January 28, 2025

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

RE: Reg Notice 24-13 Requests Comment on the Effectiveness and Efficiency of its Requirements Relating to Day Trading

Dear Ms. Mitchell:

Apex Clearing Corporation ("Apex") has reviewed FINRA's request noted above and would like to make recommendations and offer guidance on how to create a level playing field for all market participants while simultaneously streamlining an onerous process that has outlived its usefulness regarding customer protection. Apex has outlined responses to some of the relevant questions below:

Question 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.

The original intention of the policy was clearly to protect smaller investors from extreme volatility and speculation resulting from both easy online access to the markets, as well as the volatility observed during the dot.com boom.   This environment created risk for firms, as well as end customers, given the lack of technology to gauge intraday risk, as well as an uninformed investor base. Also, when these rules were created, the risk of unnecessarily high trading commissions was also a factor.

Today, firms have far more efficient technology that is real time and can be acted upon immediately. Also, member firms employ associates that have "grown up" in this business with day trading and are far more aware of the risks associated with and have internal controls to address individuals who exceed given buying power limits.

Protecting the customer is paramount. It's why we are here. Allowing customers to extend themselves beyond the normal parameters for overnight positions is the relevant risk simply because it requires customers to make sell decisions based on regulations, not technical or fundamental analysis. Customers have become accustomed to this freedom to leverage. Consideration should be given to lowering the multiples for intraday Day trade buying power calculations, as well as removing the Patterned day trader ("PDT") designation entirely, as well as the "trade count". Allowing for two times the lower of house excess or Special Memorandum Account ("SMA"), or four times the lower of house excess or SMA (time and tick), or somewhere in between is a suggestion.

Question 2

How useful are the day-trading account approval and risk disclosure requirements in addressing risks to customers?

Both large and small dollar traders are now aware of the risks of active trading, and while those warnings should remain, their effectiveness depend on the reader (customer) and his/her willingness to understand and take seriously the warnings given to them.

Question 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?

No response.

Question 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?

No response.

Question 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?

Most firms announced zero commission trading in recent years, and this is an implicit call for active trading and should be subject to the policy. If a DTBP figure is displayed, a firm should be subject to policy. If they advertise speed and efficient trade execution, they call for active trading, as these concepts aren't important to buy and hold investors.

Question 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?

Zero days to expiration options. This requires customers to mitigate risk by the end of day. The emergence of this product creates even more opportunities for customers to hit their trade count and/or get hit with a day trade violation. Some relief here would be fair to all parties.

Question 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?

No response.

Question 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?

No response.

Question 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 people? If so, why?

No response.

Question 10

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

In the current market environment, this set of rules adds a unique, albeit unintentional, risk to both client and firm. The low threshold to becoming a PDT is a risk as it puts otherwise inactive traders who uncharacteristically traded actively for a short time in the position of being required to raise more equity to get to $25,000 threshold or holding a position overnight when they do not wish to, to avoid account closure or restriction. This rule doesn't address risks in current day trading and creates unnecessary ones.

Question 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?

Advancements in technology have allowed firms to monitor open exposure on an intraday basis far more efficiently through computerized algorithms, stress testing, etc.; however, intraday risk management is a grey area when a firm and FINRA are encouraging the risk taking with extremely generous intraday DTBP. Pulling back on allowable intraday DTBP would seem more sensible from a risk perspective versus creating even more technology to monitor the intraday use of an account's surplus, or to perform trade counts.

Question 12

Have changes in the business and market environment 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?

The rules have become somewhat obsolete as many end customers find themselves in a position where they are pattern, under 25k equity and have a legitimate reason to sell a position they bought that day. Requiring them to hold to avoid account closure or trade cancellation/restriction is counterintuitive to FINRA's "protect the customer" mandate.

Notwithstanding market volatility, zero commission trading and narrowing of spreads has allowed for the quicker realization of profits and/or losses, accompanied by the need to get out of a position rapidly. This has led to an increase in trading.

Currently, the low trade count thresholds for becoming "pattern" are too punitive based on technology changes and product evolution. Those who may not be a "rapid fire active trader" may find themselves stuck in this position. The relatively high $25,000 minimum may drive small investors to close accounts.

Current policy also, directly or indirectly, led to other product offerings such as Limited Margin as the call for permissible active day trading began extending to IRA accounts as Customers lost their ability to trade actively on margin, as well as cash IRA accounts due to Good Faith rules. It allowed them to trade their own cash, settled or unsettled, without a "trade count", which allows end customer to trade unsettled funds in cash far less restrictively than a straight margin account performing the same actions.

Customers have even requested oddball tactics such as canceling the round-trip trades to cash to incur a free ride as it won't affect their margin day trade count and create a PDT designation or create a Day trade call.

Question 13

What has 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)?

