January 28, 2025

Submitted electronically through: www.finra.org

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

Re: Retrospective Rule Review: Day Trading Regulatory Notice 24-13

Dear Ms. Mitchell:

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority ("FINRA") on its retrospective review[2] of FINRA's day trading rules ("Rules"), which have been in their current form since 2001. Fidelity agrees that it is an appropriate time to review the Rules, as well as their application to modern markets.

Executive Summary

Fidelity strongly supports FINRA's retrospective review of the Rules given the dramatic changes to technology, the market environment, and brokerage customer behavior since the Rules were last updated more than two decades ago. In their current form, the Rules are outdated, unnecessarily complex, and more specifically, lead to investor confusion and operational inefficiencies without commensurate benefits. Fidelity encourages FINRA to simplify the Rules. Fidelity recommends:

1. Eliminating the "pattern day trader" designation and removing its $25,000 minimum equity requirement. Fidelity finds that this designation is confusing to brokerage customers and often results in customers making sub-optimal trading decisions merely to avoid the pattern day trader designation.
2. Establishing a program that allows broker-dealers with robust risk monitoring programs to opt out of FINRA day trading rules. Current Federal Reserve Board and FINRA margin rules, combined with the availability of dynamic risk monitoring and trading limits employed by many broker-dealers, provide sufficient controls and investor protections.
3. Adding a "day trading risks" section to the existing margin disclosures required in FINRA Rule 2264 and eliminating the current day trading risk disclosure requirement under FINRA Rule 2270.

[1] Fidelity is one of the world's leading providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing, and other financial products and services. We administer approximately $12.6 trillion in assets from nearly 50 million individual investors, 24,000 employer client firms, 16,000 wealth management firms and institutions, and 8.5 million clearing and custody accounts.

[2] *See* Retrospective Rule Review: Day Trading, Regulatory Notice 24-13 (October 29, 2024) (Request for Comment), available at https://www.finra.org/sites/default/files/2024-10/Regulatory-Notice-24-13.pdf.

1. The "Pattern Day Trader" Designation is Ineffective and Should be Eliminated

FINRA should eliminate the "pattern day trader" designation and remove its current $25,000 minimum equity requirement. The "pattern day trader" designation is not necessary, results in customer confusion, and can lead investors to make sub-optimal trading decisions merely to avoid the pattern day trader designation.

FINRA Rule 4210 designates an investor as a "pattern day trader" if the investor executes four or more day trades within five business days and the day trades constitute more than six percent of their total trades in that five-day period. This designation is intended to identify investors likely to engage in higher-risk trading strategies. However, in practice, the designation regulates *categories of investors*, as opposed to *actual transactions* that pose risk. We do not believe that the length of time that an investor holds a security inherently affects the risk profile of the investment. Trading on margin is a trading strategy that entails risk, whether the investor buys and sells a security on the same day or sells the security the next day or the next month.

Further, FINRA's "pattern day trader" designation burdens investors by requiring maintenance of a minimum equity amount of $25,000 in their account, even if the investor no longer engages in day trading.

FINRA's current pattern day trader designation process also results in a negative customer experience. Customers either inadvertently trip over rules they do not fully understand, pursue alternative trading strategies (such as opening a new account at a competitor that does not have the pattern day trader designation attached to it), or make sub-optimal trading decisions merely to avoid the pattern day trader designation. This negative customer experience leads to additional burdens on broker-dealers that must allocate resources to analyze customer behavior and subjectively determine if an investor intends to thwart FINRA Rules.

For these reasons, FINRA should eliminate the "pattern day trader" designation. At minimum, FINRA should allow a broker-dealer to remove an investor's pattern day trader designation based on quantitative factors. The designation should not remain with an investor for an indeterminate time. Under FINRA's current Rules, an investor could, in a flurry of activity reasonably reactive to market conditions, become designated as a pattern day trader after a week's worth of trading activity and remain subject to those restrictions indefinitely, absent an affirmative outreach to the investor's broker-dealer to remove the designation. FINRA should provide a clear, quantitatively based "off ramp" for the pattern day trader designation. Such an approach would provide greater clarity both to investors and to broker-dealers as to when the designation could be removed.

2. Establish a Program That Allows Broker-Dealers with Robust Risk Monitoring Programs to Opt Out of FINRA Rules

FINRA should establish a program that allows a broker-dealer to opt out of specific FINRA Rules once the broker-dealer has satisfied FINRA that its in-house, intraday risk monitoring tools adequately limit investor intraday trading exposure. For years, broker-dealers have had the capability to manage margin trading risk through dynamic risk monitoring tools. Many broker-dealers employ robust risk monitoring tools. Those tools, in connection with existing margin rules under the Federal Reserve Board's Regulation T ("Reg. T") and FINRA Rule 4210, provide a strong framework to protect both customers and their firms from the risk of margin trading without the heightened regulatory burden of FINRA's Rules.

As an added benefit, Reg. T margin and Rule 4210 maintenance margin rules are easier for brokerage customers to understand than FINRA's Rules. Moreover, the risk monitoring tools employed by modern brokerage firms are less burdensome to implement from an operational standpoint.

While the risks of day trading still exist, many of the perceived disadvantages of day trading have diminished over the last 25 years, reducing the need for a specific rule set dedicated to day trading. For example, the current risk disclosure required under FINRA Rule 2130 includes language that a day trading strategy generates "substantial commissions" (the language lists an average of $16 per trade as a reasonable commission fee). In recent years, however, most major broker-dealers have moved to a no-commission online equity trading model, rendering this particular regulatory concern largely obsolete.[3]

3. Streamline FINRA Rules by Adding a Day Trading Risks Section to Rule 2264 and Eliminating the Rule 2270 Disclosure Requirement

FINRA should add a "day trading risks" section to the existing margin disclosures required in FINRA Rule 2264 and eliminate the current day trading risk disclosure requirement under FINRA Rule 2270. Fidelity agrees that providing information on day trading to educate investors on this trading strategy is an important aspect of risk management, and we appreciate the value of the day trading risk disclosure statement required to be provided to any customer under FINRA Rule 2270. But the appropriate location for any day trading risk disclosure statement is in FINRA Rule 2264, alongside margin disclosures provided to all brokerage customers when they open an account that is eligible for margin. Existing margin disclosures provide investors a considerable amount of information regarding their rights and obligations when trading in a margin account. A subsection of FINRA Rule 2264 dedicated to the risks of

[3] Also, since FINRA's last update to the Rules, investors have increasingly turned to numerous online resources to help them understand complex trading strategies. The popularity of social media sites like Reddit and X (formerly known as Twitter) expand opportunities for individual investors to increase their knowledge by learning from other investors.

day trading would be an appropriate addition to FINRA Rule 2264. Fidelity's recommendation to move the day trading risk disclosure statement from FINRA Rule 2270 to FINRA Rule 2264 would also allow FINRA to streamline its rules by eliminating FINRA Rule 2270.

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Fidelity would be pleased to provide further information or respond to questions FINRA may have about our comments.

Sincerely,

Roberto Braceras
General Counsel
Fidelity Investments

Chris Radler
Head of Clearing Operations & Margin
National Financial Services LLC