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listening*in*

Better Markets

A Vision Of Wealth Creation For Many Vs. Wealth Extraction For Few

Better Markets, Inc., the non-partisan, non-profit independent Washington advocacy organization that Mike Masters, founder and managing principal of Atlanta's Masters Capital, and Dennis Kelleher (pictured nearby) established a decade ago to take up the cudgels for the interests of ordinary Americans in the wake of the 2008's massive bank bailout, celebrated its 10th anniversary last summer. Not with any extravagant bash, mind you. But with an entirely Covid-appropriate online conference of heavy hitters, from President Obama on down, reflecting on the impact of the Dodd-Frank financial reforms, spawned — like Better Markets — by the Great Financial Crisis — and on a long, unfinished agenda aimed at coaxing, nudging, browbeating and yes, forcing, as necessary, the U.S. financial system to serve — not just itself, the few, the lucky, and the exceedingly rich — but all Americans, the productive economy and society at large.

A Herculean task, no doubt. Probably thankless, too. But Dennis, Better Markets' President and CEO, clearly relishes the role. And Wall Street grandees would be well-advised not to discount his prodigious efforts. Dennis, a litigation partner at Skadden, Arps, Slate, Meagher & Flom, specializing in crisis management and complex international securities and financial matters — before he left the firm to spend eight years in senior staff positions in the U.S. Senate, ultimately as chief counsel and senior advisor for a member of Senate leadership — is unlikely ever to be mistaken as a patsy. The man lives and breathes Washington, finance, securities — and their laws and regulations. And he's "for the people." Listen in.
— KMW

Dennis Kelleher

Welcome to WOWS, Dennis. You've had quite a busy spring — but I see that Gary Gensler just won confirmation as SEC Chair this morning. Congratulations.
Dennis Kelleher: Thanks. I think everybody is pretty excited about that.

I suspect the Obama-era CFTC chief will create considerable culture shock within the Securities and Exchange Commission.
Dennis: Well, I'm not sure I'd call it culture shock. The opportunity is that the SEC has roughly 4,300 employees — many of them hardworking public

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servants who I am sure are going to welcome, if not embrace, the new leadership. Many of the people who work in the SEC actually take their mission seriously — unlike the agency's leadership over the last four years.

Of course. I imagine Trump policies caused considerable consternation in the ranks, and frustration, among the veteran SEC staffers who didn't quit.
Dennis: Yes. For some of them anyway, I think.

No political opinions are universal in D.C. — or anywhere, in these polarized times — as you certainly know after pursuing Better Markets' agenda for a decade. How closely do you identify with Don Quixote by now?
Dennis: I don't think we do at all. For six of the last 10 years, we were pretty successful. The last four years were *not* progress — and we had some significant setbacks. But the core and the foundations of the post-'08 crash reforms remain in place and remain pretty strong. Of course, there still is an unfinished agenda.

> **"The financial system is too often a wealth-extraction mechanism for the few rather than a wealth-creation system for the many."**

Always. There were reforms passed that were never implemented, and some that were rolled back, just for starters.
Dennis: There were. But there have also been 10 years of subsequent changes in the markets that need to be addressed. So we've got the unfinished Dodd-Frank agenda and then we've got the agenda beyond Dodd-Frank.

Which seems to grow by the day. Judging by the testimony you've given in Congress recently, you're determined to not let the crisis headlines — about the likes of Robinhood, GameStop, Citadel, and my personal favorite, Roaring Kitty, or Greensill and Credit Suisse — go to waste. You've been quite blunt in pointing out the gaping holes in regulatory structure and practice.
Dennis: Well, that's true. Look, the SEC has got multiple buckets on their agenda. In fact, that's not just the situation at the SEC, it's the same across all the financial regulatory agencies. As I said, they've got the unfinished Dodd-Frank agenda — everything from money market funds, credit rating agencies, executive compensation, regulation of the shadow banking system —

Don't forget derivatives —
Dennis: Well, Security-Based Swap (SBS) derivatives. I would say a good 80%-plus of the CFTC's derivatives rules are in place. The big issue there, of course, is implementation, interpretation, and enforcement.

When it comes to the SBS rules, the Security-Based Swaps rules, the SEC did finally finalize a set of regulations in 2019, although they are weak and loophole-ridden. And they don't start coming into effect until October, when SBS swap dealers have to register. Then in November, the dealers have to start reporting transactions through the swap data repositories. While, as I say, those SBS rules are weak and loophole-ridden, they do, nonetheless, represent some progress that Gary Gensler's SEC could build on.

Clearly, they have no shortage of projects to take on —
Dennis: Yes, and the SBS derivatives are just part of the bucket of issues before the SEC that are involved with finishing the implementation of Dodd-Frank.

But then they also have their beyond Dodd-Frank agenda. Everything from tackling the many market structure issues, the fragmentation of the markets, the development of dark pools and high frequency trading, and the very real need for the SEC to get the CAT, the Consolidated Audit Trail, finished and working well.

You think they should be taking that crucial project out of the industry's hands?
Dennis: Well, it would be nice to eliminate the debilitating conflicts of interest that cannot be avoided when such an important regulatory tool is outsourced to the industry. We've been working on this issue for 10 years now — we've consistently been the only non-industry participant in the discussions about the Consolidated Audit Trail, as well as the other market structure issues. Way back

when Mary Schapiro and Mary Jo White were the SEC chairs, what I used to say to them was, "Look, putting an industry consortium in charge of the construction and operation of the CAT is the same as asking bank robbers to provide you with their getaway maps for future bank robberies."

Big Corporate Exceptionalism by Monte Wolverton, Battle Ground, WA

That's quite a colorful analogy —

Dennis: Well, my point is, they're not going to do it. You cannot ask the industry you are supposed to supervise and police to stop their predatory behavior, to provide you with a robust, effective tool to identify their wrongful and illegal, if not criminal, conduct.

Yet that is what the CAT is supposed to be — a state of the art system for tracking trade data across all of the venues that comprise our national market system in real time. As has been evident for too long, the SEC simply cannot fulfill its core mission of protecting investors, maintaining the integrity of our markets and facilitating capital formation without such a timely supercomputer-based system.

But that's exactly what the SEC did when it tasked Wall Street with creating a way for it to audit all market trades in real time. And *still* there's no CAT —

Dennis: Of course, so here we are 10 years later. Truthfully, I don't claim any great credit for clairvoyancy there. My view is you don't have to be that smart to know you can't ask the people who you need to supervise and prosecute to provide you with the tools to do it.

In this case, that evidence could very likely send them to the clinker.

Dennis: Yes, the conflict is so obvious from the beginning. Now, last year, after many years of organizational delays and missed implementation deadlines, responsibility for the CAT was transferred to FINRA from its prior developer, CAT NMS, which had been set up as a for-profit entity by an industry consortium.

Of course, FINRA is a better choice than the prior developer. On the other hand, FINRA is also an industry creature and industry captured. And, while FINRA will likely do a much better job than the prior crew, it is still unlikely to build a Consolidated Audit Trail with the level of robustness and real-time accuracy required to equip the SEC to do its job effectively. As I said last year when I was talking to former SEC Chairman [Jay] Clayton and his team, nobody would think it would acceptable for the police in a city to say to the mayor, "Don't worry. When a crime happens, we will get right on it — in the next day or so."

Especially when the activity supposedly being policed is occurring in milliseconds.

Dennis: Yet look at the most recent proposal for the Consolidated Audit Trail. They have defined "real time" as being about 24 hours after the fact, and we pointed out that we thought that timeframe might be problematic. It wouldn't be acceptable for anybody else and it shouldn't be acceptable for the SEC. In fact, we've got a whole bunch of what I'll call after-Dodd-Frank issues in the markets that need to be addressed. It is a pretty big bucket.

Yet another bucket of issues the SEC will have on its plate will have to do with addressing the Biden administration's priorities — racial justice, climate, and economic inequality. I think you'll see very aggressive action taken in those arenas, not just at the

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SEC but across all the agencies.

Then the fourth bucket of issues that the new SEC head will be faced with is what I'll call the surprise bucket. Recent examples are GameStop, Archegos — but who knows what is going to happen over the next several years that none of us can predict?

