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**Submitted by SEC Webform**[1]

J. Matthew DeLesDernier
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**RE: File No. SR-FINRA-2025-017: Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Replace the Day Trading Margin Provisions with Intraday Margin Standards**

Dear Mr. DeLesDernier:

On behalf of the North American Securities Administrators Association ("NASAA"),[2] I am writing in response to U.S. Securities and Exchange Commission ("SEC" or "Commission") Release No. 34-104572, *Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Replace the Day Trading Margin Provisions with Intraday Margin Standards*, recently filed with the SEC by the Financial Industry Regulatory Authority, Inc. ("FINRA") as SR-FINRA-2025-017 (the "Proposal").[3] In short, while targeted revisions may be in order, FINRA has not made the case for wholesale changes to the margin requirements because the Proposal does not adequately consider the risks that retail traders continue to face from frequent trading on margin, nor does it justify eliminating safeguards that protect firms from inadequately controlling margin. If the Proposal is approved, it should be revised to require FINRA member firms to monitor risk on an intraday basis, subject to limited exceptions.

NASAA supported the day trading margin rules when they were adopted,[4] and we continue to believe that the regulatory framework provides important protections to both the markets and

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1 https://www.sec.gov/comments/sr-finra-2025-017/notice-filing-proposed-rule-change-amend-finra-rule-4210-margin-requirements-replace-day-trading#no-back.

2 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.

3 The Proposal is available at https://www.sec.gov/files/rules/sro/finra/2026/34-104572.pdf.

4 Letter from Bradley W. Skolnik, NASAA President and Indiana Securities Commissioner, to Jonathan G. Katz, Secretary, SEC, Re: File No. SR-NASD-00-03 (Mar. 10, 2000).

market participants. Nonetheless, we believe that certain adjustments may be appropriate.[5] For example, NASAA generally supports the Proposal's aims to align the required maintenance margin levels to the risk of a customer's positions or strategy, and to empower broker-dealers to monitor and adjust risk more dynamically in real time by, *e.g.*, requiring additional margin or blocking trades that would create or increase margin deficits. However, the Proposal would fundamentally overhaul the day trading margin rules.

FINRA seeks Commission approval of the Proposal, but without a record that demonstrates adequate justification or support. Further the Proposal lacks sufficiently robust guardrails to assure that it will work as expected. The Proposal in its current form is therefore not consistent with investor protection and the public interest, and the Commission should not approve it without further analysis from FINRA in the form of an adequate administrative record and appropriate guardrails to protect day traders, broker-dealers, and the broader markets.[6]

## I. **FINRA proposes a fundamental overhaul of the regulatory framework without adequate justification.**

Day trading is an inherently speculative strategy wherein traders execute multiple transactions daily in often-volatile securities and derivative products. The available evidence shows that the vast majority of day traders lose most or all of their money.[7] As the Commission recognized when it approved the current day trading margin rules in 2001, the use of margin amplifies the risks of day trading, and therefore demands appropriate regulatory guardrails.[8] The current rules were "designed to protect Pattern Day Traders, the firms where those traders have their accounts, and the markets on which they trade" by "ensur[ing] that day traders have an appropriate amount of equity for the potential losses that may be incurred."[9]

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[5] *See* Letter from Leslie M. Van Buskirk, NASAA President and Administrator, Division of Securities, Wisconsin Department of Financial Institutions, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, Re: Regulatory Notice 24-13: *Retrospective Rule Review: Day Trading*, 1, 6, 8-9 (Jan. 28, 2025).

[6] *See* 15 U.S.C. § 78o-3(b)(6) (requiring that the rules of a registered national securities association be "designed . . . in general, to protect investors and the public interest").

