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VIA ELECTRONIC SUBMISSION

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

Re: ***Regulatory Notice 24-13 (*****Retrospective Rule Review: Day Trading; FINRA Requests Comment on the Effectiveness and Efficiency of its Requirements Relating to Day Trading)**

Dear Ms. Mitchell:

Robinhood Financial LLC and Robinhood Securities, LLC[1] (together, "Robinhood") respectfully submit this letter in response to the above-referenced request by the Financial Industry Regulatory Authority, Inc. ("FINRA") for comment on the effectiveness and efficiency of its requirements relating to day trading.[2] Robinhood supports FINRA's efforts to review whether the day trading rules are meeting the intended investor protection objectives by reasonably efficient means.

As described in detail below, the existing day trading rules are no longer useful to address risks to customers and firms. When the rules were implemented in 2001, the $25,000 minimum equity required for accounts of customers deemed pattern day traders was based on preventing financial losses and the conclusion that an investor's amount of capital was directly related to their chances of success. At the time, though, commissions and fees required the average day trader to realize annual gains of $200,000 to obtain one cent of profit. Today, zero commission trading and fractional share trading have eliminated the need for such high account equity requirements. Technology has also greatly improved firms' risk monitoring capabilities. For example, firms can now track in real-time the risks created by customer trades and react immediately to mitigate those risks. Rather than protecting investors and firms, FINRA's existing day trading rules

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[1] Both of these FINRA-member broker-dealers are wholly owned subsidiaries of Robinhood Markets, Inc.
[2] Robinhood's letter will focus on pattern day trading requirements as Robinhood does not promote day-trading strategies.

unnecessarily restrict retail investors' access to the markets based on wealth by forcing firms to impose extremely large minimum account equity requirements which many customers simply cannot reach or maintain. Robinhood data described in this letter shows that investors subject to the day trading requirements lose access to trading opportunities and strategies, and that they are less likely to maintain their accounts.

Robinhood proposes a solution that would remove the day trade count as the method for designation as a pattern day trader. Instead, FINRA should require enhanced disclosures regarding day trading and day-trading buying power and allow customers to "opt-in" to a designation as a pattern day trader if they would prefer access to day-trading buying power. Implementing these simple changes would significantly benefit retail investors and better address the risks the rules were originally meant to mitigate.

Background

Robinhood believes that increased participation in the market by more investors is a good thing. Robinhood is proud that as a result of innovation and technology, first-time and other retail investors are able to participate in the U.S. markets and join in the wealth creation that institutional and high-net-worth investors have traditionally taken advantage of for decades. Robinhood's mission is to democratize finance for all by providing access to investing regardless of a customer's income or wealth. Using technology to open the markets to retail investors from all backgrounds and remove traditional barriers to investing is central to our mission. Robinhood makes trading more accessible by eliminating account minimums and trading commissions and offering investors fractional trading.

The Securities and Exchange Commission ("SEC") and FINRA have historically recognized the importance of investor participation in the markets and taken steps to encourage more efficient markets that work better for the retail investor. In recent decades, the U.S. securities markets have transformed from a marketplace wholly dominated by a handful of broker-dealers and exchanges that stifled competition, where most Americans could not afford to participate, to today's markets where the cost of trading has never been lower, competition is thriving, and market participation has never been more widespread.

The longstanding day trading rules define "day trading" as the purchasing and selling or the selling and purchasing of the same security on the same day in a margin account. "Day trading" is not permitted in a cash account as all securities purchased in a cash account must be paid for in full before they are sold. Under FINRA rules, in a cash account, purchasing a security, paying for it in full and then selling the same security is not considered a day trade.[3] A "pattern day trader" is defined as any customer who executes four or more day trades within five business days. If the

[3] https://www.finra.org/investors/investing/investment-products/stocks/day-trading.

customer's number of day trades is six percent or less of their total trades for a five business day period, the customer will not be considered a pattern day trader.