Gosh knows. But there *will* be surprises.
Dennis: Well, right. The only thing we know for sure is that the surprise bucket will keep everyone plenty busy. So there's a lot of work to do. While we are generally in pretty good shape, you can always be in better shape. The big, big, big issue in my view that's getting next to no attention is what happened last March and April.

Meaning? The ocean of ink on the pandemic drowned out a lot of stuff then —
Dennis: We put out two reports. One was called, "No Financial Crash Yet Thanks to Dodd-Frank and Banking Reforms." It was put out in June of last year. It demonstrated that the banking reforms instituted after the Great Financial Crisis were proving to work very well amid the pandemic. *Because of those reforms*, the banks had capital and liquidity and the banks were *never* at risk of failure last March and April. That was when the pandemic first really hit and the economy shut down, which precipitated a financial crisis, although nobody has had to admit that yet, because the banks stayed very strong.

In fact, I had to laugh then, because the bank CEOs were all bragging last spring about how strong they were and how they could support the real economy.

You found that funny?
Dennis: What they were forgetting to mention was that — not only had they been forced to build up their capital buffers — but they were forced to do it *over their relentless opposition*. If we had listened to the banks and their lobbyists during the debate over Dodd-Frank or during the subsequent rulemaking procedures, the banks would have collapsed very quickly last March, just like they did in September and October of 2008. That said, the banks did perform quite well during the pandemic crisis — and that was entirely due to Dodd-Frank and the post financial crisis banking reforms, as we detailed that our June 2020 white paper.

That's the good news.

I don't see a neglected "big issue" there.
Dennis: Wait for it. The bad news is in a white paper we put out early last December, in which we detailed how the Trump Administration's deregulation at the Fed over the last four years has materially weakened the bank regulatory regime.

Indeed, even though post-GFC banking sector reforms are *the* key reason the largest banks entered the COVID-19 pandemic in relatively strong financial condition — and why they have so far been able to serve as a source of support for the economy rather than contributing to and exacerbating the downturn as they did in the last crisis — many of those reforms have been under attack by the industry from the start. And the Trump administration's deregulatory efforts succeeded in weakening a number of the reforms by legislation and rulemaking.

Such as?
Dennis: For instance, in 2018, Congress passed something called EGRRCPA, the bipartisan Economic Growth, Regulatory Relief and Consumer Protection Act, which among other things, changed the definition of systemically important banks, raising the asset size-based threshold for the required application of stronger rules and standards for bank holding companies from $50 billion to $250 billion. It also eliminated a requirement for enhanced standards for bank holding companies in the $50 - $100 billion asset range. Importantly, EGRRCPA also gave the Federal Reserve Board broad discretion to determine whether it should continue to apply Dodd-Frank's stronger "enhanced prudential standards" to bank holding companies with assets in the $100 - $250 billion range.

What's more, while many of the post-GFC reforms remain intact for the very largest "Globally Systemically Important Banks" or GSIBs, there were significant changes, under the Trump Administration, that undermine the value of what was perhaps the most important post-GFC initiative: the Fed's stress testing program and related bank supervision efforts — which apply to all banks with over $100 billion in assets.

The ones "too big to fail"?
Dennis: Exactly. Congress did not *require* the Fed to ease standards for these large banks. But, with Trump's regulators in charge, the Fed nonetheless exercised its discretion to do so, over some detailed dissents. Importantly, banks in this largest asset category represent a large share of the U.S. banking system, so problems at them could well represent a threat to the system in a downturn. And together, these changes made by the Fed (often with other regulators) undermine the progress that had been made since the GFC. They have reduced the con-

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fidence taxpayers can have that the banking system is resilient enough to withstand a severely stressful period without requiring another taxpayer-supported bailout.

Yet ironically, few are worried because the Dodd-Frank rules had made the banks strong enough to get through the pandemic crisis — before they were weakened?

Dennis: Yes. That's why the upcoming appointments to the Fed are critically important. There's one open seat on the Federal Reserve Board today. The term of the Fed's Vice President for Supervision Randy Quarles runs out in October. Fed Vice Chair Richard Clarida's term is up in November. And of course, Jay Powell's term as Chairman ends in February of 2022.

When one looks at our white paper detailing the real damage done to banking regulation during the Trump years, it's clear there is a lot of repair work to be done there. We clearly need people with a completely different mindset about to how one regulates the banks to be put in charge of the Fed.

But there's an even bigger issue than the narrow banking rules—

What's that?

Dennis: If there was one thing that was revealed — very starkly — last March and April, it was that the shadow banking system in the United States is still alive, well, unregulated, and *very* dangerous.

Almost all of the bailouts last year, which amounted to multi-trillion dollars, supported and floated the shadow banking system — just as happened in 2008 and 2009. But nobody is talking about that, nobody is looking at that, nobody's thinking about that — except in two areas.

Which are?

Dennis: One area is money market fund reform, because the pandemic crisis revealed, once again, how financially fragile they are. As we have been saying since 2008 — I have had these fights with Mary Schapiro and Mary Jo White and Jay Clayton — so this isn't a partisan issue. But every one of them refused to properly regulate money market funds.

Because?

Dennis: It goes to show the incredible power of the money market fund industry in this country — it is very, very powerful. Yet there's no getting around the fact that MMFs are an inherently risky investment product masquerading as a bank product. MMFs are essentially marketed as bank deposits, but their sponsors are spared the cost of maintaining capital reserves, deposit insurance, and compliance with prudential oversight, all of which afford banks' access to the Federal Reserve as a lender of last resort.

Those savings, which MMFs have now enjoyed for decades, have enabled them to offer retail investors and institutions elevated yields, along with convenient cash management services. Yet those savings and the sponsors' related profits ultimately come at the expense of U.S. taxpayers who have had to bail them out repeatedly in a crisis. Some people are finally talking about that fragility, because taxpayers have now had to do that during two crises within the last 12 years. It's now clear that money market fund reform simply has to happen, as we said in a comment we filed recently on the President's Working Group Report on money market funds.

The fragility of money funds is real, all right. And it's not the half of the craziness that goes on in short-term funding markets. Dare I mention Greensill?

Dennis: True enough. But the other fragility that people are talking about now is in the Treasury markets. The Treasury markets clearly need to not only be scrutinized, but reformed in a number of ways. But even that doesn't even really touch the depth and breadth of the failures of the shadow banking system — and the unseen, unregulated dangers in them. Again, you can see that by the bailouts that were required last March and April.

So here we are again, 13 years after the Great Financial Crisis, coming up on 11 years after Dodd-Frank. Yet the Fed basically had to trot out the same playbook that they used in '08 and '09 to prop up the shadow banking system. They literally just pulled the programs off the shelf and used them again.

What's that line about everything looking like a nail to a man with a hammer?

Dennis: Right. The Primary Dealer Credit Facility and the Fed's whole alphabet soup of other bailout programs were all used last March and April. That took the assets on the Fed's balance sheet up to $4-plus trillion, but the real amounts spent on the bailouts were significantly higher than that. As a result — you know, people used to quaintly talk about a Greenspan Put. Some people talked about a Bernanke Put — Now we essentially have a perpetual Fed Put.

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Which isn't a blessing, you're implying —
Dennis: What that does, of course, is it incentivizes the highest-risk behavior. It creates moral hazard among the financial industry and, worst of all, it virtually guarantees future crashes that will require future Fed bailouts.

Yet there is an utter lack of interest in analyzing what happened last March and April. More importantly, there's also an utter lack of interest in Washington in exploring what would be required to make sure, in the future, that those kinds of bailouts aren't necessary. It is a dereliction of duty at a mind-boggling level. It is hard to understand the lack of a serious attention — by the most serious policy makers in this country — to the need, first, for a granular analysis of what happened, and then, for working out a real, robust, concrete plan to ensure that it will never happen again. And, of course, we all know that starts with regulating the shadow banking system.

Isn't it perfectly obvious? They got away with it — twice. Why not whistle past the graveyard, if that's "working?" Besides, shadow market types rake in lots of coin, some of which gets spread around D.C.
Dennis: Well, that's right. They're making too much money and they have too much influence. They have regulatory capture. They use the revolving door basically to purchase special access and influence. But it's inevitable that there will be another crash — one at the level of, if not worse than, '08 — if policymakers in the United States just continue to turn a blind eye to the kind of dangers in the financial system that materialized again in March and April of 2020. And yet, that's what they're doing so far.