[7] *See*, *e.g.*, Robert Rother, *90% of Day Traders Lose Money—Here's The Brutal Truth Nobody Tells You About*, MEDIUM (May 23, 2025) (citing reported failure rates between 80-95%); Bob Pisani, *Attention Robinhood power users: Most day traders lose money*, CNBC (Nov. 20, 2020) (citing studies showing low success rates in Taiwan, Brazil, and with certain self-directed brokerage firms); NASAA, *Report of the Day Trading Project Group, Findings and Recommendations*, 1, 5-10 (Aug. 9, 1999) ("NASAA Day Trading Report") (*inter alia*, noting analyst's conclusion that "70% of public traders will not only lose, but will almost certainly lose everything they invest"); Permanent Subcommittee on Investigations, Senate Comm. On Governmental Affairs, 106th Cong., 2d Sess., Report, *Day Trading: Case Studies and Conclusions*, 2, 5-6, 24-28 (July 27, 2000) ("Senate Day Trading Report") (*inter alia*, stating that "even among experienced and well capitalized traders, a majority will lose money").

[8] *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*, SEC Rel. No. 34-44009, 66 Fed. Reg. 13608, 13617 (Mar. 6, 2001) ("PDT Approval Order").

[9] *Id*.

FINRA proposes to abandon the concept of "pattern day traders" entirely. The Proposal would also eliminate the long-standing requirements applicable to the use of margin by such "'true' day traders"[10] – *e.g.*, heightened minimum equity in the account before and during trading, limiting buying power until a margin call has been met, and the prohibition of cross-guarantees as a source of funds to meet margin obligations – and replace them with "intraday margin requirements" applicable to all margin accounts.[11] FINRA explains that the Proposal is appropriate because of changes in the markets and investor preferences, as well as investors' and broker-dealers' dissatisfaction with the current rules.[12] These developments include the proliferation of zero-commission trading and mobile trading apps, new products designed for day trading, the availability of information on social media, and younger investors' increasing comfort with and appetite for risky trading. However, the Proposal does not adequately consider whether, and to what extent, the risks and concerns that led to the adoption of the current rules persist today, or whether new risks have emerged as a result of the developments that FINRA cites in support of the Proposal. Further, FINRA did not seek public comment on the proposed changes, which would have allowed FINRA to gather data to properly develop the Proposal before seeking the Commission's approval.

### A. Many of the risks and concerns that led to the adoption of the day trading margin rules persist today.

Retail investors enjoy greater access to the capital markets in large part due to innovation and corresponding changes in broker-dealer business models. The proliferation of self-directed, zero-commission trading platforms combined with technological developments have enabled retail investors to trade at the push of a button on their phones. Traders and other market participants have ready access to more information than they did in 2001, from a variety of sources and outlets. As important as these developments are, they have not eliminated the risks of day trading or the fact that using margin amplifies such risks. The Proposal offers no analysis of the extent to which those risks may have been mitigated since the adoption of the current rule. Despite acknowledging that "new risks have emerged that are not covered by current rule,"[13] the Proposal does not consider the impact of such new risks, including practices used by some firms to encourage more and frequent trading by their customers.

As an initial matter, the Proposal overstates the significance of zero-commission trading in evaluating the overall risk of day trading.[14] While brokerage commissions undoubtedly reduce profits, they are not the only cost or source of risk associated with frequent trading. Even in a zero-

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10 *See id.*, 66 Fed. Reg. at 13610 (noting that the proposed NASD rule would distinguish between "'true' day traders" and "merely incidental or occasional day traders").

11 *See* Proposal at 10-21.

12 *See id.* at 7-10.

13 *Id.* at 23-24 (acknowledging that "new risks have emerged," but citing only "the expansion in 0DTE options trading" without further discussion).

14 *See id.* at 6-7, 11, 23.

commission environment, smaller, less experienced traders lose money due to a variety of factors, such as overconfidence in their information and abilities, volatility, and the reality that other market participants are better equipped to seize profitable trades and liquidity in fractions of a second.[15] The Proposal also fails to recognize that this phenomenon – low-commission broker-dealers and trading platforms that augment their revenue by entering into "order flow" agreements with market makers – is not new, even if it has become more widespread.[16] Nonetheless, the Proposal relies on the rise in the number of zero-commission trading platforms as one of its central justifications, but says nothing about potential harms that may exist in the current cost environment for retail investors.

