



NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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January 28, 2025

By email to pubcom@finra.org

Jennifer Piorko Mitchell
Office of the Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1700 K Street, NW
Washington, DC 20006

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

Dear Ms. Mitchell:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I am writing in response to Financial Industry Regulatory Authority, Inc. (“FINRA”) Regulatory Notice 24-13: *Retrospective Rule Review: Day Trading* (the “Notice”),² which seeks commentary on FINRA rules and other requirements governing day trading. NASAA supported the day trading rules when they were adopted,³ and we continue to believe that they provide critical protections to the broader markets while appropriately balancing the relevant interests. While it may be appropriate to adjust certain aspects of the rules, any adjustments must be narrow and targeted, and should be informed by empirical data. Many of the investor protection and market stability concerns that led to the current day trading rules exist today and for that reason NASAA does not see a reason to eliminate or significantly curtail the applicable rules and requirements.

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² The Notice is available at <https://www.finra.org/sites/default/files/2024-10/Regulatory-Notice-24-13.pdf>.

³ See [Letter from David Shellenberger, Chairman, NASAA Project Group on Day Trading to NASDR Re: Proposed Rules Regarding Approval Procedures for Day Trading Accounts](#) (May 29, 1999); [Letter from Bradley Skolnik, NASAA President and Indiana Securities Commissioner to SEC Re: File No. SR-NASD-99-41](#) (Oct. 12, 1999); [Letter from Bradley Skolnik, NASAA President and Indiana Securities Commissioner to SEC Re: File No. SR-NASD-99-41](#) (Mar. 23, 2000); [Letter from Bradley Skolnik, NASAA President and Indiana Securities Commissioner to SEC Re: File No. SR-NASD-00-03](#) (Mar. 10, 2000).

I. The day trading rules are as important and necessary today as when they were adopted, if not more so.

Day trading is a speculative activity that often bears a closer resemblance to gambling than to investing.⁴ The volatility of internet stocks coupled with technological advances that made it possible for many retail investors to trade online led to the increased popularity of day trading in the late 1990s, which in turn led to negative consequences such as people leaving their careers or withdrawing their savings to become full-time professional day traders.⁵

These developments raised significant concerns regarding investor protection and the stability of the markets. For example, NASAA and federal legislators, among others, found evidence that the majority of day traders (and a greater majority of novice day traders) lost their money and that day trading closely resembled gambling for novice, undercapitalized traders.⁶ These risks were exacerbated by the frequent use of leverage and margin.⁷ Further, while day trading may have modestly increased liquidity and resulted in lower brokerage commissions and expanded access to financial information, there was evidence that day trading contributed to increased market volatility.⁸ NASAA and federal legislators also found evidence that some day trading firms skirted laws and rules to attract and maintain customer accounts. This included abuses related to deceptive marketing, inadequate risk disclosure, suitability violations, questionable loan arrangements (*i.e.*, arranging loans between customers or from the broker-dealer), abusive day trading in discretionary customer accounts, encouragement of unregistered investment adviser activity through customers trading third-party funds, books and records violations, and supervisory failures.⁹ The day trading rules¹⁰ were adopted and appropriately tailored to address these concerns and protect both investors and the markets.¹¹

⁴ See, e.g., [NASAA, Report of the Day Trading Project Group, Findings and Recommendations](#), 5 (Aug. 9, 1999) (“NASAA Day Trading Report”); [Permanent Subcommittee on Investigations, Senate Comm. On Governmental Affairs, 106th Cong., 2d Sess., Report, Day Trading: Case Studies and Conclusions](#), 2 (July 27, 2000) (“Senate Day Trading Report”).

⁵ See, e.g., NASAA Day Trading Report at 1-2; Senate Day Trading Report, 2-3, 13-27; National Association of Securities Dealers (“NASD”) Special Notice to Members 99-32 (Apr. 15, 1999); NASD Special Notice to Members 99-33 (Apr. 15, 1999) (“NTM 99-33”).

⁶ See NASAA Day Trading Report at 1 (noting conclusion that “70% of public traders will not only lose, but will almost certainly lose everything they invest”); Senate Day Trading Report at 22-27.

⁷ See generally Senate Day Trading Report; NTM 99-33; NASAA letters, *supra* note 3.

⁸ See Senate Day Trading Report at 33-35.

⁹ See generally NASAA Day Trading Report; Senate Day Trading Report.

¹⁰ As used in this letter, “day trading rules” refers collectively to FINRA Rules 2130, 2270, and relevant provisions in Rule 4210, as well as those rules’ predecessors in the NASD rulebook.

¹¹ See, e.g., Notice at 4.

