pattern day trader designation? Has the number of these requests generally increased, decreased or stayed the same over the past five years?

18. Are members or other market participants observing growth or decline in the number and activity of pattern day traders?

19. What are the economic impacts, including costs and benefits, arising from the pattern day trading requirements? What are the impacts to different market participants (*e.g.*, customers trading on margin, members and their counterparties) and different markets? To what extent do the costs and benefits have a varying impact on members based on business attributes, such as size or business model?

20. What changes, if any, should FINRA consider for the pattern day trading requirements? For example:

    - Should FINRA modify the definition of "pattern day trader"? If so, how?
    - Should FINRA eliminate or expand the designation of "pattern day trader"? If so, why?
    - Should FINRA change the number of day trades needed before a customer is designated a pattern day trader? If so, what should the number of trades be, and why?
    - Should FINRA consider an alternative method for identifying pattern day trader behavior, such as how day trades are counted? If so, what should that method be?
    - Should FINRA change the $25,000 minimum equity amount? If so, what should the minimum equity amount be, and why? What considerations should be taken into account when thinking about changing the minimum equity amount? For example, should the minimum equity amount be adjusted for inflation? If so, how? What would be the potential benefits from changing the minimum equity amount? What potential risks, or economic impacts, would result from such a change?

In addition to comments responsive to these questions, FINRA invites comment on any other aspects of the day trading requirements that commenters wish to address. FINRA further requests any data or evidence in support of comments. While the purpose of this *Notice* is to obtain input as to whether the current requirements are effective and efficient, FINRA also welcomes specific suggestions as to how the requirements should be changed. As discussed above, FINRA will separately consider during the action phase specific changes to the requirements.

Endnotes

1 Parties should submit in their comments only personally identifiable information, such as phone numbers and addresses, that they wish to make available publicly. FINRA, however, reserves the right to redact, remove or decline to post comments that are inappropriate for publication, such as vulgar, abusive or potentially fraudulent comment letters. FINRA also reserves the right to redact or edit personally identifiable information from comment submissions.

2 As discussed in further detail in this *Notice*, note that under FINRA rules the term "customer" as used with reference to the margin requirements is subject to a different definition than "customer" as used with reference to the day-trading account opening and risk disclosure requirements.

3 *See*, *e.g.*, New FINRA Foundation Research Examines Changing Investor Demographics, Preferences and Attitudes, December 15, 2022; *see also* FINRA Foundation-CFA Institute Research Focuses on Gen Z Investors, May 24, 2023.

4 *Id*.

5 *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.

6 The day trading requirements under Rule 4210 are specific to margin accounts and for convenience are referred to in this *Notice* as the "pattern day trading requirements." The review includes the associated interpretations relating to the pattern day trading requirements that FINRA maintains on its website. These associated interpretations include: Interpretations /023 and /025 under Rule 4210(b)(4); Interpretation /03 under Rule 4210(f)(5); Interpretations /01, /02 and /03 under Rule 4210(f)(8)(B)(ii); Interpretations /01, /02, /04, /05 and /06 under Rule 4210(f)(8)(B)(iii); Interpretation /01 under Rule 4210(f)(8)(B)(iv)a.; Interpretation /01 under Rule 4210(f)(8)(B)(iv)d.; and Interpretation /01 under Rule 4210(f)(8)(B)(iv)f. FINRA recently updated the set of interpretations under Rule 4210. *See Regulatory Notice 24-11* (August 9, 2024) (FINRA Announces Publication of Updated Interpretations of FINRA's Margin Rule With Guide To the Updates). With regard to the interpretations relating to the pattern day trading requirements, these updates include minor conforming edits to Interpretations /02 and /03 under Rule 4210(f)(8)B)(ii), streamlining and clarification of Interpretations /02, /04 and /05 under Rule 4210(f)(8)(B)(iii), and the addition of new Interpretation /06 under Rule 4210(f)(8)(B)(iii).

7 In 2000, the SEC approved the rulemakings proposed by the National Association of Securities Dealers (NASD), FINRA's predecessor, that established the day-trading account approval and day-trading risk disclosure requirements. *See* Securities Exchange Act Release No. 43021 (July 10, 2000), 65 FR 44082 (July 17, 2000) (Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the Opening of Day-Trading Accounts; File No. SR-NASD-99-41) ("Day-Trading Account Opening Approval Order"). *See also* Notice to Members *00-62* (September 2000) (SEC Approves Day-Trading Rules).