While access to more information may help traders make investment decisions, the availability of more information does not equate to better information, nor does it ensure safer trading. Today, it is easy to obtain financial data and other 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 and analysis from broker-dealers, Yahoo Finance, and the Federal Reserve Economic Data database). But, whether due to cost, convenience, or other factors, 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.[17] 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.[18]

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15 *See*, *e.g.*, Rother, *supra* note 7 ("Even if you're right 50% of the time, transaction costs, spreads, and slippage eat your profits. You need to be right 55–60% of the time just to break even."); NASAA Day Trading Report at 5-10; Senate Day Trading Report at 22-28.

16 *See* Senate Day Trading Report at 16-17 (discussing an advertisement directed by a day trading firm to "hyper-active" investors, marketing the firm's execution system as a way to avoid paying higher execution costs arising from "order flow" agreements by supposedly low-cost online brokers).

17 *See*, *e.g.*, Tom Akana *et al.*, Fed. Res. Bank of Phila., Consumer Fin. Inst., *How Americans Use Social Media for Financial Advice*, 7-8 (Mar. 2025) (discussing factors including cost, accessibility and convenience, likability and relatability, and data suggesting that investors who use social media for financial advice place higher value on the "perceived wealth/financial success of advice provider" and "how quickly the advice promises to generate wealth"); FINRA Investor Education Foundation, *Investors in the United States: The Changing Landscape*, 19-21 (Dec. 2022); FINRA Investor Education Foundation and CFA Institute, *Gen Z and Investing: Social Media, Crypto, FOMO, and Family*, 4-6 (May 2023).

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

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 inexpert individuals encouraging risk taking and speculation.[19] 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.[20] 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.'"[21] In yet 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.[22] The SEC has in recent years taken enforcement action against celebrities promoting speculative digital asset investments without proper disclosures,[23] 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.[24]

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 <u>bolster</u>, not reduce, the need for strong day trading rules. Research suggests that many of these investors lack the resources and investing knowledge to effectively recognize and guard against the risks of day trading. 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.[25] Younger, less experienced investors generally tend to be more susceptible to social media trends, app-based notifications, and media attention on certain securities that can drive impulsive, high-

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19 *See*, *e.g.*, NASAA, Informed Investor Advisory: Finfluencers (posted August 2022).

20 *M1 Finance LLC*, FINRA Letter of Acceptance, Waiver, and Consent ("AWC") No. 2021072581101 (Mar. 15, 2024).

21 *TradeZero America, Inc.*, FINRA AWC No. 2021072581301 (June 10, 2024).

22 *Cobra Trading, Inc.*, FINRA AWC No. 2021072501001 (Apr. 3, 2024).

23 *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).

24 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).

25 *See Investors in the United States* at 7-9; *Gen Z and Investing* at 1-2, 9.

turnover trading.[26] Other research indicates that many "Gen Zs" are not investing yet because they lack sufficient savings or income, among other reasons.[27] This suggests that these investors do not have the financial ability to withstand significant losses, let alone the types of losses that might come through the use of margin. Research further suggests that many younger investors may lack sufficient knowledge about investing to make prudent decisions to protect themselves.[28]

The Proposal neglects to consider whether developments like the proliferation of mobile trading apps and increasing reliance on social media for information may have increased existing risks or created new ones. Some online and app-based broker-dealers use 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, more aggressive trading, or less informed trading.[29] Further, trading platforms popular with day traders and other high-risk traders may also promote themselves through finfluencer content, podcasts, and other new media platforms. Even if those trading platforms do not focus on day trading, their marketing through finfluencers who promote day trading might drive potential day traders to those trading platforms. Unfortunately, the Proposal does not meaningfully address these risks and their potential impact on the behavior of day traders.

