Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Petition of: Fidelity Investments	File No. SR-OCC-2025-018

PETITION FOR REVIEW OF ORDER TAKEN BY DELEGATED AUTHORITY GRANTING APPROVAL OF PROPOSED RULE CHANGE BY OPTIONS CLEARING CORPORATION AMENDING METHODOLOGY FOR ALLOCATION OF CLEARING FUND DEPOSIT REQUIREMENTS

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Pursuant to Rule 430 of the Rules of Practice of the Securities and Exchange Commission (Commission or SEC), Fidelity Investments and its affiliated and related entities (Fidelity) hereby petition the Commission for review of the Order set forth in Exchange Act Release No. 104359 (Dec. 11, 2025), 90 Fed. Reg. 58352. In that Order, the Division of Trading and Markets (the Division), acting pursuant to delegated authority, approved a proposed rule change by the Options Clearing Corporation (OCC) amending OCC's allocation methodology for determining the Clearing Fund deposit requirements for OCC's clearing members, including Fidelity company National Financial Services LLC.[1]

INTRODUCTION

This petition concerns OCC's proposed overhaul of the allocation methodology for its Clearing Fund. The existing contribution formula turns on three metrics: (i) the member's proportional share of the total margin collateral posted with OCC by all members (70% weight); (ii) the member's "open interest," or average daily number of cleared contracts with positions that remain open end-of-day (15% weight); and (iii) the member's "volume," a similar metric that captures the number of cleared contracts regardless of whether positions are open end-of-day (15% weight). OCC's proposed rule would discard that formula and introduce a new stress-loss metric (to be given 70% weight), plus 15% margin and 15% volume. The consequences would be staggering for clearing members like Fidelity, whose required contribution would increase by two-thirds under the new methodology. Yet the rule change received limited scrutiny, likely because the comment period corresponded with the government shutdown and because OCC presented its data in a way that obscured the significant impact on "agency broker" clearing members that

[1] Fidelity Investments provides clearing, custody, or other brokerage services through National Financial Services LLC.

facilitate trading for retail investors. The Commission should not let this important change go overlooked. It should review and reverse the Division's approval decision.

Under the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78a *et seq.*, the Commission must ensure that proposed OCC rule changes are consistent with the requirements of the Act and applicable regulations. OCC's proposed allocation change does not satisfy that standard—and thus would not withstand a judicial challenge under the Administrative Procedure Act (APA)—for at least three reasons.

First, Section 17A of the Exchange Act repeatedly commands that OCC rules may not play favorites. The Exchange Act bars OCC from "permit[ting] unfair discrimination," requires it to "provide for the equitable allocation of . . . charges among its participants," and forbids it from "impos[ing] any burden on competition not necessary or appropriate." 15 U.S.C. § 78q-1(b)(3)(D), (F), (I). But OCC's use of its stress-loss scenario as a primary determinant of a clearing member's contribution disproportionately tips the scales against agency brokers and in favor of proprietary trading firms and market makers. That measure captures one aspect of the particular risk profile of agency brokers, while ignoring the ways in which those brokers protect against such risk. Meanwhile, OCC's proposal would reduce the combined 30% weight of open interest and volume to just 15%, by eliminating the open-interest component entirely. Open interest and volume are inputs that can help capture operational risk, which is a core aspect of the risk profile of proprietary trading firms and market makers. The net result is unjustifiable discrimination, not an even-handed evaluation of risk.

Second, Section 17A requires that OCC "protect investors and the public interest." 15 U.S.C. § 78q-1(b)(3)(F). OCC's rule does the opposite. By heavily penalizing agency brokers, it creates significant new costs that may be passed down to retail investors, whether in the form of

higher costs or modified product availability. OCC never acknowledged these inevitable harms to individual investors.

Third, the Commission's regulations (and the basic strictures of the APA) require that OCC provide a detailed description of the change's operation and effects. 17 C.F.R. § 201.700(b)(3). Both OCC's proposal and the Division's approval fall short. When the primary effect of a rule change is to disadvantage a clearly identifiable group—here, agency brokers—OCC must acknowledge that consequence and explain why it is warranted. Instead, OCC grouped data in a way that masked any significant effect on individual clearing members or certain business models. It provided the aggregate contribution percentages for the clearing members inside and outside the top 10, leaving the impression that the new rule would have tiny effects on the order of 0% to 3%. In fact, Fidelity faces a *67% increase* in its required contribution. Other agency brokers likely face similarly material increases. Yet no discussion of that pronounced effect on an identifiable group of clearing members can be found anywhere in OCC's proposal or the Division's approval decision.

The Commission's full review is warranted here. Given the significance and skew of OCC's proposed rule change, affected clearing members have real concerns. But the comment process here was marked by procedural challenges. Perhaps most notably, the entirety of the OCC comment period (October 1 to October 22) overlapped with the shutdown of the federal government. As a result, a significant rule change has faced far less scrutiny than it warrants. The Commission's full review can remedy that oversight.