In particular, the account approval and disclosure requirements help ensure that traders are made aware of the inherent risks of day trading, and that investors for whom day trading is inappropriate are not approved for that kind of activity.¹² The margin requirements for pattern day traders, including minimum equity requirements and limitation of buying power in certain circumstances, are also important to reduce risks not only to the person trading, but to the firms holding their accounts and the markets in which they trade.¹³ These requirements are still necessary and may be more important today.

Retail investors have never had greater access to the capital markets. The proliferation of primarily self-directed, zero-commission trading platforms has enabled retail investors to trade at the push of a button on their smartphones and tablets. These developments bring new opportunities for individuals who may have once viewed investing as something reserved for the very well-off. However, broader access comes with more opportunity and ability to engage in risky activities like day trading. Broader access and opportunity now coincides with increasing complexity of the markets themselves, such as the recent approval of the 24X National Exchange to operate a trading platform available 23 hours per day, five days per week.¹⁴

The increasing entry of younger investors into the markets and data suggesting that these investors tend to have a higher appetite for risk serve to bolster, not reduce, the need for strong day trading rules. Similar to the popularity of “dot-com” stocks in the late 1990s and early 2000s, many younger investors today are focused at least in part on trends like digital asset promotion campaigns and meme stocks.¹⁵ But research suggests that many of these investors lack the resources and investing knowledge to effectively recognize and guard against the risks of day trading. For example, research indicates that many Gen Zs are not investing yet because they already lack sufficient savings or income, among other reasons.¹⁶ This suggests that these investors do not have the financial ability to withstand significant losses, which could be exacerbated by the

¹² See, e.g., SEC Rel. No. 34-43021, *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*, 1-2, 9 (July 10, 2000) (“Account Opening Approval Order”).

¹³ See, e.g., SEC Rel. No. 34-44009, *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*, 17 (Feb. 27, 2001) (“Pattern Day Trader Approval Order”).

¹⁴ [SEC Rel. No. 34-101777, *In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange*](#) (Nov. 27, 2024).

¹⁵ See [FINRA Foundation, *Investors in the United States: The Changing Landscape*](#), 7-9 (Dec. 2022); [FINRA Foundation, CFA Institute, *Gen Z and Investing: Social Media, Crypto, FOMO, and Family*](#), 1-2, 9 (May 2023).

¹⁶ See *Gen Z and Investing* at 7.

use of margin or other leverage. Research also suggests that many younger investors may lack sufficient knowledge about investing to make prudent decisions and protect themselves.¹⁷

Although investors have access to more information than they did in 2000, access alone does not equate to better information. Today, it is very easy to obtain investment information from traditional media outlets (*e.g.*, the New York Times DealBook, and the Wall Street Journal), as well as specialized resources (*e.g.*, research from broker-dealers, Yahoo Finance, and the Federal Reserve Economic Data database). But many investors are now more likely to rely on information and advice from social media and similar sources, such as YouTube, Reddit, TikTok, and others.¹⁸ As the SEC Investor Advisory Committee explained in December 2024,

[w]hile there is helpful and educational information available through social media, some financial influencers are promoting strategies that are inappropriate for many investors. Social media platforms have very low barriers to entry, making them appealing to scammers, as well as those who have hidden agendas, and/or undisclosed conflicts of interest. Consequently, it is difficult for retail investors to distinguish between content from truthful regulated firms, content from legitimate amateur investors, and content from deliberate fraudsters.¹⁹

The availability and ubiquity of these platforms make them prime vehicles for finfluencers and similar personalities to reach retail investors. While some finfluencers may be experts who encourage responsible investing, others may simply be charismatic but inexperienced individuals encouraging risk taking and speculation.²⁰ FINRA has recently imposed fines on industry firms who paid influencers and social media personalities for promotion, for violations related to misleading information provided by these influencers and the failure to adequately vet and oversee their promotional communications. In one FINRA matter, a paid influencer made false and misleading claims about the firm's margin lending program and the cost of trading through the firm.²¹ In another matter, a paid influencer stated that "the firm was for 'people who want to trade and make billies'" and that he "was up several thousand dollars without 'even trying.'"²² In yet

¹⁷ See *Investors in the United States* at 22-25; *id.* at 23 ("Among those who have made purchases on margin, more than three-quarters (76 percent) answered the margin question incorrectly."); *Gen Z and Investing* at 9 (noting that half of Gen Zs surveyed said that they have made an investment driven by their fear of missing out, most frequently in digital assets, stocks, and meme stocks).

¹⁸ *Investors in the United States* at 19-21; *Gen Z and Investing* at 4-6.