What have you been urging policymakers to do instead?
Dennis: We haven't laid out what they should be doing in terms of what I call a 360-degree after-action analysis. But we have laid out — in two reports over the last year — what we think policymakers should be doing on an agency-by-agency basis.

The first report, we put out last July 21st in connection with the 10th anniversary of the Dodd-Frank Act, and we were quite thorough. The report is over 100 pages long. It walks through what happened under the Obama administration, from a markets regulatory point of view, and then it walks through what had been done and undone during the deregulation era of Trump — all to stress the importance of reflecting on the Dodd-Frank Act.

Because?
Dennis: Because "financial stability," "financial reform" and "financial rules" are the *means* to achieve some of the nation's most important social, political and economic *goals*. Including a strong and stable financial system that:
• Reduces inequality while creating economic security, opportunity and widespread prosperity for all people,
• Supports the productive economy,
• Produces sustained, durable and broad-based economic growth, and
• Protects investors, consumers, workers and the environment.

Pardon my cynicism, but it sounds like a bit of an "Impossible Dream."
Dennis: I grant you that those goals are undermined by an economic system that does not work for the vast majority of Americans — because, among other things, the financial system is too often a *wealth-extraction* mechanism for the few rather than a *wealth-creation* system for the many.

This is the result of too many — certainly not all, but too many — in the financial sector using their economic power to buy political power, which they then use throughout the policymaking process to protect and increase their economic power, usually at the expense of everyone else, including their competitors and others in the financial sector. The financial sector thereby undermines and corrupts democracy by hijacking the government to serve its own ends, while also tilting the financial system decidedly in its favor.

Making all of that worse, the pandemic, and the economic crisis it has caused, have exposed the structural inequalities embedded in our economic and financial systems and how they egregiously and disproportionately impact Black Americans and people of color.

How do you figure?
Dennis: The financial system and the financial industry have played significant roles in creating and perpetuating racial inequities. It is critical to remember that the economy — who it works for and who it does not — is *not* predetermined. It is shaped by people — and it is often rigged by connected, wealthy insiders protecting their own interests. Their actions to maximize their profits; protect and increase their wealth; and maintain their positions of privilege, power and influence profoundly impact who gets the benefits of our economic and financial systems — and who does not.

You aren't suggesting that Dodd-Frank, sweeping though it was, could have tackled

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all that, are you?

Dennis: No. The Dodd-Frank Act could not have addressed — and did not address — all of those issues. But, it was intended to create and support guardrails, gatekeepers and guard-dogs that could force the financial sector to better serve society.

Isn't that kind of amorphous — serving society better?

Dennis: We mean supporting the real, productive economy that generates jobs and broad-based economic growth, rather than enriching financiers on Wall Street, destabilizing the financial system, draining public resources for Wall Street's own benefit and unleashing predators on consumers and investors.

That is why what is at stake in implementing the Dodd-Frank Act — and in financial stability and reforms more broadly — is nothing less than enabling more Americans to attain the American Dream, enhancing their standards of living, quality of life and peace of mind. The Great Depression of the 1930s and the financial crash of 2008 illustrate that with heartbreaking clarity.

Those are big goals and strong language, but you said you outlined how we're supposed to get there?

Dennis: That came in a second report, which we put out on September 15th of last year, on the anniversary of the Lehman collapse — and in connection with a webinar we did with a senator I introduced as "the likely incoming Chairman of the Senate Banking Committee, Sherrod Brown." Called, "Road to Recovery, Protecting Main Street from President Trump's Dangerous Deregulation of Wall Street," its nearly 50 pages detailed our views on what each of the regulatory agencies' priorities should be — if, in fact, Trump was defeated — and we got serious regulators back in office.

That must have made you really popular on the Republican side of the aisle.

Dennis: Well, we've never really been their favorites.

True. But how dare you suggest there's anything better than deregulated markets?

Dennis: I have to tell you, I have this argument with Republicans all the time. I shouldn't say argument. I have this *discussion* with them. To wit: Lehman Brothers collapsed on September 15, 2008. In October of 2009, the U6 unemployment rate — which measures people who are unemployed and people who are forced to work part-time because they can't find full-time work — the U6 rate hit 17% in October of 2009. That meant that 25 million Americans were effectively out of work. What's more, there was an analysis done around that time that identified how many of those 25 million were heads of households. Looked at through that lens, the U6 unemployment rate actually showed that 50 million Americans at that juncture were being impacted by unemployment. *50 million Americans*, right? What I say to my Republican friends is that those weren't 50 million *Democrats*. Those were 50 million *Americans*. They were Republicans, Democrats, Independents, non-voters, agnostics — call them whatever you want.

A financial crisis does not impact the American people based on their party affiliations. One of the saddest things to come out of the 2008 crash was Wall Street's politicization of financial reform and financial stability. Because what Wall Street did, once Obama won in November of '08, was move virtually all of its money to the Republicans — in an attempt to stop what became Dodd-Frank. And then, of course, they went to war with the Obama administration.

So when people ask why financial reform is so political, I say it's because the industry itself decided to politicize it. Now, of course they did it in a sophisticated way that overlapped with the Republican view of the world, which is small government, free markets, deregulation or anti-regulation.

You've noticed! Surely, as a long-time denizen of Washington, you expected nothing less.

Dennis: True enough. But financial reforms to enhance financial stability are one of the very few things that *shouldn't* be political or partisan at all — because the consequences are felt by *everybody*, Republicans, Democrats or whoever. When you suffer massive losses and you lose your home, you lose your job, you lose your savings, you lose your retirement — you don't take those hits based on party affiliation. Financial crashes and financial recklessness really don't care who they inflict the losses on.

The other point I often make to the Republicans who like to pose as big protectors of taxpayers, is that, well, one of the best ways to protect taxpayers is to *prevent* financial crashes. As I said, it's quite unfortunate that the financial industry has politicized financial reform and financial stability, but that is unfortunately the case.

The cynic in me says Wall Street couldn't care less about anyone's losses, as long its own screens are green. And, when the Street

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largely succeeded at deflecting blame for the GFC, its arrogance only increased. So what if, over time, the sight of bankers getting bailed out at the same time working stiffs' mortgages were being foreclosed fomented populist resentment — even Trumpism?
Dennis: Well, yes, but. On the one hand, the big banks got away with it. On the other hand, they didn't. They got away with it in two really important aspects. The first, of course, is that there were virtually no prosecutions and therefore no accountability for the reckless, illegal, and criminal conduct engaged in by the biggest financial institutions in the country.

And that sorry trend still continues, until proven otherwise.
Dennis: Yes, and they also got away with avoiding any significant structural reforms. So the too-big-to-fail banks continue to get too-bigger-to-fail, day by day. On the other hand, the Dodd-Frank Act did, when it was implemented, actually work, and that's one of the things that our white paper from last June, "No Financial Crash Yet Thanks to Dodd-Frank and Banking Reforms," showed. The real question now — as it has been for a number of years — is not whether the laws and rules are strong enough. The question is whether there's the political will and the regulatory courage to —

Enforce them —
Dennis: — implement and use them. So far, that record has been quite variable. We have to wait and see how that plays out. But it's whether they'll be meaningfully held accountable that's in doubt, not whether Wall Street has accumulated a substantial rap sheet of illegal activities. Indeed, we actually put out a fact sheet this January, on "Wall Street's Crime Spree 1998-2020," conservatively counting 395 major legal actions and more than $195 billion in fines over the last 20 years — and detailing illegal conduct that was shocking.

Come on Dennis, you have to be too jaded to actually be shocked that the banks shrug off wrist-slaps like fines.
Dennis: I know, it shouldn't surprise anybody, but it's nonetheless shocking that the illegal conduct of the biggest banks in this country actually has increased since the Great Financial Crisis. After all, we all know the adage that crime unpunished is crime undeterred. Not only aren't they really punished and they aren't deterred — they're actually incentivized to engage in more crime. Because if you can essentially get away with it, why not, right?

After all, their legal fees and fines are just costs of doing business — and tax writeoffs.
Dennis: That's true. We just have to wait and see how things are going to change with the Biden Administration. I do think things are going to change significantly at the SEC — and hopefully at other agencies. I know Gary Gensler has a pretty strong view on enforcing the law — including enforcing the law against individuals, executives and supervisors. We can only hope that will come to pass.