Designation as a pattern day trader imposes special maintenance margin requirements, including a specific minimum equity requirement and buying power limitations.[4] Specifically, the rules impose a minimum equity requirement of $25,000, a stark difference from the $2,000 required to borrow on margin.[5] This minimum equity must be deposited in the account before the customer may continue day trading, which limits their ability to trade. The rules also impose buying power limitations related to the customer's "day-trading buying power."[6] If an investor is designated as a pattern day trader, then they are presumed to permanently remain a pattern day trader.[7]

When proposing the day trading rules, the National Association of Securities Dealers ("NASD")[8] stated that day trading presents unique investor protection concerns and that day trading requires a significant amount of capital.[9] In approving the day trading rules, the SEC referenced the U.S. Senate Permanent Subcommittee on Investigations (''Senate Subcommittee''), which conducted an eight-month investigation of day trading. The SEC specifically noted the Senate Subcommittee's support for a substantial increase in the size of the equity requirement for day trading when approving the minimum equity requirement.[10]

Importantly, though, during the Senate Subcommittee hearings, the SEC stated that the average day trader must realize gains of more than **$200,000** annually just to pay commissions and fees.[11] At the time, commissions ranged from $15 to $25 per trade and a "medium fee structure" assumed a commission of $16.70 per trade. Based on its investigation, the Senate Subcommittee found that ''[securities] industry leaders agreed that a day trader's chance of success is directly and proportionally related to the amount of capital with which a person starts trading.''[12] The NASD represented that increasing the minimum equity requirement to $25,000 would more appropriately address the additional risks inherent in leveraged day trading activities.[13]

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[4] Regulatory Notice 24-13 at 4.
[5] Regulatory Notice 24-13 n. 33.
[6] Paragraph (f)(8)(B)(iii) of 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, multiplied by four for equity securities.
[7] FINRA Rule 4210(f)(8)(B)(ii)/03. A customer may seek a one-time removal of the designation in certain circumstances. If, after the removal, the customer again engages in pattern day trading, the designation may not be terminated absent extraordinary circumstances.
[8] The rules were originally proposed by NASD, FINRA's predecessor.
[9] Regulatory Notice 24-13 at 4.
[10] Exchange Act Release No. 34–44009, 66 FR 13608, 13613 (Mar. 6, 2001) (New York Stock Exchange, Inc., and National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Changes Relating to Margin Requirements for Day Trading) ("SEC Approval Order").
[11] Day Trading: Case Studies and Conclusions, Report Prepared by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, 106th Congress, 2d Session, Report 106-364 at 32 (July 27, 2000) (the "Permanent Subcommittee Report").
[12] SEC Approval Order, 66 FR at 13613.
[13] SEC Approval Order, 66 FR at 13611.

The SEC received 162 comment letters in response to NASD's proposed rules. Of those 162 commenters, the NASD stated that 150 generally opposed the proposal and just 3 supported the proposal.[14] Many commenters thought that the proposed minimum equity requirement was unfair and discriminatory against small investors. Commenters also expressed concern that the minimum equity requirement would preclude the average investor from accessing the market.[15] The SEC approved the proposed rules and stated it "finds that the NYSE and NASD proposals are designed to protect Pattern Day Traders, the firms where those traders have their accounts, and the markets on which they trade. The intra-day risk of substantial losses to both the customer and the firm increases in day trading accounts that do not have sufficient equity capital."[16]

Discussion

The original purposes of and need for the pattern day trading requirements have been dramatically altered since 2001 by changes in investors, the market, and technology. As a result, the current requirements are no longer useful in addressing risks to customers and firms. First, the request for comment states that FINRA has previously noted that "day trading can be risky and may not be appropriate for customers with limited resources." Since the rules were originally implemented, when the SEC stated that a day trader needed annual gains of $200,000 to cover commissions and fees, there has been an industry-wide shift to commission-free trading. As a result, the connection between capital and day trading is strikingly different. In 2000, four day trades purchasing and selling the same security would have cost approximately $133 in commissions. Today, those trades at Robinhood cost $0 in commissions.

Further, retail investors can now place orders to trade less than a full share of a stock ("fractional shares").[17] Four purchases of one share of Apple, the security with the largest market capitalization at the end of 2024, would have cost approximately $1,000 without the capability of utilizing fractional shares. With fractional shares, a retail investor can now make those four purchases for as little as $4 at Robinhood (you can purchase as little as $1 worth of a security in Robinhood's fractional share program). Investors no longer face the significant capital requirements that existed when the pattern day trading rules were adopted.

