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January 28, 2025

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

Re: **Regulatory Notice 24-13**

Dear Ms. Piorko Mitchell,

tastytrade, Inc. ("tastytrade" or the "Firm") appreciates the opportunity to provide input on FINRA's request for comment in FINRA Regulatory Notice 24-13 regarding the effectiveness and efficiency of the requirements for day trading. We wish to comment specifically on the pattern day trader ("PDT") requirements set forth in FINRA Rule 4210 ("PDT requirements"). For the reasons described below, including, but not limited to, the evolution of online trading since 2001, technological advancements in execution capabilities and risk monitoring, educational initiatives, and unnecessary costs arising from the existing PDT requirements, we recommend that FINRA eliminate the PDT requirements. If FINRA determines that the maintenance of the PDT requirements is necessary despite the industry developments obviating the need for them, we recommend that FINRA modify the rule to address the concerns highlighted below.

As a brokerage firm focused on the self-directed retail trading experience, these rules have an immense impact on our customers. Many of our clients use the protective and income enhancing benefits of options in their portfolios, and their financial well-being is adversely impacted by these rules. Our founders, executive team, and dedicated representatives have worked tirelessly for over two decades, across multiple firms, helping customers understand these rules. Amid customer confusion, we constantly articulate that these rules are not firm imposed but rather a construct of our regulatory system.

First, consider changes that have occurred over the two decades the rule has been in existence. When this rule originated in 2001, the landscape for self-directed investors was completely different, with high costs and trading technology that was in its infancy. Looking at some of the major players in today's market, this was only two years after the founding of thinkorswim (now owned by Charles Schwab), for which much of our management team is responsible. This was also 12 years before the origins of Robinhood and 16 years before the launch of tastytrade's retail trading platforms. Investing in the top S&P 500 firms in 2001 involved buying shares of firms like General Electric, Intel, and Exxon Mobil. Tesla and Meta (Facebook) would be founded in the following 3 years.

Retail customers trading online in 2001 were logging into Windows Millenium or XP machines. They connected to the internet and trading software via dial-up at speeds of around 56kbps. The first iPhone would launch six years later, and the first iPad nine years later. Today, customers connect to our trading platforms from 16th generation iPhones, 10th generation iPads, and receive trade alerts to their Apple watches. Trading is available on myriads of Android, Windows, and Mac devices and on both desktop and browser-based trading platforms. Internet speeds are upwards of 3,000 times faster than what was available in 2001.

In short, this is one area where financial regulation should adapt to industry and technological advancements. While these rules made sense in 2001, they are archaic in 2025 given the evolution of online trading, technological advances, and educational initiatives over the last 20 years. We are grateful that FINRA is considering changes to the PDT requirements.

Retail investors today have seen their experience enhanced in every way over the years, allowing more American households to participate in our markets. The sophistication of clients has increased significantly, due to the educational efforts of the industry. There is also a larger variety of financial products available, and many investors no longer simply "buy and hold" stocks. Customers access equity and options quotes on seamless platforms, with live ticking data, up-to-the-minute news, and real-time charting access. In addition to the technological advances, there are some inherent market dynamics from which retail traders and investors benefit. Major stocks and ETFs consistently offer penny wide bid/ask differentials through normal trading hours, preventing slippage, as spreads have contracted drastically over the past few decades. This market improvement has permeated into the options world, meaning retail traders experiencing penny wide spreads on liquid products is becoming the norm. The increased liquidity, and depth of book for equities and options in liquid symbols, means that customers typically receive or pay at or better than the prevailing bid/ask price. Retail investors trading smaller sizes benefit from these parameters of our market and almost always receive executions that meet or exceed their expectations.

