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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: Effectiveness and Efficiency of Day Trading Requirements; Regulatory Notice 24-13

Dear Ms. Mitchell,

Interactive Brokers LLC ("IBKR") is pleased to submit these comments in response to Regulatory Notice 24-13, FINRA's request regarding the "Effectiveness and Efficiency of its Requirements Relating to Day Trading," published on October 29, 2024 (the "Notice").

IBKR commends FINRA for proactively engaging the public regarding its pattern day trading ("PDT") requirements. Such periodic reviews are important to ensure that rules, regulations and related guidance continue to align with the current practices and technological capabilities of market participants as they evolve over time.

As described in more detail below, IBKR believes that FINRA should permit broker-dealer ("BD") firms that use a real-time margining system to compute their clients' day-trading buying power based upon the client's real-time excess margin rather than based upon the excess margin at the close of the prior business day. We believe that this change will further the purpose of the rule while bringing it up-to-date with the current state of BDs' technical capabilities.

Purpose of the PDT Rule; EOD Margin

The PDT rule was designed to address the risks presented by PDT customers' intraday trading in an end-of-day ("EOD") margining regime.[1] As explained in the 2000 rule proposal preamble:

> ***Because [initial and maintenance] margin requirements are calculated only at the end of each day****, a day trader who has no positions in his or her account at the end of the day would not incur [margin charges], assuming no losses in the account*.[2]

The NASD went on to explain that PDT customers that buy and sell a single security multiple times within a trading day can cause themselves "and the firm, if credit is extended, [to be] at risk during the day."[3] A Senate report at the time found that "a large number of day traders do not even have sufficient capital to meet their margin calls."[4] In order to limit the potential intra-day risks posed by PDT traders in an EOD margining environment, FINRA's PDT rule restricts day-trading buying power based on the prior day's excess margin (since that was the last known excess margin value intraday in an EOD-calculation world).

Specifically, FINRA Rule 4210 defines "day-trading buying power" as "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 this Rule, multiplied by four for equity securities."[5]

Real-time Margin is Superior to EOD Margin for Accomplishing the Purposes of the PDT Rule

A real-time margining system (which does not permit a client to open a position unless he has the necessary excess margin at trade time) better protects both clients and BDs from creating intra-day risk above the client's ability to cover it than does the existing rule.

When the BD margins in real-time, a PDT customer can only open a position if there is sufficient excess equity (i.e., excess margin) in the account at the time of the order placement / trade. In contrast, under the current rule a customer whose account equity has decayed substantially overnight could still engage in day-trading up to the limits of his prior night's buying power without generating a day-trading margin call.

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[1] See NASD Notice to Members 01-26, April 2001; available at https://www.finra.org/sites/default/files/NoticeDocument/p003881.pdf

[2] See Form 19b-4 Proposed Rule change by National Association of Securities Dealers, Inc., January 13, 2000, available at https://www.finra.org/sites/default/files/RuleFiling/p000878.pdf (emphasis added).

[3] *Id.*

[4] Day Trading: Case Studies and Conclusions – Report prepared by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate; July 27, 2000; available at https://www.govinfo.gov/content/pkg/CRPT-106srpt364/html/CRPT-106srpt364.htm

[5] FINRA Rule 4210(f)(8)(B)(iii).

Consider, for example, a customer who ended the day on Friday, January 24, 2025 with a long position of 500 shares of NVDA and no other positions. His EOD equity on January 24 would have been 500 * $142.62 [the closing price that Friday] = $71,310. His day-trading buying power on Monday, January 27, 2025, under the existing rule would thus have been[6] $71,310 * (1 – 0.25) * 4 = $213,930. Applying real-time margin, however, the same client's day-trading buying power would have ranged between $175,050 and $192,600.[7]

Now consider the same scenario above, but in a counterfactual universe in which the price of NVDA had risen (instead of fallen) to $162 over the weekend. The customer's real time equity at the opening on Monday, January 27 would have been 500 * $162 = $81,000, and his real-time buying power would have been $243,000. However, under an EOD margining process, the customer's buying power would remain at $213,930 (as calculated above).