Does the SEC have the resources to pick up its pace? Hasn't it been starved for resources of late?
Dennis: They've got plenty of resources — though they could always use more. Look, Gary got the most out of the resources of the CFTC, which were nothing compared to the SEC's.

True enough.
Dennis: I think the SEC should get more resources, but even if they do not, Gary will get the most out of the resources that they have now. I mean, truthfully — I wouldn't want to have to pick — but if I had to pick the agency where I would really fight much harder for additional resources, it would be the CFTC. The CFTC has just been starved in a despicable way.

In fact, it's really one of the biggest successes of the financial industry's lobbying efforts in this country since Dodd-Frank. They've been able to ensure that Dodd-Frank's regulatory framework for derivatives markets can't be enforced or policed, because they've made sure that the CFTC's budget has been so paltry that the agency simply can't do its job in a meaningful way. They can't do on the regulatory side, they can't do it on the enforcement side. The CFTC does the best they can with what they have, but they don't have one-third of the amount of a budget that they should have.

Especially if you contrast the size of the CFTC budget with the size of the markets it is supposed to be regulating.
Dennis: Yep. That really needs to change. But I don't see that changing with the current Congress, given how tight the very small to nonexistent margin of error is that the Democrats have. And of course, in fairness it's not just Republicans who are preventing adequate funding of the CFTC — nor is it just Republicans who are blocking the proper and full regulation of the derivatives industry. The industry has many, many, many allies on the Democratic side, as well. It's just that, unlike on the Re-

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publican side, it's not *every* member of the party.

On the Republican side, there is virtually uniform unanimity in opposition to even the most minimalist investor protections, consumer protections, financial stability reforms. On the Democratic side, that's not the case. There are plenty of Democrats who are in favor of those things. But there is certainly no unanimity on the Democratic side.

That's another Impossible Dream.
Dennis: Well, truthfully there's going to be no meaningful legislation coming out of the Congress until there's a significant change in the composition of the Congress. That's all there is to it. At 51 to 50 in the Senate (counting Vice President Kamala Harris's tie-breaking vote) and with a margin in the House of what, less than 10 votes —

Virtual gridlock is still baked in.
Dennis: Yes, there's zero chance of meaningful legislation, and not only in our space but in any space. Which means that all of the action is going to have to be at the regulatory agencies — and, I should say, the Administration broadly. But in particular, at least regarding the financial arena, it will have to happen at the regulatory agencies.

Let's hope Ted Kaufman has long since explained that to his friend Joe.
Dennis: Well, it's a little unfortunate — and I should use a different word — but even with the best of intentions, there's only so much capacity that the political system has. And the Biden administration is appropriately allocating a massive amount of time and resources to fighting the pandemic, which is exactly what they have to prioritize.

I couldn't agree more.
Dennis: Then their real second priority is to figure out how to prevent the economy from collapsing and ideally help the economy actually recover from this period of shutdowns, full and partial. And in reality, those two unimaginably large challenges would be enough to consume any administration forever. So it's a credit to the Biden administration that he is also trying to do a bunch of other things. But there is no getting around that they've got to prioritize those first two challenges, and then — to the extent there's a capacity left within the system — they can start trying to get some other things done. It's that old hackneyed metaphor, but it's true. There's only so much oxygen in the policymaking space.

I worked on the Senate staff when the Obama administration passed both the Affordable Care Act and the Dodd-Frank Act — and, before both of those, we passed a stimulus bill. Each one of those things was a mammoth undertaking. And any one of them would have been significant achievement, all by itself. To do multiple large packages really puts a lot of stress on the system. So I think that the new Administration is doing the best they can under historically challenging circumstances.

Granted, Congress — like the electorate — is pretty evenly divided. But is that the *only* reason it's so challenging to move any legislation? I mean, there were times in the 30's under FDR and in the 60's under Kennedy-Johnson that Congress actually accomplished quite a lot — despite considerable dissent. It seems politicians today don't think they can walk and chew gum at the same time.
Dennis: Well, in fairness, FDR only got things done when he had super-majorities in the Congress.

And even that wasn't enough to protect him from having the Supreme Court rule against parts of his New Deal plans.
Dennis: Right. Not until the Supreme Court faced an existential threat from FDR's court-packing scheme did they begin to rule more favorably on New Deal programs. At any rate, I think there are only so many crises you can deal with at once. Of course, if you talk to Biden administration people they'll say, "We're not only dealing with the COVID crisis and the economic crisis. We're also trying to deal with the climate crisis, with racial justice, and with the economic inequality crisis."

Not to mention, watching crazy things going on all around the globe.
Dennis: Yes, little things like Afghanistan and Iran and China and Russia. We've got the biggest buildup of Russian troops on the border of the Ukraine that we've had maybe ever. We've got Iran now recommitting a massive enrichment of uranium. And you can look almost anywhere in the world and see China being quite bellicose in challenging American interests. There is just an almost inconceivably large amount of things going on that require the attention of the policymakers. So I agree with you. I hope my good friend Ted is talking to President Biden about these things. But I recognize that President Biden has got an incredibly full plate.

Why anyone wants that job is beyond me.
Dennis: Well, thank God he did.

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Exactly. I particularly appreciate the reason he says the was motivated to run.
Dennis: Yes, his motivation was unimpeachable. Pun intended.

[Laughs] **Oh, give the Republicans an opening and they'll try.**
Dennis: Well, that's true too.

If the focus is going to be on executive branch actions, are you working on Tracer™-like projects for all of the agencies? It's great stuff, by the way.
Dennis: Thank you. Tracer™ is actually our microsite that has carefully tracked all the COVID-related so-called temporary financial regulations and the regulatory relief necessitated by COVID. In fairness, most of the agencies have been pretty responsible about the relief that they've provided. Most of it has been pretty well-targeted and time-limited.

We're in the middle of a discussion with the Fed over the SLR, the supplemental leverage ratio. At the start of the pandemic, they allowed the bank holding companies to exclude both their holdings of Treasury securities and their deposits at the Fed, when calculating their leverage ratio, which determines the amount of capital they have to hold as reserves. The idea, amid the crisis, was to make it easier for the financial institutions to absorb government bonds and reserves, while continuing to lend. They did let that temporary relief expire, as we urged, but they also made it clear that they're going to think about what additional relief for the big banks might be appropriate.

But with the exception of the SLR, the regulators have been, I think, fairly responsible, reasonable, and time-limited in what they've done. We've tracked their actions pretty carefully and a lot of other people are tracking it, too.

So what about going forward?
Dennis: From our point of view, what these agencies really have to do is get back in the business of fulfilling their missions, whether it's investor protection, consumer protection, or financial stability — there's a lot of work to be done in those areas. We haven't even talked much about the CFTC, but Rostin [Benham, Acting CFTC Chair] has inherited an agency that has been crippled over the last four years *by design*.

So it badly needs rehab?
Dennis: Right. Before you can move forward you've got to get it back on track. He's the right guy for that. Rostin is a very talented, committed, thoughtful, really savvy public servant. I have no doubt that he will take the reins of that place and get it back into business probably quicker than anybody else could possible do it.

I'm actually pretty optimistic about the CFTC, because you couldn't get better leadership coming in. Same with the SEC.

The macro challenges are going to be, fundamentally, capital formation and allocation. In other words, they have to do with the structure and the activities of the biggest banks in the country — and the regulation of the shadow banking system. That really needs to be an intense focus because capital formation and allocation are root causes of the climate crisis, the racial justice crisis, the economic inequality crisis, as well as investor and consumer protection and financial stability.

And if we don't deal with the root causes of these multiple interconnected crises, then we can't make real progress. That's really where we need to be focused over the next four years.

Can you explain how you trace all of those interconnected crises back to issues with capital creation and allocation?
Dennis: Well, we have two conveniently recent fantastic examples. GameStop (GME) and Archegos.

Go on —
Dennis: There are different ways to look at GameStop. On the one hand, you can say, well, the problem is retail brokers ripping off retail investors. It is the Robinhoods of the world (and Robinhood just happened to get fined $65 million by the SEC last December for defrauding the retail investors by intentionally *not telling* them about payment for order flow) who are the problem.