¹⁹ [Recommendation of the SEC Investor Advisory Committee regarding the Protection of Investors in their Interactions with Finfluencers](#), 1 (Dec. 10, 2024).

²⁰ See, *e.g.*, [NASAA, Informed Investor Advisory: Finfluencers](#) (posted August 2022).

²¹ [MI Finance LLC, FINRA Letter of Acceptance, Waiver, and Consent \("AWC"\) No. 2021072581101](#) (Mar. 15, 2024).

²² [TradeZero America, Inc., FINRA AWC No. 2021072581301](#) (June 10, 2024).

another FINRA matter, paid influencers talked about their purportedly massive profits from trading through the firm with little effort, improperly suggesting that individuals could achieve similar results, without discussing the risks involved.²³ The Securities and Exchange Commission (“SEC”) has in recent years taken enforcement action against celebrities promoting speculative digital asset investments without proper disclosures,²⁴ as well as against a professional trader and media personality who allegedly made false or misleading recommendations about stocks popular with retail investors to move the market before trading in the opposite direction.²⁵ Loosening day trading rules would therefore be risky, especially when the quality of information investors are relying on is questionable.

Industry practices have also changed in ways that could encourage more frequent trading. For example, some online brokerage firms have used behavioral prompts, gamified design elements, other digital engagement practices, and social cues (e.g., lists of popular stocks) that may have the effect of encouraging more frequent trading.²⁶ Furthermore, trading platforms popular with day traders and other high-risk traders may promote themselves on finfluencer content, podcasts, and other new media platforms. Even if those trading platforms do not focus on day trading, their marketing through a finfluencer who promotes day trading might drive potential day traders to those trading platforms. Finally, although the lack of brokerage commissions effectively nullifies one of the costs that historically contributed to the difficulty of profitable day trading,²⁷ the perceived lack of any cost and the firm’s incentives resulting from payment-for-order-flow models could result in customers trading more frequently than is otherwise appropriate.

More investors are entering the markets with access to trading functionality literally at their fingertips, and they are doing so with increased confidence and appetite for risk that may be

²³ [Cobra Trading, Inc., FINRA AWC No. 2021072501001](#) (Apr. 3, 2024).

²⁴ See, e.g., [Baker McKenzie, Blockchain \(blog\), The SEC Keeps its Sights Set on Crypto “Finfluencers”](#) (Apr. 14, 2023); [Holland & Knight SECond Opinions Blog, Tout, Tout, Let it all Out: SEC Continues Crackdown on Celebs, Athletes Touting Digital Assets](#) (Mar. 2, 2023).

²⁵ [U.S. Dept. of Justice, Criminal Div., Pending Criminal Division Cases, United States v. Andrew Left](#) (viewed Jan. 23, 2025); [SEC, Press Release, SEC Charges Andrew Left and Citron Capital for \\$20 Million Fraud Scheme](#) (July 26, 2024).

²⁶ See, e.g., *Gen Z and Investing* at 8 (noting that “almost half (45 percent) of U.S. Gen Z investors were motivated to start investing based on a promotional incentive, such as cash, crypto, or stock”). See also SEC Rel. No. 34-92766, *Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology to Develop and Provide Investment Advice* (Aug. 27, 2021); SEC Rel. No. 34-97990, *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers*, 27-33 (July 26, 2023). See also [Letter from Benjamin Schiffrin, Director of Securities Policy, Better Markets, Inc., to SEC Re: File No. 10-242, 24X National Exchange LLC](#) (“Schiffirin Letter”) at 3-5 (June 27, 2024) (explaining that “Gamification combined with around-the-clock trading would threaten retail investors” by prompting them to engage in risky trading).

²⁷ See NASAA Day Trading Report at 5-7.

influenced by imperfect information.²⁸ For these reasons, it is important that broker-dealers continue to act as gatekeepers, ensure that investors are approved for day trading only when such a strategy is appropriate for them, and provide simple, easy to understand disclosures about the risks associated with day trading.

The margin requirements for pattern day traders are just as important. The use of margin amplifies the risk of loss to traders and further exposes the broker-dealer and its other customers to risks from a day trader's activities. The technological and other developments cited in the Notice mean that more retail investors will have both the practical ability and appetite for risk to engage in that sort of trading activity, as well as the possible overconfidence to overextend themselves and suffer huge losses. This naturally increases the risk to broker-dealer firms and their other customers as a result of day trading activity, especially on margin.