In other words, in the first example, the existing rule would have allowed the client to take on intra-day risk on Monday morning that he could not afford, merely because he could have afforded it as of the end-of-day on Friday. The result is risk to the customer and BD that surpasses the actual equity in the account.

In the second example, the existing rule would either:

- have resulted in an unnecessary day-trading margin call for the customer (if the member's real-time margining system allowed the customer to open the position based on his actual excess margin at the time);[8] OR
- have disallowed the client from taking on intra-day risk on Monday morning that he could afford, merely because he could not have afforded it on Friday.

A real-time day-trading buying power calculation, in contrast, always tailors itself to the client's *actual* ability to cover risk *at the time the risk is incurred*.

<u>There is Precedent for Preferring Real-time Margin to the EOD Calculation</u>

Indeed, FINRA has previously acknowledged that real-time margining obviates the need for reference to prior-day "buying power." In 2010, FINRA interpreted Rule 4210(g) to allow BDs to margin in real-time, without calculating PDT margin requirements, with respect to portfolio margin ("PM") approved PDT customers:

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[6] Applying statutory maintenance margin of 25% under FINRA Rule 4210(c).

[7] NVDA opened on Monday, January 27, 2025, at $124.94, down over 12% from its prior close, and ranged between $116.70 and $128.40 over the course of the trading day that day.

[8] If the customer was allowed to open a position to the limit of his full real-time buying power (i.e., to buy $243,000 of additional positions) and then closed the position before the end of the day, the customer would under the current rule be subject to a day-trading margin call in the amount of nearly $10,000, <u>as punishment for opening a position that his account equity already supported at the time he opened it</u>.

> *A member can use intraday maintenance excess to calculate day trading requirements provided the member has the intraday capability to re-price and recalculate the account to determine if there is sufficient excess equity in the account at the time an order is received, and to automatically block the order if there is insufficient excess equity.*[9]

In summary, IBKR believes that, in the interests of effective and efficient risk management, and in order to remain in-step with technological advancements made over the past 25 years, FINRA should adjust its PDT rule and interpretations to account for the availability of real-time margining systems.

While IBKR does not object to FINRA retaining a minimum equity threshold for all PDT customers, IBKR would propose that FINRA amend Rule 4210 (or issue interpretive relief) to the effect that either:

- the requirements in Rule 4210(f)(8)(B) related to day-trading (apart from the minimum equity requirement) do not apply to any account subject to real-time margining; or
- permits members to use real-time maintenance excess to calculate day-trading buying power if the member has an appropriate real-time margining system [in line with the relief provided by Rule 4210(g)(13)/03 for portfolio margin accounts that have under $5 million in equity but are subject to real-time margining].

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We appreciate the opportunity to submit our comments in response to the Notice, and we hope that the foregoing is helpful to FINRA. We commend FINRA's efforts to promote the effectiveness, efficiency and vibrancy of markets through sound regulation, and we believe that our recommendations support these outcomes.

If you have any questions, please feel free to reach out to me at jdebord@interactivebrokers.com.

Sincerely,

/s/ Jon DeBord
Jon DeBord

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[9] FINRA Rule 4210(g)(13)/03; *see also* FINRA Regulatory Notice 10-45. See also prior Rule 4210(g)(13)/01:

> *For portfolio margin accounts that do not establish and maintain equity of $5 million,* ***members that have the capability to charge the required margin at the time an order is entered and prohibit the trade from being executed if an account does not have enough maintenance excess, are not required to calculate any day trading requirements promulgated under this Rule****. FINRA recognizes that in this instance, a customer will not exceed his/her day-trading buying power and therefore will not incur a day trade margin call.* (Emphasis added).