And, of course, it's easy to see why a Robinhood wouldn't want to disclose anything about their payment for order flow practices. Because then retail investors might start asking questions. Like, "Gee, I wonder if I'm *really* getting treated well, or if the Robinhoods of the world are doing things that cost me money, just to increase their own income through the payments they get for order flow?"

So GameStop neatly illustrated the really deep conflicts of interest at retail brokerage firms that can work to the disadvantage of retail investors.

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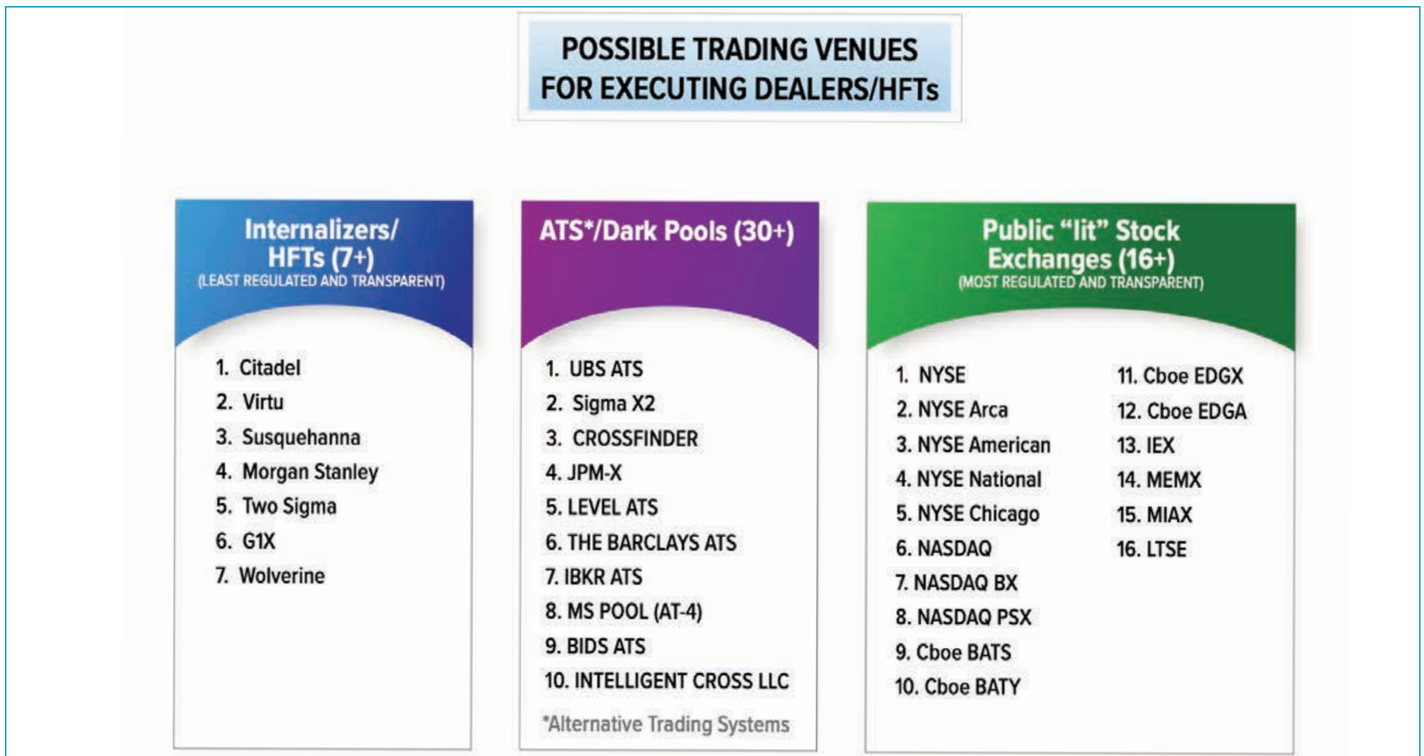
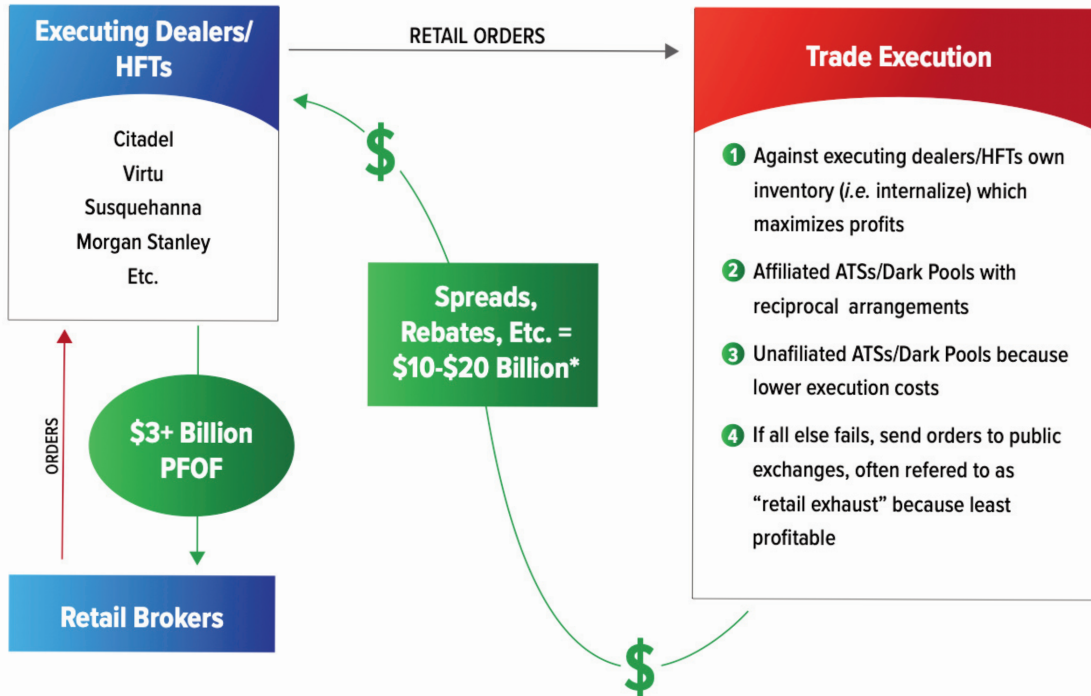
Retail Traders = as much as 1/3 of total U.S. Trading

*Order Flow = Huge information advantage which enables positioning book advantageously



Source: Slides, pages 11-13, Better Markets | 1825 K Street, NW | Suite 1080 | Washington, DC 20006 | 202-618-6464 | bettermarkets.com | © 2021 Better Markets, Inc. All Rights reserved. Published as Appendix C, Testimony of Dennis M. Kelleher, President and CEO of Better Markets Inc. Before House Committee on Financial Services, "Game Stopped? Who Wins and Loses When Short Sellers, Social Media and Retail Investors Collide, Part II," March 17, 2021.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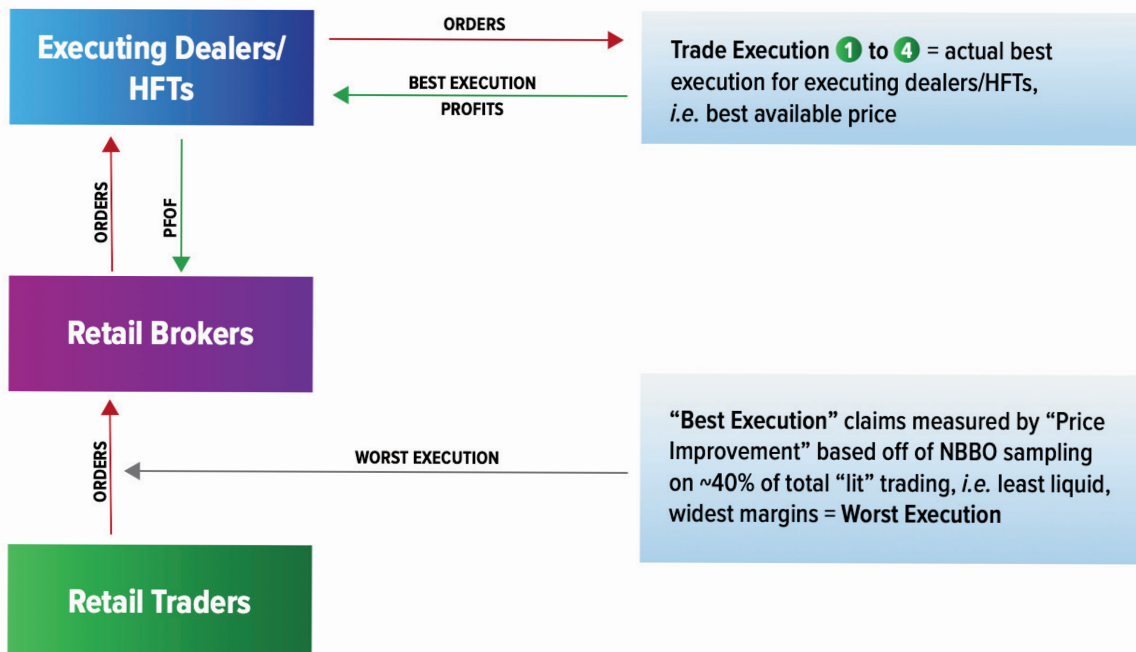
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ORDERS
WORST EXECUTION
"Best Execution" claims measured by "Price Improvement" based off of NBBO sampling on ~40% of total "lit" trading, i.e. least liquid, widest margins = Worst Execution
Retail Traders