When the PDT requirements were first implemented, customers trading in and out of positions not only incurred the costs associated with wide markets but also costs due to high commissions. Trading shares of stock was extremely expensive, but now, most clients are not charged commissions on equity trades. Ten years ago, retail client participation in options markets was extremely low, primarily because a customer could pay $26 to trade in and out of a one option contract spread (buying one option while simultaneously selling an option, in a defined risk strategy). This would include a $10 ticket charge with $1.50 per contract commission, to both open and close a trade. Today that same trade, in and out, costs tastytrade customers $2 in commissions. We charge $1 per contract to open trades; we do not charge customers commissions for closing orders as we believe this better empowers customers to manage their risk. Given the high transaction costs at the time the PDT requirements were implemented, the PDT requirements, though inadvertent, also protected retail clients from churning, but as noted above, commissions are now significantly lower (and in many cases zero). The advances in market efficiencies and cost reductions have benefited the retail customer over the last two decades, while antiquated regulation continues to hinder them.

At the time the PDT requirements were implemented, there was an incredible rally in tech stocks, which led to an increased interest in trading, often by people with smaller accounts who were taking outsize risks. Fortunately, front end technology available to customers has advanced

tremendously over the past 23 years - the same is true of risk monitoring software. The most impactful advancement is the ability to monitor all client risks in real time. This did not exist in the same form in 2001, and the PDT requirements were intended primarily to limit unknown risks for clearing firms.

The PDT requirements remain in effect, even though the original concerns leading to their implementation are now effectively managed through advanced risk monitoring systems. In 2001, the PDT requirements provided additional protection to the integrity of the markets given the lack of technology to monitor these positions in real time. However, we can now monitor client portfolios in real time. Our risk and margin teams are constantly monitoring customer positions, buying power and associated risk. We protect ourselves, the client, and the clearing firm through defined risk parameters. Any exceptions to those parameters are flagged, and our risk and margin teams can take immediate action as needed. The tastytrade platforms present existing, real-time position monitoring, buying power and account values so customers know their allocated capital as well as their available funds to trade. Clients can see their real time risk and use our software to simulate “what if” scenarios to understand risk under many different scenarios.

Unfortunately, the presence of this rule in a changing market is, in many situations, harming customers’ ability to manage risk. We are now in an environment where investors may refrain from taking profits, or mitigating losses, due to fear of incurring a trade that may penalize them under the current PDT standards. This is counterintuitive to cultivating an atmosphere for customers to manage their trades and reduce their own risk. The very basics of risk management and reasons for investing are disincentivized in many situations for fear of accumulating too many round trips under the rule in its current form. Given the improvements in technology, the ability to monitor risk in real time and the capability that brokerage and clearing firms have for constant oversight of the risk being taken by clients, the PDT requirements do not add value to risk monitoring, but rather, create more confusion and negative incentives for customers.

The PDT requirements also risk alienating customers, who in 2025 have many more choices in what and where to invest and trade than they had in 2001. Brokerage firms, including tastytrade, provide access to futures and futures options markets, as well as cryptocurrency markets, all on one platform (to customers who qualify). Investors who become exasperated by the FINRA rule, can simply shift their focus to futures and futures options, fixed income, commodities and currencies, as well as with some firms, event contracts. Most of these markets are not limited by the same requirements. In addition, as retail traders continue to take advantage of the free and accessible education offered by tastytrade and others, clients are opting for non-PDT products more frequently. These products often offer comparable market access to equity indices, commodities, and currencies. Customers who learn the products and shift their strategies to those new markets may never come back to equity securities and securities options, frustrated and limited by the rules that govern them. This is fundamentally unfair to retail customers, who feel as though the market discriminates against them as they are not seen as wealthy or intelligent enough to have the access that others are granted.

The current PDT monetary threshold of $25,000 is arbitrary and unnecessary given the risk controls available today. In addition, keeping the threshold artificially high results in a denial of access to many would-be market participants and younger generations seeking to capitalize on

the free markets and advance their financial freedom.[1] This threshold can also result in a misallocation of resources, causing investors to over-allocate capital to their trading accounts. Keeping this requirement at $25,000 may incentivize investors to siphon more of their net worth into their margin trading account and away from tax benefited, longer term 401(k) or IRA accounts. Lowering, or removing this threshold, will remove these impediments customers face today as a result of the PDT requirements.