### B. FINRA seeks SEC approval without adequate notice and comment.

The gaps in the analysis of how the changes contemplated in the Proposal might impact investors and firms are particularly significant because FINRA did not seek public comment on

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26 *See*, *e.g.*, Sonja Warkulat and Matthias Pelster, *Social media attention and retail investor behavior: Evidence from r/wallstreetbets*, 96 Int'l Rev. Fin. Analysis, Art. 103721 (Nov. 2024); Liran Eliner and Botir Kobilov, *To the Moon or Bust: Do Retail Investors Profit From Social Media-Induced Trading?*, American Finance Association (July 30, 2023); Brad M. Barber *et al*., *Attention Induced Trading and Returns: Evidence from Robinhood Users*, 77 J. Fin. 3141 (Dec. 2022) (pre-publication draft available from Social Science Research Network (SSRN)); Robin Greenwood and Stefan Nagel, *Inexperienced investors and bubbles*, 93 J. Fin. Econ. 239 (Aug. 2009).

27 *See Gen Z and Investing* at 7.

28 *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).

29 *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"); Barber *et al*., *supra* note 25; Warkulat and Pelster, *supra* note 25. *See also* *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*, SEC Rel. No. 34-92766 (Aug. 27, 2021); *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers*, SEC Rel. No. 34-97990, at 27-33 (July 26, 2023); Letter from Benjamin Schiffrin, Director of Securities Policy, Better Markets, Inc., to Vanessa A. Countryman, Secretary, SEC, Re: File No. 10-242, 24X National Exchange LLC, 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).

the Proposal before filing it with the SEC. As FINRA explains in the Proposal, it commenced a "retrospective review" of its day trading rules by issuing Regulatory Notice 24-13 in October, 2024 (the "Regulatory Notice").[30] The Regulatory Notice did not propose any specific course of action, and it solicited primarily anecdotal comments about the day trading rules and how FINRA should revise them.[31] NASAA's letter in response to the Regulatory Notice raised several concerns about the persistent risks of day trading, but indicated that certain changes to the day trading margin rules may be appropriate and encouraged FINRA to collect empirical evidence to support any proposal to change those requirements.[32]

FINRA appears to have decided not to collect additional empirical evidence to inform the Proposal. Instead, FINRA developed the Proposal based on "approximately 65 comments" received in response to an open-ended Regulatory Notice and "outreach to a cross-section of members and other interested parties."[33] The Proposal does not contain a list of the "other interested parties."[34] FINRA then elected not to publish the Proposal for comment before it was filed with the SEC, resulting in further limiting the data and information that could have helped to shape the proposed changes.[35] Ultimately, FINRA expressly acknowledges that "[w]ritten comments on this specific proposal were neither solicited nor received."[36]

By taking the Proposal directly to the SEC, FINRA's approach has limited the time in which all stakeholders can engage in thoughtful consideration of the Proposal.[37] It also deprives

30 Proposal at 8; Regulatory Notice 24-13 (Oct. 2024).

31 *See* Regulatory Notice at 11-13.

32 *See* NASAA letter, *supra* note 5.

33 Proposal at 9 n.23, 10.

34 *See id*. at 8-10. The one time that the Proposal identifies the source of comments received by FINRA, it notes that certain exchanges, and associations representing firms and individuals with a potential pecuniary interest in expanding access to leveraged day trading, "have suggested that the requirements should be modernized to account for market developments." *See id*. at 8 n.20.

35 *See*, *e.g.*, Hester M. Peirce, Comm'r, SEC, Rat Farms and Rule Comments – Statement on Comment Period Lengths (Dec. 10, 2021) (stating that "[t]he notice and comment process is intended to be a dialogue" and "[t]he more eyes allowed to peruse a rule carefully, the more likely we are to identify potential bad consequences ahead of time").