ALL TRADING IN THE U.S. *

5 day running average as of March 15, 2021 = 53.38% lit and 46.62% dark: https://www.cboe.com/us/equities/market_statistics/

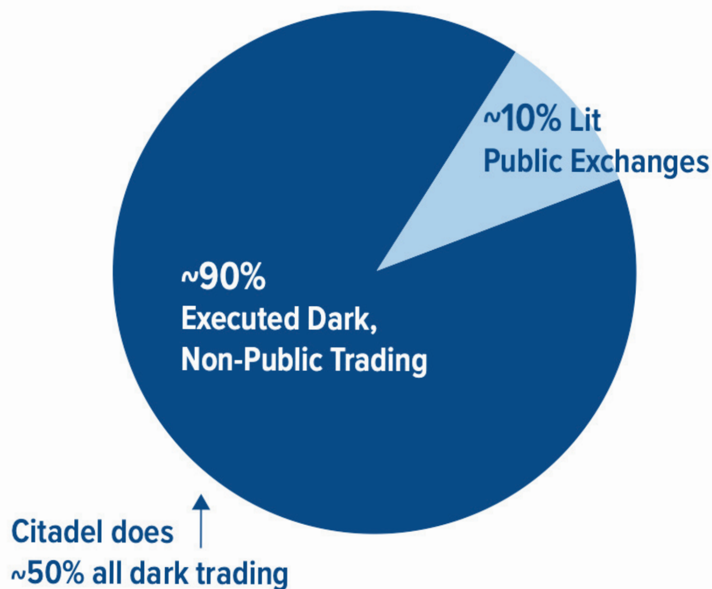
NBBO determined based on only the 53% of the bids/offers on "lit" public exchanges but after (1) excluding 20% of the volume that trades through hidden orders and (2) excluding odd lots which are a significant percentage of the "lit" trading. Therefore, NBBO only based on ~40% of total bids/offers but even that amount of "lit" bids/offers likely manipulated because:

1. Executing Dealers/HFTs are active traders in "lit" and dark markets and able to influence spreads in the "lit" markets
2. Posting bids/offers of just 200-300 shares often can move price
3. Lit exchange prices also move based on undisclosed activity in derivatives, futures and bond markets, where HFTs are active as well

= NBBO not even close to best execution and should not be used as benchmark or reference price

* Approx. 12 billion shares traded per day in U.S. with average trade size ~100 shares; executed within milliseconds

Retail Trading in US = as much as 1/3rd all Trading



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But the next layer of problems exposed by the GameStop frenzy, of course, is the fragmentation of the entire equity market structure. It depends on the day, but it has gotten to the point where, let's say, only about half of all equity trades on any given day take place on public, lit exchanges. In other words, where there is transparency and regulation.

The payment for order flow slides (nearby) that you included in your GameStop testimony before the House Financial Services Committee do a great job of demystifying payment for order flow in today's baroque market structure —

Dennis: Oh, thank you. About 50% of equity trades today take place in dark, unpublic, unregulated venues where predators thrive. So the Citadels of the world are enriching themselves through a fragmented and needlessly complex system that exists for the purpose of wealth extraction, not wealth creation.

That's quite a catch phrase.

Dennis: It's actually the fundamental problem — but there's also an even deeper issue. We didn't raise it in connection with GameStop frenzy because there were just so many issues. I mean, we could go into hedge funds, we could go into short selling, we could go into 13F, 13D and disclosure. But let's just leave those aside and take our discussion of the issues raised by what has happened with GameStop, up to the *next* level.

What's that?

Dennis: Take a minute to think about the amount of capital that has been allocated into the financial ecosystem in connection with the GameStop frenzy. I'm talking about everything from the retail brokers ripping off retail investors to the high-frequency trading firms to the bleeding dry of the public exchanges. All of that involves allocating capital. What's more, it has implications for capital formation.

Because?

Dennis: To the extent that over half of the equity trading in U.S. markets is *not* happening on public, lit exchanges, price discovery is not being accomplished — to the degree it should be — on those public exchanges. Now, there are people who will tell you that this is equivalent to arguing about how many angels can dance on the head of a pin. But at the end of the day, what less efficient price discovery means is that there are wider spreads in public markets than there otherwise would be. Simply because there's less liquidity. Less liquidity means less trading, means wider spreads, means the cost of capital is higher than it otherwise would be. Period. Full stop.

Clearly, the GameStop trading frenzy saga has lessons on many levels. But at a fundamental level, it illustrates the misallocation of capital in U.S. markets, which results in a lack of capital formation — because of the mispricing of capital in our equity markets. Actually, when you keep peeling way the layers of needless structural complexity in the markets, what you'll often find is capital misallocation and a lack of capital formation. Archegos is another great example, in my view.

Explain, if you please —

Dennis: At Archegos, you can find all of the obvious issues that relate to shadow banking, to undisclosed and nontransparent derivatives trading, whether it's in total return swaps or other derivatives instruments. All derivatives involve leverage. And the reason is *not* mysterious. If you want to buy equities on leverage, you have to put up 50% of the stock's price as margin. But if you instead acquire an equivalent economic interest via derivatives, you'll only have to put up margin of 10% or 15%.

Such a deal!

Dennis: As I said when the story broke amid the massive fire sale of Archegos' positions by its banks to meet margin calls, the first thing that was apparent was that the shadow banking system is much larger than it was in 2008, and remains just as nontransparent in material respects. We put a statement out, saying, "Systemic risk from secret and interconnected leverage, trading and derivatives in astronomical undisclosed amounts continues to permeate the shadow banking system and remains as dangerous today as it was in 1998 when the Long-Term Capital Management hedge fund blew up. And, as in 1998, 2008 and 2020, Wall Street's largest, taxpayer-backed and bailed-out too-big-to-fail banks are at the center of creating and selling these dangerous products — and enabling this high-risk conduct."

In Archegos' case, there are also issues around blatant failures of disclosure and clarity relating to 13F and 13D filings. There are issues stemming from the regulatory loophole created by so-called family offices and the regulatory arbitrage between family offices and hedge funds.

Archegos also raises all the issues about the too-big-to-fail banks acting in multiple contradictory, and conflicted, capacities. In this instance, you have them acting as prime brokers, as market makers, as derivatives dealers, and as lenders. They're also in both the cash markets and in the physical markets. So dig deeply enough, and what

do you find but too-big-to-fail banks — bailed out now twice in 12 years by taxpayers — at the core of another hedge fund collapse — enabling and feeding wild gambling bets made by a family office.

Heads, they win; tails, taxpayers lose.

Dennis: All those things are important issues to think about and talk about. At the same time, I think Archegos is also a perfect illustration of how finance has been hijacked by insiders who are using it as a wealth-extraction mechanism rather than a wealth-creation mechanism. Just think of the amount of capital that's being allocated to facilitate the gambling done by family offices and hedge funds.