Further, because customers are given the opportunity to request a reset of their account only one time following a PDT flag, customers are driven to move firms to give them an additional opportunity to "reset" their account. This makes this provision of the PDT requirements ineffective, at best. Consider the comparison to a state implementing a rule requiring revocation of a license following a minor traffic violation, but the individual could move to another state and obtain a new license. The individual is not ultimately prevented from driving if they are willing to move (and have the means to do so). The imposition of these limitations for PDT is arbitrary, costly, and does not mitigate risks to the customer or firm.

The movement of accounts triggers costs to both firms and customers. For example, customers are typically assessed a $75 fee to transfer an account to another firm.[2] In addition, account transfers can take several days to complete. This also does not consider the time and resources necessary for both customers and firms to complete and process new account forms (and any related closing account requirements). Further, customers that cannot or will not satisfy the $25,000 minimum equity requirement lose the opportunity to maintain accounts at their firm of choice.

For these reasons, we recommend the elimination of the $25,000 minimum equity requirement for customers designated as PDTs. While we do not believe a monetary threshold is necessary for PDTs, if FINRA determines to maintain a monetary threshold for investors, we recommend that FINRA bring this dollar amount to $2,000 to align with the requirement in Rule 4210(b). This would eliminate unnecessary costs to both customers and firms (tied to PDT firm movements) and allow investors to better manage risk and invest with a smaller portion of their overall net worth, providing more financial flexibility and freedom. Again, we are thankful for the opportunity to comment on possible changes to the PDT requirements. We sincerely hope FINRA will consider our arguments as to why these rules are no longer necessary or appropriate.

FINRA also requested comment on specific questions regarding the PDT requirements,[3] below are our answers, consistent with our message above:

10. ***How useful are the pattern day trading requirements in addressing risks to individual customers and firms?***

    We do not believe that the PDT requirements properly address the risks or needs of retail investors. Instead, they limit the ability to mitigate and manage risk by causing an

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[1] For example, most Gen Z customers (the latest generation joining the workforce) have not had the time (or resources) to build up capital to meet this threshold. Based on tastytrade customer account data in December 2024, prior generations (Gen Y/Millennials) are twice as likely to meet the $25,000 level, while baby boom generation customers are about five times more likely to meet that level in their trading account.
[2] This fee amount ranges by firm.
[3] This section provides additional feedback on FINRA's Questions 10-20. This letter also generally addresses the feedback sought in Question 1.

investor to think twice before taking profits in a winning trade or capping losses in a position moving against them. It is by far the largest source of client frustration and contributes to their perception of an unfair and discriminatory marketplace.

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?***

    tastytrade employs a real-time buying power and risk management system. At order entry, buying power is calculated for existing positions and the desired trade. If the account has available buying power (enough margin excess), the new trade will be routed (if all other pre-trade requirements are satisfied). If buying power is insufficient for the new trade, it will be rejected. Additionally, tastytrade continuously monitors buying power in real-time for all accounts. Accounts with negative buying power due to adverse market movements are reviewed and clients are contacted/positions are reduced (if necessary). These systems update constantly throughout the day enabling real-time action from our team. The technology and methodologies employed today for risk management are far beyond anything imaginable in 2001.

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?***

    Historically, the PDT requirements were designed to protect investors from "overtrading" in wide markets with excessive slippage and high commissions. This highlights the antiquity of the rule. As discussed above, on the contrary, the current market environment greatly empowers investors to trade with minimal slippage and record low commissions.

    The industry has also seen an exponential growth in trading volumes, of which retail continues to participate increasingly. In 2001, an average of 722 million shares traded per day, compared to 11.1 billion in 2024. For options contracts, the OCC reports 3.1 million average daily contracts in 2001, compared to 48.5 million last year.[4] This increase in volume led to enhanced liquidity that retail investors experience today in the form of tight spreads and larger depth of book.

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)?***

    Customers are often confused and exasperated by the PDT requirements, especially if it is their first time encountering the situation. Customers often wrongly assume the PDT requirements are a firm policy and not an industry regulation.