BACKGROUND

A. The OCC Clearing Fund

The Options Clearing Corporation is the sole central counterparty for standardized equity options listed on U.S. national securities exchanges. OCC has over 100 clearing members, for

which it performs clearance and settlement services. Several of those members are agency brokers that clear options trades for their retail and institutional customers, while many other members trade and clear options for their own accounts. This latter category includes proprietary and quantitative trading firms, market makers, and traditional broker-dealers and bank-affiliated firms engaged in principal trading.

Because OCC interposes itself as the buyer to every seller and the seller to every buyer for contracts that it clears, it is obligated to perform on cleared contracts if a clearing member defaults. OCC therefore faces a risk that it will not maintain sufficient financial resources to cover those exposures in the event of a default by one or more of its members. OCC addresses that risk in a number of ways, including by maintaining robust membership standards, requiring clearing members to post margin collateral, conducting ongoing surveillance and intraday monitoring, performing regular stress and sufficiency testing, and maintaining clear default-management tools and procedures. OCC calculates each clearing member's required margin amount daily by looking to the member's portfolio composition, diversification, volatility, and other risk factors. *See* 90 Fed. Reg. 47383, 47384-47385 (Oct. 1, 2025); 83 Fed. Reg. 37855, 37857-37858 (July 27, 2018). As a final backstop, OCC also maintains a Clearing Fund. *See* 17 C.F.R. § 240.17ad-22(e)(4). The Clearing Fund is a prefunded pool of financial resources contributed by all clearing members, which OCC may draw upon if needed to meet its obligations. OCC's rules separately govern how the Clearing Fund is *sized* (that is, the total amount of liquidity resources that OCC maintains) and how that total amount is *allocated* among the clearing members (that is, the percentage of the fund that each clearing member must pay in).

B. OCC's Sizing Methodology

OCC determines the size of the Clearing Fund by looking to the amount "required within a confidence level selected by OCC to sustain possible loss under a defined set of scenarios."

Exchange Act Release No. 65119, 76 Fed. Reg. 51087, 51087 (Aug. 12, 2011). OCC's current sizing rules, approved by the Commission in 2018, use a "Cover 2" standard. 83 Fed. Reg. at 37855. OCC uses a scenario-based stress-testing framework to simulate the profits and losses of all clearing member portfolios under certain "extreme but plausible" scenarios. 90 Fed. Reg. 36457, 36457-58 (Aug. 4, 2025). OCC then establishes the size of its Clearing Fund at an amount sufficient to protect it against losses stemming from the default of the two clearing members that would potentially cause the largest aggregate credit exposure for OCC. *See* 17 C.F.R. § 240.17ad-22(e)(4)(ii).

C. OCC's Allocation Methodology

In contrast with OCC's approach to sizing the Clearing Fund, OCC's methodology for determining each clearing member's proportional contribution has changed substantially over time. Before 2013, OCC required clearing members to contribute in proportion to their average daily "open interest"—the number of cleared contracts with positions that remain open at the end of the trading day. 78 Fed. Reg. 24257, 24257 (Apr. 18, 2013).

In 2013, OCC adopted, and the Commission approved, a new allocation formula that OCC believed would more "equitably allocate contributions among its clearing members based on each clearing member's particular activities and the use of OCC's facilities." *Id.* The 2013 formula included three components: open interest (50%); "volume" (15%); and "total risk" (35%). *Id.* OCC's new "volume" metric, "like open interest, [was] a measure of a clearing member's level of usage of OCC's facilities." *Id*. But whereas open interest reflected the number of cleared contracts with positions remaining open at the end of the trading day, the volume metric reflected the number of cleared contracts regardless of whether those positions remained open. Thus, the volume metric captured the "demands on OCC's services and facilities" created by "market-making, high frequency trading, and execution-only services," which can involve clearing large numbers of

contracts that are closed intraday and therefore are not reflected in the "open interest" metric. *Id.* Meanwhile, OCC designed its new "total risk" metric to "measure the economic significance of the activities of a clearing member"—that is, to capture the risks associated with the clearing member's portfolio, which can be affected by "the types of positions, number of long positions versus short positions, value of the securities underlying the contracts, volatility of the underlying, diversification," and so on. *Id.* To achieve that objective, OCC tied each clearing member's "total risk" metric to the amount of margin collateral required from that member under OCC's margin methodology. *Id.*

OCC revised the allocation formula again in 2018. 83 Fed. Reg. 37855 (July 27, 2018). While keeping the same metrics, OCC shifted their weights, moving to 70% total risk, 15% open interest, and 15% volume. *Id.* at 37859. In approving OCC's 2018 proposal, the Division noted that the change "place[d] more emphasis on the economic risk presented by a clearing member's cleared contracts than the operational risk presented by a high volume clearing member," such as a market maker or proprietary trading firm. *Id.* at 37860.