Given the answer to question 12, the conversations tend to be difficult, specifically where end customers do not feel they are a "day trader", although they meet the definition. While consideration was given to extending trade counts, we feel this is a non-starter as it would only add to the complexity of an already complex set of regulations.

Question 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?

The good faith rule somewhat limits the ability to day trade in cash accounts as it limits the use of unsettled funds, thereby limiting the "trade count". Currently, even if not using margin intraday, day trades in a margin account do not have the good faith rule to worry about, only the trade count.

Margin customers should not have a day trade count against them using their own funds, whether settled or unsettled, to day trade. This rule makes it more restrictive, regarding the number of day trades placed, to trade with your own cash in a margin account than it does in a cash account. Removing the trade count rids us of this issue. Theoretically, a customer can day trade five days in a row without incurring a penalty in cash if using their own settled cash, on margin they would be PDT.

Question 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?

Yes, a strict definition of what constitutes a business day will be necessary as it removes any possible doubt for the definition of "day trade" A 24-hour day is recommended to capture after-hours trades as well as premarket trades. Apex currently uses a 7PM to 7PM model.

Question 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?

True active day traders who have committed to the strategy and understand all risks are not a concern as they are usually far more capitalized and need not worry about minimum equity figures, so no adaptation is necessary. While changes should be made, it isn't for this reason. Only smaller traders needed to adapt to PDT rules.

Question 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?

Responses have increased given easy access to markets and so many new entrants into the arena during the COVID era. When a customer responds, it is to ask why they are a PDT and how to have it removed. Actual day traders are fully aware that they are PDT and will never question the designation. Also, many believe this is a restriction and NOT a designation, which causes some confusion. Requests to remove the PDT designation have increased since the allowance was made to do so.

Question 18

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

Observations of trends over the past years show clear growth.

Question 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?

Although difficult to quantify, there is a cost to both firms, as well as the industry, when customers "broker hop" to have a clean slate at another firm after they have exhausted their trade count and one PDT lift that has been allotted. customers will remove cash and open an account at another firm, rather than ACAT, to avoid having a PDT designation following them. The cost, and risk, especially to smaller firms that are not as well capitalized, is a burden.

Question 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?***

  Consideration should be given to the removal of the designation altogether. See the response to the next question.

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

  The elimination of this rule/designation would allow smaller investors a more level playing field as there would be no scenario where a customer is handcuffed solely due to their equity/wealth. In tandem with the lowering of intraday DTBP multiples, all customers play by the same rules and will minimize the instances where they find themselves in a large intraday/overnight call or risk using the fourth trade.

- ***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?***

  Changing the number of day trade is not a consideration, as this only adds unnecessary complexity and does not address the real problem of the designation itself.

- ***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?***

  See previous answer.

- ***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?

Changing the minimum equity amount does little to address the challenges the current regulations create if done as a standalone solution. This solution would also require similar changes to intraday buying power as discussed above or it would only serve to raise the risk to firms and the same processes would remain in place. It also does not resolve the trade count issue. The minimum equity can be the same $2,000 for margin account for all participants. Of course, this only works in conjunction with other suggestions made regarding intraday DTBP.

In addition to comments responsive to these questions, FINRA invites comments 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.

The main issue with the current day trading policy is the PDT designation itself, as well as the exorbitant intraday allowances for day trading. When you allow a customer to utilize this four times excess, it's an excessive extension of credit that puts them and the firm at risk and creates unnatural scenarios where customers must sell. By lowering the DTBP amount, you lower the risk of large overnight exchange calls if a customer decides to hold. Conversely, the PDT designation may require the opposite, an end customer being forced to hold to avoid the PDT designation (by definition, these customers will have under 25k which amplifies overnight risk).

Apex suggests a simplification of the rules that would eliminate the onerous processes of trade counts, PDT designations, and minimum equity figures. It also removes the temptation of customers to "count" their day trades on margin as well as their good faith violations (especially that we are now T + 1) in cash and request to move trades around accordingly to avoid restrictions/designations.

Apex also has a suggestion around FDIC sweep vehicles and their inclusion into DTBP calculations. Currently, to have free cash calculated into DTBP, it must remain on margin or otherwise move from FDIC the next day to cover the call. This adds a manual workload to operations associates and leaves funds on Apex's books. A change to this would also allow customers to earn interest in their FDIC balance. Some points to consider here:

- Bank Sweep Program bank deposits are held in Member Firm name FBO customer.15c3-3 Reserve bank accounts are titled in the same way with similar no-lien language to ensure immediate access to funds.
- Firms may redeem the sweep position for cash from the bank deposits at any time at the firm's discretion – including same day redemption.
- FDIC Insured Bank Sweep at worst offers the same protection to the customer as SIPC, at best is far more beneficial to the customer via extended insurance above the limits.
- Sweep Programs reduce balance sheet leverage for carrying firms.

Best regards,

William Brennan

Chief Administrative Officer

Apex Clearing Corporation