36 Proposal at 39.

37 *See*, *e.g.*, Letter from Patrick McHenry, Ranking Member, House Committee on Financial Services, and Pat Toomey, Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs, to Gary Gensler, Chair, SEC (Jan. 10, 2022) (stating that "[t]he notice-and-comment process is critical to effective . . . rulemaking," that "properly scrutinizing a proposed rulemaking often requires a significant investment of time and resources," and expressing concern that "unreasonably short comment periods . . . harm the quality of public comment"); Statement of Comm'r Peirce, *supra* note 35 ("The regulatory conversation flows only when . . . the commenting public [is afforded] sufficient time both to review and analyze proposals thoroughly and to formulate fully articulated opinions and suggestions. Analyzing a [complex] rulemaking in the context of intricate markets and an already complicated set of securities and other relevant laws is not an easy task. Such analysis takes time. Thirty days is typically not enough time to get feedback on a rule proposal."); Elad L. Roisman, Comm'r, SEC, Statement on the Proposed

both FINRA and the Commission of any insights that would have been generated in a robust notice and comment process focused on developing a complete record. Thus, FINRA's approach places the SEC in a position where it must decide whether to approve or disapprove a proposed overhaul of the day trading margin rules without the input that would have been provided if FINRA had issued a regulatory notice and sought comment from a range of interested stakeholders. While FINRA generally summarizes some of the comments received pursuant to the Regulatory Notice, those comments were not responding to a defined proposal, and FINRA selectively refers only to support for the proposed changes. Further, the Regulatory Notice sought comments regarding the margin requirements for "pattern day traders," but the Proposal would alter the manner in which FINRA member firms are expected to monitor risk, determine margin deficits, and address the risks that arise, regardless of whether customers are engaged in day trading.[38] FINRA also fails in the Proposal to consider some of the potential alternatives suggested by commenters.[39] The Commission should therefore require FINRA to provide it with a complete record to facilitate meaningful review and scrutiny of the Proposal.[40]

For the foregoing reasons, the Proposal needs additional supporting analysis from FINRA before it is appropriate for approval. If the Commission is inclined to move forward without further analysis from FINRA, additional guardrails should be included to protect market participants.

## II. **Additional guardrails are necessary to better assure that the proposed changes will work as expected and protect market participants from unnecessary and excessive risk.**

As described in the Proposal, the new intraday margin requirements "are designed so that [FINRA] members could comply with the rule by implementing real-time monitoring of customer positions and blocking transactions that would otherwise create or increase intraday margin deficits."[41] If the new requirements work as planned, FINRA expects that "these members'

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Rules Regarding 10b5-1 Plans (Dec. 15, 2021) (noting that a comment period of 45 days is "shorter than our customary comment periods, which have typically been 90 or at least 60 days").

38 *See* Regulatory Notice at 12-13 (requesting anecdotal comments regarding "the pattern day trading requirements," not about the FINRA margin rules more broadly).

39 *See* Proposal at 38; Comments on Regulatory Notice 24-13. Multiple commenters urged FINRA to take a more targeted approach to its revisions. While FINRA considered some of these approaches, such as reducing, rather than eliminating, the current minimum equity requirements for pattern day traders, it failed to consider others, such as allowing firms that are capable of real-time monitoring to do so while otherwise retaining the existing approach (*i.e.*, defined, heightened minimum equity) for firms that cannot or will not do so.

40 *Cf. Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442, 446-51 (D.C. Cir. 2017) (holding that SEC approval of proposed rule change by the Options Clearing Corporation was arbitrary and capricious where SEC relied on OCC's analysis and conclusions instead of the SEC's independent assessment); *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1150-52 (D.C. Cir. 2011) (vacating adoption of a rule based on (1) selective reliance on supportive evidence and discounting of adverse evidence, and (2) "arbitrar[y]" failure to seriously consider how the rule would operate, *i.e.*, how certain actors might use it).