D. OCC's Proposed Allocation Methodology Change

1. On September 26, 2025, OCC filed the proposed rule change with the Commission, seeking to again revise its Clearing Fund allocation methodology. 90 Fed. Reg. at 47383. The proposed allocation change does not alter the size of the Clearing Fund. But it does substantially revise OCC's existing formula—70% total risk, 15% open interest, 15% volume—for allocating contributions to the fund among clearing members.[2]

[2] OCC also proposed to extend the lookback period used for allocation inputs from one month to three months, and to adopt a new authority allowing OCC to hold allocation weights constant month-over-month during periods of heightened market volatility. 90 Fed. Reg. at 47383. Fidelity does not seek review of the Division's approval of either of these changes.

Specifically, OCC proposed moving to a new formula centered on a new metric: 70% "Clearing Fund risk-based shortfall allocations based on stress loss in excess of margin"; 15% total risk, which OCC now calls "margin"; 15% volume; and 0% open interest. *Id*. OCC's new "shortfall" metric refers to the estimated loss in excess of the clearing member's margin requirement that the member would experience in the worst of the stress-testing scenarios that OCC uses to determine the size of the Clearing Fund. 90 Fed. Reg. 58352, 58353 & n.16 (Dec. 11, 2025); *see supra*, p. 5. Thus, the proposed rule adopts a methodology that is "driven primarily by a clearing member's proportionate share of shortfalls (i.e., the estimated stress loss exposure in excess of margin requirements)." 90 Fed. Reg. at 58353.

In proposing this change to the Commission, OCC explained that it intended to "better align[] the allocation of the Clearing Fund with the sizing of the Clearing Fund," "as the same set of stress scenarios used to calculate the shortfalls will be used as input to the allocation scheme." 90 Fed. Reg. at 47386. Although OCC for the last seven years has measured the two requirements differently, it now sought to "generate contribution requirements that are commensurate to the risks borne by OCC from its clearing members." *Id.* at 47388. OCC also noted that, in its view, "shortfall is a closer proxy to the risk borne by OCC" than the margin-based "total risk" metric that OCC had weighted heavily in the allocation formula since 2018. *Id.* at 47389.

2. On October 1, 2025, the Division published Notice of OCC's Proposed Allocation Change in the Federal Register, requesting comments by October 22. 90 Fed. Reg. at 47390. That same day, a lapse in appropriations led to a government shutdown. The Commission stayed and extended other comment periods in light of the shutdown, *see* Exchange Act Release No. 104162 (Oct. 1, 2025), but not this one. The shutdown ultimately ran from October 1 to November 12.

Both OCC and the Commission took actions related to the proposed allocation change during the shutdown period. On October 2, one day after the shutdown began, OCC issued a memorandum to clearing members "discussing, amongst other things, the proposed rule change." 90 Fed. Reg. at 58352 n.5. On October 7, OCC filed "Partial Amendment No. 1" with the Commission to add the October 2 memorandum to the rulemaking file. OCC, Partial Amendment No. 1 to SR-OCC-2025-018 (Oct. 2, 2025); *see* 90 Fed. Reg. at 58352. On November 3, the Commission extended the time for its review of OCC's proposal from November 15 to December 30. 90 Fed. Reg. at 58352.

3. Despite that extension, the SEC's Division of Trading and Markets, acting pursuant to delegated authority, approved the proposed rule change "on an accelerated basis" three weeks ahead of its December 30 review-period deadline. *Id*. at 58355. The Division concluded that the proposed rule change was consistent with Section 17A(b)(3)(F)'s requirement that OCC's rules not unfairly discriminate among clearing members. *Id.* The Division reached that conclusion based on its understanding that the formula change would "more closely align a member's financial obligations to OCC with the credit risk the member poses" because OCC's previous "methodology for allocating such contributions" was not "aligned with the methodology for setting the size of the Clearing Fund itself." *Id*. at 58354-55; *see id.* at 58352.

The Division's approval order also opened a new comment period of unclear scope ending on January 6, 2026, or 21 days after the approval decision's publication in the Federal Register. *Id*. at 58355. The Division appears to have provided that additional comment period as a housekeeping measure to account for OCC's "Partial Amendment No. 1"—the October 2 memorandum from OCC to clearing members—even though that memorandum merely described the original proposal and did not "change the purpose of or basis for the proposed changes." *Id.*

Despite having approved OCC's Proposed Allocation Change, the Division's order invites comment "concerning . . . whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange Act." *Id.*

STANDING

Fidelity is a "person aggrieved" by OCC's proposed allocation change and is thus entitled to seek the Commission's review of the Division's approval. *See* 17 C.F.R. § 201.430(a). Fidelity company National Financial Services LLC is a clearing member of OCC that must contribute substantially more to the Clearing Fund under the proposed rule change. In fact, Fidelity estimates that its contribution obligations will increase by roughly 67%.