8 In 2001, the SEC jointly approved rule amendments by the New York Stock Exchange (NYSE) and then-NASD to establish margin requirements for day trading in customer accounts. *See* Securities Exchange Act Release No. 44009 (February 27, 2001), 66 FR 13608 (March 6, 2001) (New York Stock Exchange, Inc., and National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Changes Relating to Margin Requirements for Day Trading; Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 to Each Proposed Rule Change; File Nos. SR-NYSE-99-47 and SR-NASD-00-03) (the "Pattern Day Trading Approval Order"). *See also Notice to Members 01-26* (March 27, 2001) (SEC Approves Proposed Rule Change Relating to Day-Trading Margin Requirements).

9 *See Special NASD Notice to Members 99-32* (April 15, 1999) (NASD Regulation Requests Comment on Proposed Rules Regarding Approval Procedures for Day-Trading Accounts, Including Appropriateness Determinations, and Disclosure of Risks of Day-Trading Activities).

10 *See Notice to Members 99-32*. *See also* Securities Exchange Act Release No. 41875 (September 14, 1999), 64 FR 51165 (September 21, 1999) (Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Opening of Day-Trading Accounts).

11 *See* United States Senate, Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, Day Trading: Case Studies and Conclusions, July 27, 2000. 106th Congress, 2d Session, Report 106-364 (the "Permanent Subcommittee Report").

12 *See* Permanent Subcommittee Report, at 4.

13 *See* Securities Exchange Act Release No. 42343 (January 14, 2000), 65 FR 4005 (January 25, 2000) (Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend NYSE Rule 431 (Margin Requirements)); File No. SR-NYSE-99-47) (the "NYSE Pattern Day Trading Proposal").

14 *See* Day-Trading Account Opening Approval Order.

15 *See* Day-Trading Account Opening Approval Order, 65 FR 44081, at 44087.

16 *Id*.

17 *See* Pattern Day Trading Approval Order. *See also* NYSE Pattern Day Trading Proposal, 65 FR 4005, at 4006; Securities Exchange Act Release No. 42418 (February 11, 2000), 65 FR 8461 (February 18, 2000) (Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend NASD Rule 2520 Relating to Margin Requirements for Day-Trading Customers; File No. SR-NASD-00-03) (the "former NASD Pattern Day Trading Proposal").

18 *See* Pattern Day Trading Approval Order, 66 FR 13608, at 13617.

19 *Id*.

20 For example, industry groups such as the Securities Industry and Financial Markets Association and Security Traders Association, and exchanges including BOX Options Market LLC, Cboe Global Markets, Members Exchange, Miami International Holdings, Inc. and Nasdaq, Inc. have suggested that the requirements should be modernized to account for market developments.

21 The term "day-trading strategy" is defined under

Rule 2130 to mean an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities. *See* Rule 2130(e)(1). Note that, in contrast to the pattern day trading requirements under Rule 4210, day trading for purposes of Rule 2130 is accordingly not limited to activity in the margin account.

22 Rule 0160(b)(4) provides that the term "customer" shall not include a broker or dealer. Rules 2130 and 2270 apply with reference to "non-institutional customers," which is defined under Rule 2130(e)(2) to mean a customer that does not qualify as an "institutional account" under Rule 4512(c). Rule 4512(c) in turn defines the term "institutional account" to mean: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

23 With regard to such written agreements, paragraph (c) of Rule 2130 further provides that if a member that is promoting a day-trading strategy opens an account for a non-institutional customer in reliance on the written agreement from the customer and, following the opening of the account, knows that the customer is using the account for a day-trading strategy, then the member is required to approve the customer's account for a day-trading strategy in accordance with the rule's approval process as soon as practicable, but in no event later than ten days following the date that such member knows that the customer is using the account for such a strategy.

24 *See* Day-Trading Account Opening Approval Order, 65 FR 44082, at 44085.

25 *Id*.

26 Rule 2270 applies the terms "non-institutional customer," "day-trading strategy" and "promoting a day-trading strategy" as used under Rule 2130.

27 *See* Pattern Day Trading Approval Order, 66 FR 13608, at 13617.

28 *Id*.

29 Exceptions are for (a) a "long" security position held overnight and sold the next day prior to any new purchase of the same security, or (b) a "short" security position held overnight and purchased the next day prior to any new sale of the same security. *See* Rule 4210(f)(8)(B)(i). As discussed earlier in this Notice, the pattern day trading requirements apply to margin accounts.