The main components of the pattern day trader margin requirements – *i.e.*, minimum equity in the account before trading, limitation of buying power until a margin call has been met, and the prohibition of cross-guarantees as a source of funds to meet margin obligations – not only protect day traders, but also broker-dealer firms and the markets more broadly. These measures are appropriate regulatory “speed bumps” to address these concerns.²⁹

In sum, NASAA believes that the framework of the day trading rules continues to be important, necessary, and appropriately tailored to address the risks of day trading to traders, broker-dealers, and the markets. Although NASAA does not categorically oppose targeted revisions to the existing framework, and we suggest certain changes for consideration below, we see no compelling reason for the elimination or significant curtailment of any aspect of the current framework.

II. FINRA should consider expanding the scope of Rules 2130 and 2270 to incorporate a “knows or has a reasonable basis to believe” standard similar to that in Rule 4210.

As currently written, FINRA Rules 2130 and 2270 apply to FINRA members that are “promoting a day trading strategy.” We believe that the rules should apply to FINRA members that, while not “promoting” such a strategy, nonetheless “know[] or ha[ve] a reasonable basis to believe” that a non-institutional customer opening an account will use the account for a day trading

²⁸ In evaluating the implications of data suggesting that younger investors tend to be more comfortable with risky investments, regulators must consider that data in context with other data suggesting a correlation between propensity to gamble and high investment risk tolerance among younger investors. *See, e.g., Gen Z and Investing* at 10-11 (noting that “Gen Z investors are more likely to gamble than are non-investors,” “Gen Z investors with a high financial risk tolerance are more likely to be frequent gamblers,” and “[a]mong Gen Z investors, propensity for gambling is also associated with more risky investments”).

²⁹ *See* NASAA Letter Re: File No. SR-NASD-00-03 (Mar. 10, 2000); NASAA Day Trading Report at 45-46.

strategy. Additionally, the rules should be triggered after account opening if any FINRA member “knows that the customer is using the account for a day-trading strategy,” similar to the language in Rule 2130(c). Technological advances and market and regulatory developments have made day trading easier than ever, particularly the rise of online, zero-commission trading, new products geared toward short-term trading, and the shortening of the standard settlement cycle. Such developments have made it easy for an investor, potentially uninformed, to engage in day trading behavior to a degree that was not feasible 25 years ago. These suggested changes would help to ensure the account approval and disclosure requirements are triggered by the risks presented, rather than dependent on a broker-dealer’s marketing strategy. These changes would also align these rules with Rule 4210. Last, these changes would not be unduly burdensome because account approval simply requires a firm to obtain the kinds of information routinely collected by broker-dealers in opening customer accounts, and it is proper to hold a firm accountable for the facts known to it.³⁰

III. FINRA Rules 2130 and 2270 should not be limited to “natural person” customers, but FINRA should consider adjusting the dollar threshold for “non-institutional customers”.

FINRA Rules 2130 and 2270 currently apply to “non-institutional customers,” meaning both natural persons and entities with less than \$50 million in total assets.³¹ The rules should not be limited to “natural person” customers. Before the day trading rules were adopted, NASAA observed that many day traders had opened accounts under partnership or corporate names, sometimes upon the recommendation of a broker-dealer.³² Despite the corporate form, these kinds of customers are often no more sophisticated for investment purposes than customers who open accounts under their own names. Further, many purported partnership and other entity accounts were actually being used as vehicles for customers to trade the funds of third parties, in violation of important state and federal registration requirements.³³ Unless Rules 2130 and 2270 are revised to require firms to look through entity customers and apply the requirements to the individual beneficial owners, the rules should not be limited to “natural persons.” FINRA should also consider raising the monetary threshold to determine whether an account is a “non-institutional” account that is subject to the rule. Currently, an account would be “institutional,” and therefore not subject to FINRA Rules 2130 and 2270, if it belongs to a customer with total assets of at least \$50

³⁰ See FINRA Rule 2130(b); FINRA Rule 2111(a); Account Opening Approval Order at 7. See also Pattern Day Trader Approval Order at 18 (concluding that the pattern day trader margin requirements would not be unduly burdensome despite potentially requiring systems changes by firms).

³¹ FINRA Rule 2130(e)(2); FINRA Rule 4512(c).

³² See, e.g., NASAA Day Trading Report at 38.

³³ See, e.g., NASAA Day Trading Report at 22-24.

million.³⁴ That figure has not been adjusted since at least 2007.³⁵ Given inflation and other industry and market developments since the day trading rules were adopted, \$50 million may no longer be an appropriate benchmark to determine whether a customer needs the protections afforded by the day trading rules. FINRA should therefore consider increasing that threshold for the purposes of the day trading rules.

IV. FINRA should consider revising the disclosure statement prescribed in Rule 2270 regarding commissions and trading costs.