REASONS FOR GRANTING THE PETITION

"In determining whether to grant review" of the Division's approval decision, the Commission must consider whether Fidelity has made "a reasonable showing" that the decision involves (1) "a finding or conclusion of material fact that is clearly erroneous"; (2) "a conclusion of law that is erroneous"; or (3) "an exercise of discretion or decision of law or policy that is important and that the Commission should review." 17 C.F.R. § 201.431(b)(2); *see id.* § 201.411(b). This petition easily clears that bar. For starters, the Division's legal conclusions and core factual premise—that the proposed allocation methodology fairly tracks clearing members' default risk—are wrong. Because OCC failed to establish that the proposed rule change is consistent with the requirements of the Exchange Act, the Division should have disapproved the proposal. Moreover, even if the factual and legal questions were close, the proposed change involves a "decision of law or policy that is important"—not only to affected agency brokers like Fidelity (whose contribution will increase by 67%, which equates to hundreds of millions of dollars), but also to the retail customers they serve.

Further review is warranted for practical reasons, too. The Division's approval came after an unusually disorderly rulemaking process that included a government shutdown that began on the same day as the comment period, as well as a confusing amendment. These challenges resulted in both OCC and the Division moving forward without the benefit of comments from any affected clearing members. The Commission should grant review so that it can give full consideration to Fidelity's legal and factual concerns, before the Division's approval decision becomes a final action subject to judicial scrutiny under the APA.

I. THE PROPOSED ALLOCATION CHANGE IS INCONSISTENT WITH THE EXCHANGE ACT AND SEC RULES.

The Commission may approve a rule change proposed by a self-regulatory organization such as OCC only if it "finds that such [amendment] is consistent with the requirements of [the Exchange Act] and the rules and regulations issued under [the Act] that are applicable to" OCC. 15 U.S.C. § 78s(b)(2)(C); *see Susquehanna Int'l Grp., LLP* v. *SEC*, 866 F.3d 442, 445 (D.C. Cir. 2017). Under Commission regulations, OCC bears the burden to make that showing, and its "mere assertion that the proposed rule change is consistent with [the Exchange Act] . . . is not sufficient." 17 C.F.R. § 201.700(b)(3). "Instead, [OCC's] description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding." *Id.*

Applying these principles, the Division should have disapproved the proposed allocation change for two independent reasons. First, as a matter of substance, the new rule is not "consistent with" several Exchange Act provisions because it relies on a substantially biased calculation of risk that disproportionately harms certain definite cohorts of clearing members. Second, as a matter of procedure, OCC's notice failed to sufficiently describe and justify the proposed rule's impact, including on agency brokers and the retail options market.

A. The Proposed Allocation Change Violates Section 17A.

Section 17A of the Exchange Act imposes a number of requirements that clearing agencies' rules must satisfy. As relevant here, OCC's rules must (i) avoid "unfair discrimination . . . among participants," 15 U.S.C. § 78q-1(b)(3)(F); (ii) "provide for the equitable allocation of reasonable dues, fees, and other charges among its participants," *id.* § 78q-1(b)(3)(D); (iii) refrain from "impos[ing] any burden on competition not necessary or appropriate in furtherance of the purposes" of the Exchange Act, *id.* § 78q-1(b)(3)(I); and (iv) "protect investors and the public interest," *id.* § 78q-1(b)(3)(F). The proposed rule fails all four of these statutory mandates.

1. The proposed allocation unfairly discriminates, inequitably allocates Clearing Fund contributions, and unnecessarily burdens competition.

OCC's proposed rule fails to treat clearing members evenhandedly because the new formula for allocating Clearing Fund contributions is substantially biased against agency brokers that clear trades for retail investors. Fidelity agrees with OCC and the Division that the relative default risk of each member is fundamental to the equitable allocation of Clearing Fund contributions. But the proposed allocation change greatly overstates the risk posed by the agency-broker model, compared to the risks posed by different business models such as proprietary trading firms and market makers. The new formula would thus require agency brokers to contribute to the Clearing Fund substantially in excess of the risk they generate, while allowing proprietary trading firms and market makers to contribute substantially less than their risk profile warrants—resulting in a loss-allocation framework in which agency brokers subsidize any loss created by other distinct cohorts. That is "unfair discrimination . . . among participants," an inequitable "allocation of . . . charges among" participants, and an unreasonable "burden on competition." 15 U.S.C. § 78q-1(b)(3)(D), (F), (I).