41 Proposal at 13.

customers should never incur intraday margin deficits."[42] However, although the Proposal is premised on real-time monitoring capability, FINRA makes clear that "real-time monitoring *is not a requirement under the rule*" and FINRA member firms would be permitted to make the required calculations at the end of the day, as they do now.[43] This puts too much discretion in the hands of member firms. As the Commission recognized when it approved the day trading margin requirements, day trading on margin imposes risks not only to day traders and the firms where they have their accounts, but to "the integrity of the U.S. financial markets."[44] Broker-dealers that extend margin to day traders should be required to monitor and manage risk in the manner that FINRA cites as justification for the Proposal, not simply be permitted or empowered to do so.

In the Proposal, FINRA notes that "commenters felt that the $25,000 minimum equity requirement . . . is unnecessary in light of the current capabilities of members to monitor risk in real time."[45] If that is the case, the Proposal should require intraday monitoring by default for all customers that are day trading on margin. If intraday monitoring is unnecessary for some customers because they are not engaged in day trading or other activities that create or magnify intraday risk, the Proposal could simply permit continued end-of-day monitoring for those customers and accounts. In other words, the Proposal should require firms to monitor and manage risk in the way that FINRA deems sufficient to justify the proposed changes, and specify the circumstances where intraday monitoring is unnecessary. This approach would decrease burdens where it can be done without compromising important protections, while also maintaining effective protections generally in the manner that FINRA has determined sufficient to address those risks in the context of today's markets.

FINRA's proposed approach, which would allow firms to choose how rigorously they would monitor their customers' margin, would be too permissive. In recent years, FINRA has observed deficiencies and issued examination findings that suggest that FINRA member firms are having difficulties performing the level of risk management for which the rule was designed. Among other things, FINRA has cited member firms for:

- Not having reasonably designed systems to consistently identify credit risk exposure intraday or end of day;
- Staff who fail to promptly identify and escalate incidents related to elevated risk exposure in portfolio margin accounts to senior management, in part due to insufficient expertise;
- Inadequate policies and procedures for intraday monitoring processes and controls;

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42 *Id.* at 13-14.

43 *Id.* at 14 (emphasis added).

44 PDT Approval Order, 66 Fed. Reg. at 13617.

45 Proposal at 9.

- Not having reasonably designed processes, controls, or frameworks to identify and exclude non-eligible products from the risk-based margin value of customers' accounts with the firm;

- Failing to keep adequate records of customer positions, as specified in the firm's Portfolio Margin Application approval letter from FINRA;

- Incorrectly computing the account equity used to determine the maintenance margin excess or deficiency by incorporating incorrect option prices;

- Failing to ensure that portfolio margin accounts maintain the required minimum equity; and

- Failing to conduct an internal audit review of the portfolio margin process as part of the firm's portfolio margin approval and as required by its Portfolio Margin Application.[46]

It would be inappropriate to remove or dilute important regulatory guardrails without assurance that firms can and will effectively manage the risks that the day trading margin rules were designed to address. The use of margin in day trading amplifies the risk for day traders and exposes the broker-dealers where they have their accounts, and, by extension, other customers of those firms, to risk as well. Firms are already failing to monitor and control such risks effectively. The proposed overhaul of long-standing protections must not come at the expense of appropriate guardrails, which exist to protect day traders, broker-dealers, and the broader markets alike.

## III. Conclusion

NASAA appreciates and supports efforts to expand retail investor participation in the capital markets. As regulators, we have a responsibility to make sure that we take a balanced approach to such efforts to ensure that investors build and maintain the trust upon which our capital markets thrive. 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,

Marni Rock Gibson

Marni Rock Gibson
NASAA President and
Commissioner, Kentucky Department of
Financial Institutions

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46 FINRA, *2024 FINRA Annual Regulatory Oversight Report*, 83 (Jan. 2024); FINRA, *2023 Report on FINRA's Examination and Risk Monitoring Program*, 69 (Jan. 2023).