Second, the rules were originally designed to protect customers and firms from intra-day risks of trading losses. These risks have been mitigated through technical solutions. Firms have real-time monitoring technology and can adjust margin requirements based on intra-day risk. In 2001,

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[14] Letter from Alden Adkins, Senior Vice President and General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, SEC (Oct. 3, 2000) ("NASD Letter").
[15] NASD Letter.
[16] SEC Approval Order, 66 FR at 13617.
[17] SEC, Fractional Share Investing – Buying a Slice Instead of the Whole Share, https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/fractional-share-investing-buying-slice-instead-whole-share.

technology was much more limited. Today's brokerage systems provide firms real-time insight into customer trades, including security, size, and debits. Firms generally know the risk created by intra-day trades at any given time and can adjust buying power and margin maintenance requirements intra-day to account for market movements and losses due to customer trades. This is a more targeted and efficient method of controlling risk for both the customer and the firm than the day trading rules.

Ironically, the current requirements actually create the risks to customers and firms that they are meant to prevent. For example, FINRA has noted that the rules are designed to limit the potential losses from day trading for both customers and members.[18] However, because the rules' restrictions are triggered based upon the number of customer day trades in a given period, investors may change their trading behavior and avoid closing certain positions. Holding positions can increase losses by subjecting investors and firms to increased idiosyncratic risk due to the increased likelihood of price gaps occurring overnight. It also can increase losses due to customers avoiding the close of a losing trade before the end of a day to circumvent the pattern day trader designation or further restrictions. Notably, an industry Task Force formed at NASD's recommendation in 2000 to evaluate the proposed day trading rules expressed the concern that the definition of pattern day trader could encourage customers to hold positions overnight that they might otherwise have liquidated, thus giving rise to additional risk of financial loss.[19]

The SEC noted in approving the NYSE and NASD pattern day trading requirements that the rules are "not designed to prevent day trading, but to reduce the risk of financial losses by Pattern Day Traders and their firms."[20] However, as commenters on the original proposal warned[21], the rules have, in fact, precluded the average investor from accessing the market. The existing requirements create churn, both between account types and between brokerage firms. Approximately 45% of Robinhood customers that are designated as pattern day traders have switched to a cash account. Other customers move assets to an account at a different firm where they are not designated as a pattern day trader. Customers designated as pattern day traders that do not meet the $25,000 minimum equity requirement are more than nine times as likely to be deemed as no longer active than customers that do meet the requirement.[22]

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[18] Regulatory Notice 24-13 at 1.

[19] SEC Approval Order, 66 FR at 13612. The Task Force was comprised of representatives from 15 firms and it made recommendations following evaluation of the proposed changes.

[20] SEC Approval Order, 66 FR at 13617.

[21] NASD Letter.

[22] In addition to the request for comment, FINRA requested certain data from firms to inform its understanding of the scope of pattern day trading. For purposes of the data request, an account is deemed "no longer active" under any of the following conditions:

- The account was closed
- The account was transferred to another firm via ACATS
- The account has generally ceased trading, and the equity in the account is below $100

Further, the SEC has approved the listing of products, like leveraged and inverse ETFs, that specifically recommend the day trading of the product. These products are typically designed to achieve their stated performance objectives on a daily basis.[23] Given that these products "reset" daily, if an investor holds over a period longer than one day, the performance can differ significantly from the stated daily performance objectives, which can expose investors to significant and sudden losses.[24] The current rules essentially preclude customers with less capital from trading these products.

Pattern day trading is a top driver of customer support requests and customer complaints. Robinhood has disclosures, alerts, day trade counting tools and educational content explaining pattern day trading rules and restrictions. Still, many retail investors do not understand the seemingly arbitrary restrictions or why they were put in place. Customers, like commenters on the original proposal[25], think the requirements are unfair and discriminatory against retail investors as the rules effectively exclude them from access to the same opportunities and strategies provided to wealthy individuals. Customers that do not meet the minimum equity requirement must choose between switching to a cash account (which allows them to close certain positions intra-day but excludes them from using margin and certain options trading) and trading in a margin account while subject to the various pattern day trading restrictions. This is especially confounding to customers because the designation as a pattern day trader is based on an arbitrary number of trades.