OCC's new formula substantially overstates the relative credit risk posed by agency brokers compared to proprietary trading firms and market makers because, in the Division's words, contribution requirements are "driven primarily" by OCC's new stress-loss metric. 90 Fed. Reg. at 58353. That stress-loss metric receives 0% weight under the existing formula and jumps to 70% weight in the new formula. *Id.* OCC's heavy reliance on that new metric exaggerates its actual exposure to agency-broker defaults, while understating its exposure to proprietary-trader and market-maker defaults, for two mutually reinforcing reasons.

First, OCC's stress-testing methodology does not account for key structural and regulatory features of agency brokerage that materially reduce the actual likelihood of agency-broker default. Because agency brokers clear trades for thousands or, in some cases, millions of individual small accounts, they have higher theoretical exposure to overall market direction. But that theoretical exposure does not translate into real-world default risk. As an initial matter, it ignores the independence of each individual customer and the inherent resulting diversification: put simply, two customers may short the same options, but may not default at the same time. Additionally, because potential losses that appear on agency brokers' accounts are actually suffered by their individual customers, those losses would be absorbed first by the defaulting customers' net equity and available margin collateral, which customers are required to post in proportion to the risk they pose to their broker. 17 C.F.R. § 240.15c3-3; FINRA Rule 4210(f). By contrast, stress losses experienced by proprietary trading firms and market makers hit those firms' books immediately. Finally, agency brokers frequently have access to additional forms of loss protection, including through fidelity bonds and clearing deposits by introducing brokers. *See* FINRA Rule 4360; FINRA Regulatory Notice 08-46 (Sept. 5, 2008). All together, these protections significantly reduce an agency broker's likelihood of default and loss in the event of default. Yet OCC's stress-

shortfall metric, which measures only collateral posted at OCC, ignores all these critical features, and thus ascribes to agency brokers a higher allocation of risk that does not reflect the real world.

Second, the proposed allocation change substantially minimizes a distinct category of risk that can lead to member default: operational risk. Operational risk includes "deficiencies in information systems or internal controls, human errors or misconduct, management failures, unauthorized intrusions into corporate or production systems, or disruptions from external events such as natural disasters." 81 Fed. Reg. 70786, 70837 (Dec. 12, 2016). Proprietary trading firms and market makers face greater operational risk than agency brokers because they often employ high-volume, programmatic trading strategies. When these strategies fail—through system errors, algorithmic malfunctions, or breakdowns in intraday controls and hedging—the resulting losses can scale with their trading volumes and open interest, introducing more systemic risk. Yet at the same time that OCC's new formula zeroes in on agency-brokers' paper market risk, it almost entirely ignores operational risk by placing 85% of the weight on metrics that track only risks arising from market moves (70% stress shortfall plus 15% margin). The proposed rule entirely eliminates the "open interest" metric, leaving only the "volume" metric to capture the operational risk posed by high-frequency traders and market makers. OCC's movement to minimize operational risk is especially puzzling given Commission rules instructing clearing agencies to "identify[] the plausible sources of operational risk, both internal *and external,* and mitigat[e] their impact through the use of appropriate systems." 17 C.F.R. § 240.17ad-22(e)(17)(i) (emphasis added).

The net effect is that the proposed rule would compound existing structural disparities in the Clearing Fund allocation methodology. To some extent, OCC's 2018 changes to the Clearing Fund allocation already placed more emphasis on market risk than operational risk, when

compared to the 2013 formula. In particular, the 70% "total risk" metric under the current rule does not account for agency brokers' ways of slowing and containing losses. Replacing the 2018 formula's 70% margin-based metric with OCC's new 70% stress-shortfall metric magnifies the existing structural bias against agency brokers because OCC's stress-scenario calculations rely on even more extreme tail-risk loss scenarios. In addition, the proposed rule does not merely swap out margin for the more extreme stress-shortfall metric; it adds an additional 15% margin component and eliminates the 15% open-interest component. The proposed allocation change thus both (i) moves from a 70-30 to an 85-15 weighting of market-versus-operational risk, and (ii) adopts a measure of market risk that overstates agency-broker exposure to a far greater degree. That transforms a 2018 formula that was moderately discriminatory toward agency brokers into a 2025 formula that would be grossly disproportionate, causing Fidelity's required contribution to the Clearing Fund to increase by nearly half a billion dollars.

In sum, agency brokers, proprietary trading firms, and market makers present different kinds of risk to the Clearing Fund. Agency brokers are less able than proprietary traders and market makers to hedge positions at the firm level because they intermediate customer risk, but they have additional loss-absorption and risk-containment mechanisms that materially reduce the likelihood of default and the loss on default, including in extreme market scenarios. By contrast, proprietary trading firms and market makers face heightened operational risk and faster loss crystallization, even in the absence of extreme market scenarios. The new formula would ratchet up penalties on agency brokers by ignoring the ways that those brokers can protect against a risk of default, while simultaneously failing to recognize the actual risk profiles of other types of firms. The result is a badly distorted picture of risk to the Clearing Fund that unfairly discriminates by favoring some business models over others for no statutorily justified reason.