The disclosure required under FINRA Rule 2270 currently includes the following paragraph:

Day trading will generate substantial commissions, even if the per trade cost is low. Day trading involves aggressive trading, and generally you will pay commissions on each trade. The total daily commissions that you pay on your trades will add to your losses or significantly reduce your earnings. For instance, assuming that a trade costs \$16 and an average of 29 transactions are conducted per day, an investor would need to generate an annual profit of \$111,360 just to cover commission expenses.

While this paragraph appropriately focuses on the impact of certain trading costs, FINRA should consider revising it to account for changes in how broker-dealers and trading platforms are compensated for their services. For example, the Notice cites the “greater availability of . . . zero commission trades.”³⁶ However, the firms offering these arrangements are generally being compensated through arrangements such as payment-for-order-flow. Although this lowers the direct cost to the customer, it may impact the quality of execution. These dynamics should be included in the disclosure.

V. FINRA should study the impact of the margin requirements for pattern day traders and publish its findings before proposing any changes, but certain revisions may be appropriate.

As explained above, the current margin requirements for pattern day traders represent an appropriate framework to address significant problems. Among other issues, NASAA, the SEC, and FINRA’s predecessor, the National Association of Securities Dealers found multiple instances in which broker-dealers violated, evaded, or undermined laws and rules meant to protect investors

³⁴ FINRA Rule 2130(e)(2); FINRA Rule 2270(c)(2); FINRA Rule 4512(c)(3).

³⁵ See, e.g., [NASD Rule 2360\(f\)](#) (superseded); [NASD Rule 3110\(c\)\(4\)\(C\)](#) (superseded) (version eff. Sept. 28, 2007 to Sept. 7, 2009).

³⁶ Notice at 5.

from risks associated with day trading.³⁷ Similar to earlier reports by NASAA and the Permanent Subcommittee on Investigations in the U.S. Senate,³⁸ FINRA should thoroughly study industry practices and capabilities, as well as the changes in the business and market environments since the day trading rules were adopted, to determine whether and how it is appropriate to revise the pattern day trader margin requirements. In our view, such empirical evidence would be necessary to support any proposal to change those requirements.

Nonetheless, we believe that certain changes may be appropriate. First, it may be appropriate to adjust the specific amount of the minimum equity requirement to account for inflation. While pattern day traders should continue to be subject to heightened minimum equity requirements, FINRA should consider whether developments such as zero-commission trades, payment-for-order-flow, the incentivization of trading via digital engagement practices, and other market developments make it appropriate to raise the amount. Second, while FINRA rules should continue to define “pattern day trader[s]” and subject them to appropriately targeted margin requirements, FINRA should consider whether the definition should be expanded or the threshold adjusted. It may be that four trades over five business days is too few to make those heightened requirements necessary, or that developments in risk mitigation make it acceptable for a higher percentage of total trades to be allowed without imposing those requirements. However, FINRA should study these issues to make sure that it has an empirical, unbiased picture of industry practices, market behavior, the characteristics of trading venues and platforms, and the ever-increasing complexity of the products and strategies available to retail investors through the relevant trading platforms³⁹ before proposing changes, and FINRA should publish its findings and methodology so that they can be evaluated by regulators and other stakeholders.

Finally, while some changes may be appropriate, they cannot be justified by perceptions about younger investors’ appetite for risk or broader access to platforms that allow day trading. That increased willingness to take risks may be influenced by information of questionable quality. Although broader investor access is generally a good thing, the fact that investors may be able to trade almost 24 hours per day does not mean that they should have an investment time horizon of 24 hours or less. The day trading rules provide important investor protections that help to ensure that day trading is done responsibly and without undue risk to traders, broker-dealers, and the markets. These dynamics require careful consideration of potential changes to the day trading rules before they are proposed.

³⁷ See NASAA Day Trading Report at 4-44; Senate Day Trading Report at 7-13; NASAA Letter Re: File No. SR-NASD-00-03 (Mar. 10, 2000).

³⁸ See NASAA Day Trading Report; Senate Day Trading Report.

³⁹ See, e.g., [Recommendation of the SEC Investor Advisory Committee regarding the Protection of Self-Directed Investors when Trading Complex Products and Utilizing Complex Strategies](#) (June 6, 2024).

VI. Conclusion

NASAA appreciates the opportunity to comment on Regulatory Notice 24-13 and contribute to FINRA's retrospective review of the day trading rules. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

A handwritten signature in black ink that reads "Leslie M. Van Buskirk". The signature is written in a cursive, flowing style.

Leslie M. Van Buskirk
NASAA President and
Administrator, Division of Securities
Wisconsin Department of Financial
Institutions