As the Securities Industry Association[26] stated when commenting on the proposed day trading rules, the rule "lacks any evidentiary foundation for the threshold of four roundtrip trades over a five-day period."[27] When the rules were proposed, day trading was described as "a kind of trading system involving frequent, rapid-fire purchase and sale transactions (or sale and purchase transactions) in securities in a single day."[28] Similarly, while the Senate Subcommittee acknowledged there was no standard definition of the number of trades that characterize a day trading account, it stated that "[s]ome day traders execute as few as seven buy and sell orders per day, while others may make 100 or more trades per day." In 2000, an SEC report summarized an examination sweep of day trading and cited an NASD definition of a day trader as "an individual who conducts intra-day trading in a focused and consistent manner, with the primary goal of

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[23] Robinhood discloses to customers that, among other things, these products are generally designed for the short-term investor and may not be for all investors.
[24] SEC, Updated Investor Bulletin: Leveraged and Inverse ETFs, https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/sec.
[25] NASD Letter (noting that "many commenters thought that the proposed minimum equity requirement was unfair and discriminatory against small investors").
[26] The Securities Industry Association was the predecessor to the Securities Industry and Financial Markets Association.
[27] Letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, to Elisse B. Walter, Chief Operating Officer, NASD Regulation (Oct. 26, 2000) ("SIA Letter").
[28] SEC Approval Order, 66 FR at 13616.

earning a living through the profits derived from this trading strategy."[29] Despite these descriptions of "frequent, rapid-fire purchase and sale transactions," "100 or more trades per day," and a "primary goal of earning a living through the profits derived from this trading strategy," the pattern day trading rules apply if a customer averages less than **one** day trade per day.

Proposed Update

FINRA should eliminate the day trade count as the determining factor of designation as a "pattern day trader." Instead, FINRA should require enhanced disclosures and allow investors to opt-in to the designation as a pattern day trader. Firms could then provide ongoing educational resources and customers that opt-in would receive day-trading buying power and be subject to its associated requirements. If an investor does not self-select, they should be permitted to day trade subject to the existing non-pattern day trading initial margin and maintenance margin requirements. FINRA should also eliminate the $25,000 minimum equity requirement for pattern day traders. This would treat investors equally and allow any investor to self-select status as a pattern day trader and receive day-trading buying power.

The Industry Task Force made a similar suggestion in 2000. The Task Force recommended that day-trading buying power be made available only upon a customer's request. The Securities Industry Association supported the Task Force recommendation and noted that "it recognizes that customers are in a much better position than their firms to determine how they plan to trade and how much they can afford to borrow."[30]

A regulation that allows customers to determine how they plan to trade was appropriate in 2000 and is even more well-suited now. Such an updated regulation would rely on disclosure and allow customers to select their own trading strategies. Disclosure is a proven tool to address risk and encourages participation in the securities markets by providing additional transparency and allowing investors to direct their own investments. The current regulation, which rejected such an approach, does not meet its objectives by reasonably efficient means. Instead, it creates additional risks and additional costs.

Due in part to changes since implementation, the rules both prevent customers from trading and no longer reduce the risk of financial losses to investors or their firms. Retail investors find it discriminatory, which disenfranchises many of the same investors that FINRA notes have recently joined the market.[31] Retail investors should be permitted to self-select their strategy, respond to moving markets, consider their individual trading time horizon and maintain long-term relationships with a firm. The existing rules are not necessary to protect investors or

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[29] SEC, Special Study: Report of Examinations of Day-Trading Broker-Dealers (Feb. 25, 2000).
[30] SIA Letter.
[31] Regulatory Notice 24-13 at 2-3.

firms from losses. Firms can track trading activity and margin exposure on a real-time basis and have eliminated such concerns.

Robinhood appreciates the opportunity to comment on FINRA's requirements relating to day trading. Please contact Robinhood's General Counsel, Lucas Moskowitz, at lucas.moskowitz@robinhood.com if you have any questions or comments.

Respectfully submitted,

Signed by:
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Matt Billings
President
Robinhood Financial LLC and Robinhood Securities, LLC