2. The proposed allocation fails to protect investors and the public interest.

OCC's proposed new formula also runs afoul of its duty to design its rules to "protect investors and the public interest." 15 U.S.C. § 78q-1(b)(3)(F). Substantially raising capital costs on agency brokers that serve retail investors will force those brokers to make up the cost somewhere. That may include reducing customer access, providing more limited products or services, or perhaps imposing higher costs. But as the Commission has previously noted, there is "broad acknowledgment" among industry and regulators alike of the "benefits of . . . the broker-dealer business model" as "an option for retail customers seeking investment recommendations." 84 Fed. Reg. 33318, 33319 (July 12, 2019); *see* Chairman Jay Clayton, *Regulation Best Interest and the Investment Adviser Fiduciary Duty: Two Strong Standards That Protect and Provide Choice for Main Street Investors* (July 8, 2019) ("One of our goals in this rulemaking was to preserve access and choice for Main Street investors," because preserving choice is likely to benefit retail investors through "lower fees, better services and transparency, and more offerings."), https://www.sec.gov/newsroom/speeches-statements/clayton-regulation-best-interest-investment-adviser-fiduciary-duty. Inflicting unjustified and disproportionate harm on the agency-broker business model necessarily imposes unjustified and disproportionate harm on retail investors. That result—which OCC never acknowledged—is directly contrary to "the public interest" as the Commission has long understood it. 15 U.S.C. § 78q-1(b)(3)(F).

B. OCC Failed To Carry Its Explanatory Burden To Justify The Proposed Allocation Change.

OCC's proposal and the Division's approval also violate critical procedural requirements. Under Commission rules, OCC must provide a "sufficiently detailed and specific" "description of the proposed rule change, its purpose and operation, its effect," and its "consistency with applicable [legal] requirements." 17 C.F.R. § 201.700(b)(3). That rule tracks the APA's central

command that "[w]hen an administrative agency sets policy, it must provide a reasoned explanation for its action." *Judulang* v. *Holder*, 565 U.S. 42, 45 (2011). For three reasons, OCC's proposal fails the foundational requirement of "reasonable and reasonably explained" decisionmaking. *FCC* v. *Prometheus Radio Proj.*, 592 U.S. 414, 423 (2021).

First, OCC failed to provide a sufficiently detailed description of the proposed rule change's "operation" and "effect," 17 C.F.R. § 201.700(b)(3), because it never mentioned the principal result of the new allocation: to require significantly more capital from agency brokers and less from market makers and proprietary trading firms. Nowhere did OCC—or, as a result, the Division—even recognize this impact, let alone explain why it is warranted. *Cf. Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("Normally, an agency rule would be arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem."). Because the proposed rule change has disparate effects on distinct cohorts of clearing members, OCC could not fulfill its regulatory duties without a reasoned analysis of those effects. In particular, it needed to justify the implicit finding that its current formula radically understates the default risk that agency brokers like Fidelity pose to the Clearing Fund. It likewise needed to justify the implicit finding that proprietary trading firms, whose capital requirements will decrease substantially, are dramatically less risky to the fund than the existing formula suggests. OCC did neither.

Second, OCC made matters worse by failing to inform the Division about material effects on individual clearing members. The proposed rule offers only a superficial analysis of the impact on individual clearing members, noting in general terms that "some members" may "experienc[e] larger changes relative to other Clearing Members" and that "there were substantial variations in the range and distribution of relative change between individual contributions." 90 Fed. Reg.

at 47386-87. OCC gave zero indication of how substantial those effects would be, or what the actual change in capital requirements might be for individual members like Fidelity—which faces a 67% increase in its contribution amount—or distinct cohorts of clearing members. Instead, the specific data it offered (at least outside confidential exhibits to which Fidelity has no access) reports high-level averages across the top 10 clearing members, top 5 clearing members, and all clearing members outside the top 10. *See id.* Those averages mask huge individual effects: they show a 0% to 3% average change in clearing-fund percentages across OCC's selected groupings, leaving the strong impression that the financial effect here is relatively minor. The Division noted the same limited statistics in its approval. 90 Fed. Reg. at 58353. In reality, the financial impact on individual members like Fidelity is more than *twenty times* what the misleadingly low reported averages suggest.