    Nuanced customers who are familiar with futures products have, and will continue to, migrate to futures and futures options trading instead of ETF and single stock shares and

[4] https://www.theocc.com/market-data/market-data-reports/volume-and-open-interest/historical-volume-statistics

options. In essence, the rule is causing business to leave the securities industry as investors seek financial freedom from regulatory restraints imposed by the PDT requirements.

Customers may also transfer from one firm to another to relieve themselves of a PDT flag. Thus, customers do not choose their firm of choice but rather the firm where they do not have a current PDT flag. This limits free-market competition and the chance for customers to exercise their own discretion when choosing a financial institution with which to do business.

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?***

    No changes are needed. Changing the rules to further limit other account types is unnecessary as it will continue to limit customers' choice when it comes to both trading strategies and account types. Customers have the option to choose whether to establish and trade a cash account or margin account.[5]

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?***

    Given the shifts of the industry to overnight trading via ATS and the anticipated expansion of NYSE ARCA to 24/5 trading, it makes sense to expand the "day" definition to 24 hours and clearly define a start and end point for customers and firms.

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?***

    As mentioned, the futures industry has shifted in the last two decades, continually offering products that are tailored for smaller retail customers. Customers shift capital to futures and futures options, as well as cryptocurrency.

    For customers not looking to shift product types, they sit at the mercy of the PDT requirements, impacting their ability to manage winning trades or mitigate risk in losing positions. As noted, this causes far more harm than good to the investing public.

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***

[5] The Firm notes that cash accounts come with additional limitations regarding options strategy selection, in addition to the lack of margin capability.

pattern day trader designation? Has the number of these requests generally increased, decreased or stayed the same over the past five years?

See our response to Question 13. Our trade desk is constantly taking calls, live chats and emails to help explain the PDT requirements to customers and assist them in understanding that the requirements are not the result of a tastytrade imposed policy but are regulatory requirements. In meetings with FINRA staff, we have been told that this is the second largest source of inquiries to FINRA staff as retail clients are very frustrated with the PDT requirements.

The addition of more options expirations and the resulting natural shift to shorter dated options has resulted in more inquiries regarding PDT requirements, again taking choice away from the smaller investor and giving the impression of unequal access to our markets.

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

We note a higher concentration of cash accounts with lower balances as compared to margin accounts. We also see our more active trading customers migrating to futures and futures options trading, in part due to the lower restrictions available under CFTC and NFA rules.

Higher net worth customers are far more likely to be flagged as pattern day traders, though they are not typically limited due to higher account equity (exceeding $25,000). Lower net worth customers were less likely to continue trading after being notified of a PDT flag.

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?

Our trade desk spends a significant amount of time explaining the PDT requirements to customers. This is precious time that could be used to otherwise assist customers. For the customer, this is time wasted that could be better spent working towards their financial goals. In addition, customers typically incur costs if they move accounts from one firm to another to gain a fresh start within the confines of FINRA Rule 4210.

Customers who receive a PDT call often feel burned by it, and it acts as a deterrent for future activity (potentially impacting the customer's efforts to mitigate risk). As discussed, we feel this impacts retail investor's abilities for sound trade management.

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

- ***Should FINRA eliminate or expand the designation of "pattern day trader"? If so, why?***

For the reasons explained above, we believe the designation of a "pattern day trader" and the related provisions in FINRA Rule 4210 should be eliminated.

- ***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?***

  As noted above, the $25,000 minimum equity amount should be eliminated. However, if FINRA determines to keep a minimum equity amount associated with the PDT requirements, it should be drastically lowered to $2,000 to address the inefficiencies and inequities resulting from the existing requirement. This would make it consistent with Rule 4210's minimum equity requirement for initial margin and level the playing field for retail investors.

Again, we are thankful for the opportunity to comment on possible changes to the PDT requirements. We sincerely hope FINRA will consider our arguments that the PDT requirements in FINRA Rule 4210 no longer serve a regulatory purpose given, among other things, the technological advances and evolution of online trading since 2001.

Sincerely,

Scott Sheridan
Chief Executive Officer

JJ Kinahan
President