January 5, 2024

Mr. Robert Cook
Chief Executive Officer
Financial Industry Regulatory Authority

Re: Updates to FINRA Rule 4210 – Pattern Day Trader Margin Calculations

Dear Mr. Cook:

The undersigned entities submit this letter to express their concerns with the outdated manner in which margin requirements for pattern day traders with accounts below $25,000 are calculated and respectfully urge FINRA to modernize aspects of FINRA Rule 4210 to account for market developments. As you know, Rule 4210 was put in place in 2001, and the section of the rule related to the treatment of margin for pattern day trader accounts has not kept pace with technological advancements – including those that have expanded investor access to the markets. We are concerned that many first-time investors and investors with modest account balances are often being confusingly shut out from the markets if they are inadvertently deemed a pattern day trader under Rule 4210.

I. <u>FINRA 4210 is No Longer Consistent with its Original Intent Because it Does Not Account for Modern Real-Time Risk Monitoring</u>

The margin requirements for day traders were put into place over 20 years ago to address clearing firm risk while also protecting traders. These requirements mean that pattern day traders must maintain minimum equity of $25,000 in their margin account, incurring trading restrictions if their accounts fall below that amount.[1] This made sense when brokers were unable to calculate risk in real-time, but that is no longer the case. Unfortunately, these requirements are no longer consistent with their original intent and fail to recognize that brokers now have robust, real-time risk controls that are able to easily block trades and limit risk in a way that recognizes real-time risk. Given the tremendous technological growth and resulting existence of risk tools that were previously unavailable, we believe it is time for FINRA to modernize the pattern day trader margin requirements to allow brokers to utilize these tools. Small investors with less than $25,000 in their accounts should not be penalized by an outdated rule.

We believe our request falls squarely within the intent of FINRA's on-going efforts to maintain a dynamic rulebook that evolves with market practices and changes in technology. As you recently stated in your congressional testimony:

> [FINRA has] applied the retrospective review process to thematic areas, such as how we can improve the capital formation process, modernize our rules in light of lessons learned during the pandemic, ***<u>and identify rules or processes that may inadvertently be imposing barriers to participation in the industry or affecting firms or individuals in disparate ways</u>***. [emphasis added][2]

II. <u>Because of Market Developments the Rule Inadvertently Captures and Locks Out of the Market Smaller Investors Who Were Never Intended to be Subject to the Rule</u>

While the democratization of the markets is a positive development, it has also resulted in a greater number of accounts being tagged as pattern day trader accounts. We have found that the method for calculating "day-trading buying power" today pursuant to Rule 4210 (i.e., using the previous day's activity) causes

---

[1] Accounts under $25,000 that have been tagged as PDT accounts are technically able to open positions, but they are unable to day trade. However, for a firm to make sure a client does not day trade, all trades need to be blocked to help ensure compliance with Rule 4210.

[2] *See* Robert W. Cook, President and Chief Executive Officer, FINRA, Statement Before the Subcommittee on Capital Markets of the U.S. House of Representatives' Financial Services Committee (Dec. 12, 2023), available at https://www.finra.org/media-center/speeches-testimony/statement-financial-services-committee-us-house-representatives-121223. *See generally* FINRA Retrospective Rule Review Webpage at https://www.finra.org/rules-guidance/rulemaking-process/retrospective-rule-review#:~:text=FINRA%20believes%20that%20it%20is,environmental%2C%20industry%20and%20market%20changes (stating that FINRA's retrospective rule review project is intended to ". . . look back at its . . . [rulebook] to determine whether a FINRA rule or rule set is meeting its intended investor protection objectives by reasonably efficient means, particularly in light of environmental, industry and market changes.").

significant investor confusion and frustration, especially for investors with smaller accounts that are below $25,000. It also results in smaller investors being locked out from the markets, often at time when they are discovering the many benefits of investing for the first time. This unfortunately only compounds the belief of many investors (including these newer or smaller investors) that access to the markets is unequal or that the playing field is unlevel. We strongly believe that a few key updates to modernize the pattern day trader margin requirements would greatly improve the overall investor experience and help keep markets accessible to all.

III. A Few Focused Updates to the Rule Will Address the Current Unintended Capture of Smaller Investors under the Rule and Alleviate the Potential Impression that Smaller Investors are Disadvantaged by Current Regulatory Requirements

Specifically, for pattern day trader accounts under $25,000, we urge FINRA to update this calculation to utilize the Regulation T margin requirements that exist today for overnight buying power, which would properly limit trading in their accounts in a way that recognizes firms' real-time risk controls – rather than lock these investors out from the markets. Firms have robust, real-time risk management systems to assess current risk and client balances that they didn't have when the rule was put in place.

Instead of cutting off market access for smaller investors with account balances of less than $25,000, Rule 4210 should be updated to allow firms to utilize their real-time risk controls and limit the trading that can be done by these investors to two times their excess margin (rather than four times, which is what pattern day traders with accounts over $25,000 are permitted to do). These updates to Rule 4210 do not increase the amount of risk the broker takes on, rather they allow for the utilization of real-time risk management systems and for the rule to continue to be aligned with its intended purpose.

IV. The Current Inadvertent Treatment of Smaller Investors As Pattern Day Traders Under FINRA Rule 4210 Can be Addressed by Modernizing the Rule to Permit Firms to Reduce the Day-Trading Buying Power to Regulation T Margin Levels

As the amount and diversity of investors accessing the markets continues to increase - now is not the time to deprive these investors from trading. As such, we respectfully call upon FINRA to modernize Rule 4210 to allow firms to reduce the day-trading buying power to Regulation T margin levels and use dynamic real-time calculations for pattern day trading accounts with less than $25,000 rather than cut these smaller accounts off from accessing the market. This pragmatic approach would avoid problematic outcomes for smaller investors while also continuing to further the expand access to the markets in a way that addresses firms' real-time risk.

Thank you for your attention to this matter.

Sincerely,

BOX Options Market LLC
Cboe Global Markets
Members Exchange (MEMX)
Miami International Holdings, Inc. (MIAX)
Nasdaq, Inc.
Securities Industry and Financial Markets Association (SIFMA)
Security Traders Association (STA)