This lack of transparency about the actual effects of OCC's proposed change sharply contrasts with how OCC has approached these issues in the past. When OCC instituted the original version of the allocation formula in 2013, it cautioned that many clearing members would "experience a material change," which it defined as "an increase or decrease of 10% or greater in the dollar amount" of a clearing member's contribution. 78 Fed. Reg. at 24258. OCC did not merely warn of this result; it proactively reached out to all members "negatively impacted in a material manner"—*i.e.*, above that 10% threshold—and phased in the formula to soften those material impacts. *Id.* If OCC treated a 10% negative impact as material and worth addressing in 2013, it cannot glide past the nearly 70% negative impact on Fidelity here (or perhaps even greater impacts on other agency brokers). At a minimum, OCC, and ultimately the Division, was required to explain why impacts dwarfing those OCC had previously deemed "material" no longer warranted disclosure or discussion. *See FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 515

(2009) (noting that an agency may not "depart from a prior policy *sub silentio*" and must "provide a more detailed justification" when "its new policy rests upon factual findings that contradict those which underlay its prior policy").

Third, OCC repeatedly assumed the central premise on which the proposed rule change rests. OCC and the Division asserted again and again that the current "inconsistency between the sizing and allocation" formulas for the Clearing Fund should be resolved by "align[ing]" the two formulas. 90 Fed. Reg. at 58352-53; *see, e.g.*, 90 Fed. Reg. at 47385. But they never explained why those two metrics should align. Although the Clearing Fund's *size* needs to be big enough to cover a default by the two largest clearing members, 17 C.F.R. § 240.17ad-22(e)(4)(ii), the *allocation* of the Clearing Fund is the step at which OCC must make a relative risk determination among members. That determination may be based on a variety of risk factors that each member poses, and need not track the stress-loss methodology for sizing the fund. That is, the size of the fund has no necessary relationship to the credit risk of particular members, as compared to other members. OCC and the Division failed to justify the overriding assumption that the two metrics must travel together—an assumption that it has never deployed in the many years that the two distinct metrics have coexisted.

II. THE PROPOSED ALLOCATION CHANGE IS AN IMPORTANT DECISION THAT WARRANTS THE COMMISSION'S REVIEW.

Even apart from the substantive and procedural defects set out above, the proposed allocation change warrants the Commission's review. At a minimum, the proposed rule "embodies" an important "exercise of discretion or decision of law or policy that is important," and that the full Commission should therefore consider. 17 C.F.R. § 201.431(b)(2); *see id.* § 201.411(b). The proposal would materially change which categories of clearing members bear a larger share of the Clearing Fund obligations, which has significant policy ramifications,

including for retail investors' access to the options markets. Commission review is particularly warranted because the proposed allocation change was approved after an unusual comment process that produced an underdeveloped record—meaning that these important issues have not yet been given the consideration they deserve.

A. The Proposed Allocation Change Has Significant Policy Ramifications.

As explained above, the new rule would completely overhaul how OCC allocates Clearing Fund obligations across different types of clearing members, disfavoring agency brokers and advantaging proprietary trading firms and market makers. By replacing the existing methodology with a formula dominated by a stress-based shortfall metric, the proposal would produce a substantial redistribution of Clearing Fund requirements. And that redistribution would not occur according to neutral features like size or use of the Clearing Fund, but rather according to business model. Such market-structure consequences—shifting financial burdens in a way that favors a particular business model—deserve the Commission's full review. They fall squarely within the Commission's obligation, when reviewing SRO rules, to consider whether its action will promote "efficiency, competition, and capital formation." 15 U.S.C. § 78c(f).

The resulting redistribution also has direct policy consequences for retail investors. *See supra*, Part I.A.2. The new rule would require agency brokers that clear on behalf of retail customers to dedicate additional capital to the Clearing Fund, reducing the capital and liquidity available to support customer clearing and related risk management. Those costs may be reflected in pricing, trading terms, or product availability for retail customers—effects that OCC did not analyze before seeking approval. Trickle-down effects on consumers likewise implicate Section 17A's policy objectives, including Congress's concern that clearance-and-settlement practices not impose "unnecessary costs on investors" and its direction that clearing-agency rules not impose "any burden on competition not necessary or appropriate." 15 U.S.C. § 78q-1(a)(1)(B), (b)(3)(I).

Finally, the legal deficiencies described in Part I heighten the need for Commission review. If the Commission does not review the Division's decision, the rule change will become a final agency action subject to judicial review under the APA. There are currently glaring omissions in OCC's proposal and the Division's analysis that could not survive judicial scrutiny. *See supra*, Part I.B. Commission review can ensure a complete record and careful consideration of the rule's effects before the administrative process concludes.

B. The Irregular Rulemaking Process Underscores The Need For Commission Review.

Irregularities throughout the comment process further require Commission review. Despite the material impacts of OCC's proposal, the proposed rule was approved through a compressed and unusual process that did not generate meaningful participation by the clearing members most affected.