***Mis*allocated, certainly, in Archegos' case.**

Dennis: Well, there were $10 billion or so of assets in Archegos, which they levered up by a factor of 10 or something, using synthetic derivatives — which the big banks were evidently eager to sell to them — to amass *undisclosed* economic exposures equal to more than 10% of the shares in handful of public companies. That's what I call capital misallocation, too.

Remember, Goldman Sachs, Morgan Stanley and Wells Fargo only exist today because of the grace of U.S. taxpayers in 2008. But what did we see in Archegos? You had them — along with Nomura and Credit Suisse — especially, Credit Suisse — allocating tens and tens of billions of dollars to one single-family office to make *undisclosed* concentrated leveraged bets. Bets that not only were *no*t beneficial to this country's economy, but actually antisocial.

Antisocial?

Dennis: Yes. What you tend to hear about Archegos is, oh, Credit Suisse lost $3 billion, $4 billion, $5 billion, whatever it was. [Now, reportedly more than $20 billion.] Nomura lost a couple of billion. Oh, isn't it great that Goldman Sachs, Morgan Stanley and Wells Fargo could engage in fire sales of Archegos' positions ahead of the most of the waterfall selling in those stocks — and therefore they were not materially impacted, according to their disclosures?

But one of the things nobody talks about when it comes to Archegos is that if you look at the stocks of the six or seven companies in which Archegos had those undisclosed positions, those companies lost around $33 billion in market cap, virtually overnight. And that means that every single investor in those stocks also lost money. [According to *The Wall Street Journal*, the stocks involved were ViacomCBS (VIAC), Discovery (DISCB), Farfetch (FTCH), GSX Techedu (GSX), Tencent Music Entertainment Group (TME), Baidu, and IGIYI Inc. (IQ).]

Can you imagine how many pension fund beneficiaries took those hits?

Dennis: Well, not just pension funds, but index funds, which so many investors hold. And ViacomCBS is a large-cap stock. Before the Archegos selloff, VIAC had gone up about 30% in just a couple of months — which is virtually unheard of, for a large cap. That begs the question of what role did lending by the big banks play in the runup of VIAC? That question is critically important because the collapsed hedge fund was reportedly run by a person who previously engaged in substantial insider trading, and settled rare criminal and civil charges, accepting a ban from the industry, that — until recently — had been reason enough for Goldman Sachs to reject him as a client, for years.

But then, when ViacomCBS and the others crashed —

Dennis: So did all the indexes in which ViacomCBS is a constituent — and that's *a lot* of indexes. When you add the damage done to those indexes' prices in that selloff, to the Archegos' direct toll on the individual stocks, you get to a little bit less than $200 billion in market cap losses caused by the highly leveraged gambling Archegos was doing in just a few stocks. And Archegos' highly leveraged trading was only possible because a few global systemically important financial institutions, or GSIFs, decided to allocate massive amounts of capital to enable Bill Hwang, the principal of Archegos — to actually do this.

You're implying there may have been better uses for all the dough?

Dennis: Of course. In lending the capital to Hwang, the big banks implicitly made a decision *not* to allocate that capital elsewhere. Almost invariably in these episodes, whether it's a GameStop or an Archegos, when you peel back the layers they almost always relate to a decision on capital allocation — and to capital formation.

Think about what small businesses in this country could do — if the Goldman Sachs of the world decided they were going to instead allocate that meaningful capital to, oh, I don't know, small businesses?

Actually lend to Main Street America? What are you smoking?

Dennis: Good luck, right? You even see that reflected in the earnings the big banks are reporting this week. Wells Fargo, Goldman Sachs and JPMorganChase just reported.

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Big earnings numbers.
Dennis: Yes, once again. On tremendous revenue increases. But dig a bit deeper into the reports and what you *won't* see is an increase in *lending*.

It sounds odd, but that's not their main line of business —
Dennis: What does that tell you? That tells you that these banks continue to allocate capital to trading and investments — often antisocial trading and investments, like Archegos or GameStop — but they're not allocating it to lending to the real economy, to real Americans, to Main Street interests. What the big banks are doing is juicing their executives' bonuses at the expense of Main Street families. That's one of the reasons we are having a K-shaped recovery. Because of decisions being made by giant financial institutions.

Isn't that's how the free markets work? Bankers allocate money where they think it'll earn the highest returns. Regardless of social utility or (supposedly) executive bonuses.
Dennis: On the other hand, that's not what they *say* they do, when they have their hands out for bailouts. If we are going to take care of the banks when they're in trouble, then, at the least, they should do what they are supposed to do — when they aren't in trouble.

The Financial Times had a story recently, under the headline, "Soaring Wall Street Income Powers U.S. Bank Profits." The subhead was "JPMorganChase, Goldman Sachs, Wells Fargo Beat Forecasts Despite Lackluster Loan Demand." But the truth is that *loan demand* wasn't lackluster. Demand was fine. It was *supply* that was lackluster. There was lackluster loan *activity*. What the bankers were doing instead was making money and fat bonuses on socially unproductive trading and investments — rather than supporting the real, productive economy, jobs and growth.

The problem here is in some ways a conceptualization problem as well as a structural problem.

What do you mean?
Dennis: All the real smart boys and girls on Wall Street refer to the most important economic activity in this country as "boring banking." Right? Actually making loans to people and companies — so that they can either achieve their dreams of going to school or founding businesses, growing businesses, or buying a house. That is "boring lending" because it's low-margin. When Wall Street says "boring," they mean low-margin. They would much rather be in the unboring businesses — like swing-for-the-fences trading and investments. That is where they can juice their bonuses the most. That's a conceptualization problem that we fight against every day, on a rule-by-rule basis, at Better Markets.

Isn't it also that there's nothing glamorous about doing the nitty-gritty work of loan underwriting? And it's perversely easier to sell big dreams than to help quotidian businesses grow? After all, even the bottom-feeders in the financial food chain, payday lenders, fight tooth and nail against requirements to really *underwrite* loans.
Dennis: Well, that's true, although it's interesting. People focus on the obvious, on payday lenders and debt collectors and the other street-level financial "crime" predators, though they don't necessarily violate criminal statutes. Fact is, payday lenders can't hold a candle to the too-big-to fail banks. Just one example: The biggest banks in this country generate revenue north of $20 billion a year, just on so-called overdraft fees. The payday lending industry would die for that $20 billion annual revenue stream. So it's not just the bottom feeders, the bucket shops and payday lenders, who are problems. It's the biggest institutions in this country — engaging in not just unproductive and antisocial activities but in predatory activities — that really prevent Main Street Americans from (a) keeping more of their income and (b) building wealth.

White collar crime is so much more "respectable" in polite society.
Dennis: Because, first of all they hire armies of lobbyists and allies. They've got armies of PR and communication firms that are expert at putting lipstick on the pig. And they have an audience too-willing to accept the lipstick and ignore the pig.

People are very susceptible to the illusion they might "share the wealth." Meanwhile, look at the huge group of people without so much as a bank account.
Dennis: Yes. Although the bigger problem for the unbanked is that they are un-incomed. The bottom line is they don't have money. And one of the reasons they don't have money is that we have a financial system so much more focused on wealth extraction for the few than on wealth creation for the many. If our entire banking and financial industry were really focused on how best to support and finance the real productive economy, jobs and growth, there would be a tremendous increase in income and wealth in Main Streets across this land.

Instead, one of our key problems, in our view, is that folks in finance just find it so much more lucrative for themselves to allocate capital away from productive uses — and towards financialization and gambling — that they're actually starving the real economy to boost their bonuses. That's what's going on.

It would seem pretty impossible to keep all those capitalists from "following the money." What my professors called enlightened self-interest is vanishingly rare anymore.

Dennis: You might say our mission is to change that. And that's why, at the end of the day, whether we're doing it rule-by-rule before the various regulatory agencies, or we're doing it before Congress, or we're advocating for it elsewhere, our focus at Better Markets is on encouraging capital formation and capital allocation that supports the productive economy and broad-based economic growth, the kind that will enable Main Street not just to survive, but to thrive.

I suspect there's enormous correlation between the increased financialization of the economy over the last 30 years, and the decline in productivity and other measures of real economic output.