30 *See* Rule 4210(f)(8)(B)(ii).

31 *See* note 2. The applicable definition of "customer" for purposes of Rule 4210 is set forth in paragraph (a)(3) of the rule. Specifically, the term "customer" means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. The term includes any person for whom securities are held or carried, and to or for whom a member extends, arranges or maintains any credit. The term does not include the following: (A) a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member or its customers, or (B) an "exempted borrower" as defined by Regulation T of the Board of Governors of the

Federal Reserve System ("Regulation T"), except for the proprietary account of a broker-dealer carried by a member pursuant to paragraph (e)(6) of Rule 4210. Regulation T defines an "exempted borrower" to include a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who: (1) maintains at least 1,000 active accounts on an annual basis for persons other than brokers, dealers and persons associated with a broker or dealer; (2) earns at least $10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers and persons associated with a broker or dealer; or (3) earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, dealers and persons associated with a broker or dealer. Paragraph (e)(6) of Rule 4210 addresses requirements for carrying the proprietary account of another broker-dealer.

32 *See* Rule 4210(f)(8)(B)(iv)a.

33 Paragraph (b) of Rule 4210 sets forth the rule's initial margin requirements for customer's account, and limits when withdrawal of cash or securities may be made from the account. Paragraph (b)(4) makes clear that pattern day traders are subject to the $25,000 minimum equity requirement rather than the $2,000 specified for customers under that paragraph. Further, the rule provides in part that withdrawals of cash and securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with Regulation T of the Federal Reserve Board, and the SEC's and the Commodity Futures Trading Commission's margin rules for security futures, and after such withdrawal the equity in the account is at least the greater of $25,000 in the case of a "pattern day trader" (rather than the $2,000 requirement) or an amount sufficient to meet the maintenance margin requirements of the rule.

34 *See* Rule 4210(f)(8)(B)(iv)b.

35 *See* Rule 4210(f)(8)(B)(iv)c.

36 Under paragraph (f)(8)(B)(iii) of the rule, "day-trading buying power" means the equity in a customer's account at the close of business of the previous day, less any maintenance margin requirement as prescribed in paragraph (c) of Rule 4210, multiplied by four for equity securities. This paragraph contains several additional provisions with regard to day-trading buying power:

- The day-trading buying power for non-equity securities may be computed using the applicable special maintenance margin requirements pursuant to other provisions of Rule 4210. (For example, *see* the non-equity securities provisions under Rule 4210(e)(2)(C).)
- Whenever day trading occurs in a customer's margin account the special maintenance margin required, based on the cost of all the day trades made during the day, shall be 25 percent for margin eligible equity securities, and 100 percent for non-margin eligible equity securities. For non-equity securities, the special maintenance margin shall be as required pursuant to the other provisions of Rule 4210. Alternatively, when two or more day trades occur on the same day in the same customer's account, the margin required may be computed utilizing the highest (dollar amount) open position during

that day. To utilize the highest open position computation method, a record showing the "time and tick" of each trade must be maintained to document the sequence in which each day trade was completed.

- When the equity in a customer's account, after giving consideration to the other provisions of Rule 4210, is not sufficient to meet the day trading requirements of paragraph (f)(8)(B)(iii), additional cash or securities must be received into the account to meet any deficiency within five business days of the trade date.

37 Paragraph (c) of Rule 4210 sets forth the rule's maintenance margin requirements for customer accounts, subject to exceptions as further specified in the rule.

38 *See* Rule 4210(f)(8)(B)(iv)d.

39 *See* Rule 4210(f)(8)(B)(iv)e. Broadly, paragraph (f)(4) of Rule 4210 permits an account guaranteed by another account to be consolidated with that other account, for purposes of margin, subject to specified conditions under the rule.

40 *See* Rule 4210(f)(8)(B)(iv)f.

41 Rule 4110(a) is a component of FINRA's capital compliance rules.

42 *See* note 6 above.

43 *See Regulatory Notice 21-13* (March 24, 2021) (FINRA Announces Updates to the Interpretations of FINRA's Margin Rule for Day Trading).

44 *See Regulatory Notice 21-24* (July 6, 2021) (FINRA Announces Updates to the Interpretations of FINRA's Margin Rule Regarding Minimum Equity).

45 As discussed in note 6, FINRA also made minor conforming edits or otherwise streamlined and clarified certain of the other interpretations relating to the pattern day trading requirements.