First, OCC failed to meaningfully consult with agency brokers in developing the proposed allocation change. As a covered clearing agency, OCC's governance framework provides that, consistent with the Commission's Principles for Financial Market Infrastructures, "[m]ajor decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public." OCC, *Disclosure Framework for Financial Market Infrastructures* 28 (Oct. 30, 2025); *see* 17 C.F.R. § 240.17ad-22(e)(2)(i)–(iii), (vi). OCC has represented that it meets these governance expectations through stakeholder-engagement mechanisms, including the Financial Risk Advisory Council (FRAC) and a Clearing Member Roundtable. OCC describes FRAC as a "forum for discussion and solicitation of participant feedback on proposed financial risk initiatives," and describes the Clearing Member Roundtable as "provid[ing] Clearing Members with an opportunity to discuss with OCC operational effectiveness and efficiency and larger industry issues." *Disclosure Framework for Financial Market Infrastructures* at 30.

The record does not show that either of the OCC's member-facing bodies was used here to ensure meaningful input from the agency-broker cohort that stands to bear the most significant share of the burden under the new rule. OCC did not solicit written comments from clearing members on the proposal before filing with the Commission. And although OCC presented the proposal to FRAC, OCC cannot rely on FRAC to vet its proposals because not all clearing members participate in it. Nor does OCC's proposal otherwise disclose how or whether OCC evaluated the interests of agency brokers (and the retail investors whose access depends on them), despite having done so for past allocation changes. *See* 83 Fed. Reg. at 37859 ("OCC analyzed the impact of the proposed change [to minimum Clearing Fund contributions] on its clearing members and discussed such impacts with the potentially affected clearing members").

Second, there were serious irregularities in the timeline and opportunity for comment. Perhaps most notably, the OCC comment period (October 1-22) fell entirely within a record-breaking shutdown of the federal government (October 1-November 12). The proposed rule was published on October 1, the same day that the shutdown began. On October 2, one day after the shutdown started, OCC issued a memorandum to clearing members "discussing, amongst other things, the proposed rule change." 90 Fed. Reg. at 58352 n.5. On October 7, OCC filed "Partial Amendment No. 1" with the Commission to add the October 2 memorandum to the rulemaking file. During the entire month of October, most of the Commission's activities were paused, and clearing members were grappling with a host of economic and regulatory complexities stemming from the shutdown.

To add to the complication, the Division's "accelerated" approval order also opened a new comment period ending on January 6, 2026. 90 Fed. Reg. at 58355. The Division appears to have provided that additional comment period as a housekeeping measure to account for Partial

Amendment No. 1. That sequencing created a record in which the rule itself was approved, but the public was still invited to comment—though it is unclear whether that invitation extends to comments on the entire underlying proposal or the non-substantive Partial Amendment No. 1 only. *See id*. ("Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange Act.").

In sum, the Commission should not mistake the lack of clearing-member comments here for a lack of interest. The proposed allocation change will have a significant impact on Fidelity and other agency brokers. The bare comment record merely reflects the unfortunate timing here, and nothing more. It is critical that the Commission develop a full record and ensure that members have an opportunity to submit their views now, rather than allowing a deeply flawed rule change to slide into place without the scrutiny it deserves.

CONCLUSION

For the foregoing reasons, Fidelity respectfully requests that the Commission grant this petition for review, set a briefing schedule, and reverse the Division's order approving the proposed allocation change.

Respectfully submitted,

Dated: December 24, 2025

/s/ Morgan L. Ratner

Morgan L. Ratner
Marie-Louise M. Huth
SULLIVAN & CROMWELL LLP
1700 New York Avenue NW, Suite 700
Washington, DC 20006

Counsel for Fidelity Investments

CERTIFICATE OF SERVICE

I, Morgan L. Ratner, counsel for Fidelity Investments, hereby certify that on December 24, 2025, I served a copy of the attached Petition For Review Of Order Taken By Delegated Authority Granting Approval Of Proposed Rule Change By Options Clearing Corporation Amending Methodology For Allocation Of Clearing Fund Deposit Requirements, on Vanessa Countryman, Secretary, Securities and Exchange Commission, by email to Secretarys-Office@sec.gov, as directed by the Commission website at https://www.sec.gov/enforcement-litigation/efap-electronic-filings-administrative-proceedings.

Dated: December 24, 2025 /s/ *Morgan L. Ratner*

CERTIFICATE OF COMPLIANCE

I, Morgan L. Ratner, counsel for Fidelity Investments, hereby certify that this petition complies with the word count limitation in 17 C.F.R. § 201.154(c). Excluding tables of contents and authorities, as provided by 17 C .F .R. § 201.154(c), and excluding the cover and signature blocks, the petition includes 6,634 words. The undersigned relied upon the word count of this word-processing system in preparing this certificate.

Dated: December 24, 2025 /s/ *Morgan L. Ratner*