Dennis: I don't know if it has been quantified at a very granular level, but the intensified financial short-termism, I think, correlates quite tightly with flat, if not declining, wages, income and wealth for the 90% of the American people who are on the wrong side of this K-shaped economy.

Of course, it's a multifactor analysis. We also have essentially legalized the destruction of unions, amid surging globalization, and the "technologicalization" of so much "work." Automation, I guess, is the euphemism of choice. So there have been a lot of things happening alongside financialization, but it is clearly one of the key drivers.

To sum up, what do you want most to accomplish during Biden's first four years?

Dennis: The most important thing is that we have regulators supported by policymakers who prioritize protecting investors, financial consumers, and systemic stability. Their work will, if it's done right, cause the capital allocation and formation processes to once again focus on wealth creation. Which will tremendously reduce the amount of wealth extraction going on in our financial system.

That is Better Markets' top-line goal over the next four years — and we're confident that our goals are shared by the Biden administration. And so far, based on the regulators that they have nominated, those goals will also be shared by the key regulators. So we are quite optimistic.

But we also recognize — as you know well — that executing on our goals will *not* be easy. The financial industry gives up nothing without a tremendous fight. So we're prepared for what's likely to be brutal, mano-a-mano fighting with them — at the regulatory agencies, in Congress, and in the courts — to make any progress. It's unfortunate, but if you're trying to protect investors, consumers, and financial stability, that usually means doing things that the financial industry sees as costing it money.

At least in the short run. Enlightened self-interest and all that, again.

Dennis: Right, but the instant-gratification, high-margin business for them is picking the pockets of Main Street Americans, along with engaging in high-risk bonus-boosting, antisocial behavior. They aren't going to give up those profits — or one penny — without a fight. But I will reiterate, Better Markets is ready to fight. And we've been buoyed by some recent regulatory signals.

Like the SEC's chilling statements on the bubble in SPAC offerings?

Dennis: We could go on for another two hours on SPACs and private equity wealth extraction, but suffice it to say that I think the litigation and regulatory risks for SPACs is going to go up quite a bit — which should put a damper on at least the worst of those excesses. We're already seeing it happen, with the SEC making two pretty clear statements in two weeks on SPACs. I also think private equity is going to come in for a level of scrutiny that they have never seen before — which I believe is going to reveal predatory behavior that won't be able to withstand the light of day.

Sunlight. Good old Judge Louis Brandeis' favorite disinfectant.

Dennis: That's right. And as I tried to say in my testimony at the GameStop hearings in the House, the intricacies of things like Robinhood, payment for order flow, shadow banking, derivative swaps and so much more may sound incredibly new and complex, but they are not. Most of the issues, trading practices, and obvious vulnerabilities of the U.S. financial system are long-standing. There is little new about irrational exuberance and speculative fervor for questionable securities, or frankly, widespread predatory practices.

Market participants at the center of these events have for years taken advantage of the complexity they've created, the resulting market fragmentation, their order routing schemes, the questionable execution and trading practices, the lack of transparency, and the many uses of seen and unseen leverage. Quite simply, that is why Better Markets tirelessly advocates for critical reforms to our equity market structure.

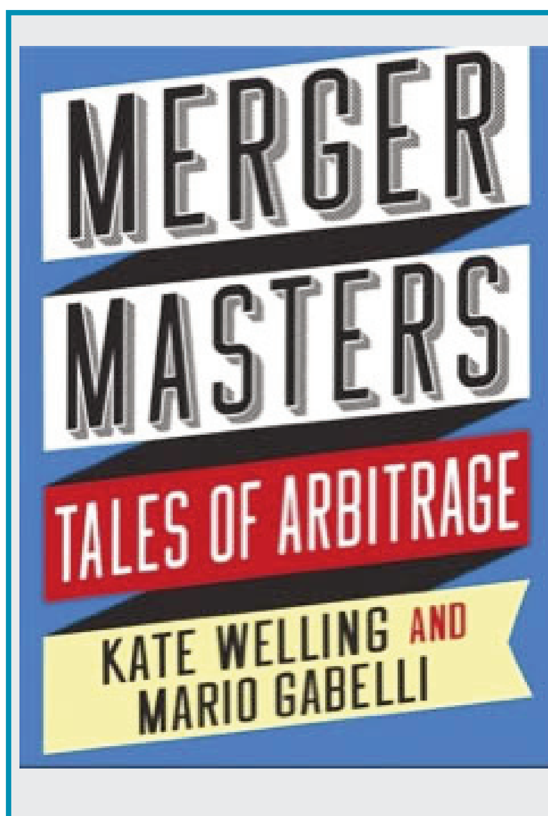
You're trying to roll a very big rock uphill — against forces about as elemental as gravity.

Dennis: We do recognize that, for years, a handful of dominant market participants — including the executing dealers/HFTs at the center of the feeding frenzy over GameStop and Wall Street's too-big-to-fail banks — have responded to economic incentives and regulatory opportunities by — in the words of former Citigroup CEO Chuck Prince — "danc[ing] while the music is playing" (i.e., maximizing profits regardless of risks) rather than taking necessary actions to protect their firms and the integrity of

the U.S. financial system.

These market participants often claim merely to operate within the rules they have been given and to be victims of unforeseeable circumstances when markets malfunction or catastrophe strikes. But the reality is that they "strike up the band" in the face of risks that they know — or should know — are building and materializing.
The other reality is that the predatory, and in some cases illegal, practices we've been talking about in relation to GameStop, Archegos and the rest, illustrate that much of current U.S. market structure has been intentionally created to be as non-transparent and complex as possible — to enable and conceal as much wealth extraction as possible. And, no surprise, that complexity is also wielded as a cudgel to intimidate policymakers, regulators, and legislators — to discourage them from looking at those activities too closely or asking too many nettlesome questions.

That's where investors are lucky to have Better Markets spreading sunlight. Thanks, Dennis, and godspeed.



"If there's a better discipline than merger arbitrage to use as the foundation for a career in investing, I haven't found it in my fifty-plus years in the financial industry. It teaches you most of the techniques needed to do deals."

— Mario Gabelli

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Welling on Wall St. Interviewee disclosure: Dennis M. Kelleher is the President, and Chief Executive Officer of Better Markets, Inc., which he co-founded in the wake of the 2008 financial crisis with Michael W. Master, the founder and managing member of Atlanta's Masters Capital Management, who is both Better Markets' primary benefactor and board chair. Based on Washington DC's K Street (where else?) Better Markets is a non-profit, non-partisan, and independent organization founded to promote the public interest in the financial markets, support financial reforms of Wall Street, and make the financial system work for all Americans again. Better Markets works with allies – including many in finance – to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more. To that end, Better Markets has filed over 300 comment letters with U.S. securities, banking, and derivatives regulators, many addressing the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act. It has also published numerous letters, reports, fact sheets, and white papers on public policy issues pertinent to U.S. securities markets and held hundreds of meetings with U.S. regulators and others, focused on critical market issues – including ensuring that the financial system (1) supports the real economy, jobs, and economic growth; (2) is resilient and not prone to crashes; (3) protects workers, consumers, investors, and markets; (4) reduces wealth and income inequality; and (5) is designed to combat structural racism and the climate crisis. See its website, www.bettermarkets.com, for a wealth of details.

Before Mike Masters convinced Dennis to join him in fighting for Better Markets, Dennis had amassed three decades of experience in the public, private, political, charitable and non-profit sectors. He has been profiled in The New York Times ("Facing Down the Bankers") and on PBS ("Braking the Banks"), among other places. He was also featured in Frontline's award-winning inside story of the global financial crisis ("Money, Power and Wall Street") as well as in the German and French public television documentaries on the global collapse. Dennis held several senior staff positions in the United States Senate, most recently as the Chief Counsel and Senior Leadership Advisor to the Chairman of the Senate Democratic Policy Committee. Previously, he was a Deputy Staff Director and General Counsel to a Senate Committee as well as a Legislative Director for a senior member of the Senate. In the private sector, Dennis worked as a litigation partner with the international law firm of Skadden, Arps, Slate, Meagher & Flom, where he had a U.S. and European practice specializing in the securities and financial markets as well as corporate conduct/misconduct. Before he graduated with highest honors from Brandeis University and with honors from Harvard Law School, Dennis enlisted and served four years of active duty in the Air Force as a crash/rescue firefighter/medic.

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