BETTER MARKETS

SPECIAL REPORT

SEPTEMBER 15, 2020

ROAD TO RECOVERY

Protecting Main Street from President Trump's Dangerous Deregulation of Wall Street

The Lehman Brothers' name is illuminated at the headquarters of Lehman Brothers Holdings Inc. September 15, 2008, in New York City. Lehman Brothers had filed a Chapter 11 bankruptcy petition in U.S. Bankruptcy Court after attempts to rescue the storied financial firm failed.

(Photo by Mario Tama/Getty Images)

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Introduction

It has been 10 years since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which reined in the riskiest activities of Wall Street's most dangerous too-big-to-fail banks and instituted a host of post-crash reforms that have made our financial system more stable and less likely to crash or cause an economic catastrophe. As important, the law has redirected Wall Street banks' activities away from high-risk trading and investments and back to supporting the real productive economy and Main Street families.[1]

The success of the post-crash reforms has been demonstrated by the banking system's resilience in the face of the COVID-19 pandemic, which has led to nearly Great Depression-levels of unemployment, a severe economic contraction and unprecedented uncertainty about the economic outlook. The fact that, thus far, there has not been a banking crisis and no taxpayer bailouts of Wall Street proves that those reforms have worked as designed and intended.[2]

The critical post-2008 crisis reforms include capital and liquidity rules, rigorous stress tests for banks, more oversight and transparency in the derivatives markets, and additional scrutiny of and limitations on Wall Street's most dangerous investment activities. Our banking system, our economy and our country are stronger and less susceptible to shocks because of the Dodd-Frank Act and its associated financial stability rules.

And yet, the Trump Administration has launched an all-out assault on these important financial protection rules. By weakening these rules, the Trump Administration has needlessly increased the risk that a future shock to our banking or financial system more broadly might result in a crisis similar to that of 2008-2009… or worse. This deregulation agenda was not enacted based on evidence or data (as made clear by their absence in the rulemakings), but on vacuous words and phrases, like "tailoring," "efficiency," "right-sizing" and "fine-tuning." Of course, the financial industry has continued its decade-long attack on Main Street protections with little more than self-serving and baseless claims buttressed by the Trump Administration's blind deregulatory ideology and zeal.

Restoring the effectiveness of these financial stability rules that protect Main Street families, businesses and banks, and undoing the damage of the Trump Administration's deregulation, must be priorities for future financial regulators.

This report identifies the top priorities for each of the six key financial regulatory agencies: The Federal Reserve Board, the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Consumer Financial Protection Bureau. It also has an appendix comprehensively listing many of the deregulatory rulemakings taken by each agency during the Trump Administration with links to Better Markets' related comment letters.

[1] For a full discussion of the Dodd-Frank Act over the last ten years, *see* Better Markets, "Ten Years of Dodd-Frank & Financial Reform: Obama's Successes, Trump's Rollbacks, and Future Challenges," (July 20, 2020), *available at* https://bettermarkets.com/sites/default/files/images/BetterMarkets_DoddFrankReport.pdf

[2] *See* Better Markets, "No Financial Crash Yet Thanks to Dodd-Frank and Banking Reforms," (June 24, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_White_Paper_Dodd-Frank_Banking_Reforms.pdf

Top Priorities for the Federal Reserve Board to Restore Financial Safety, Prevent Crashes, Protect Taxpayers and Reduce the Risk of Bailouts

The Federal Reserve System is the country's central bank. Among its many responsibilities is the job of supervising and regulating the largest banks in the country to ensure that they operate in a safe and sound manner, and are strong enough to support the economy and not fail and need bailouts.

How the Federal Reserve System Works:

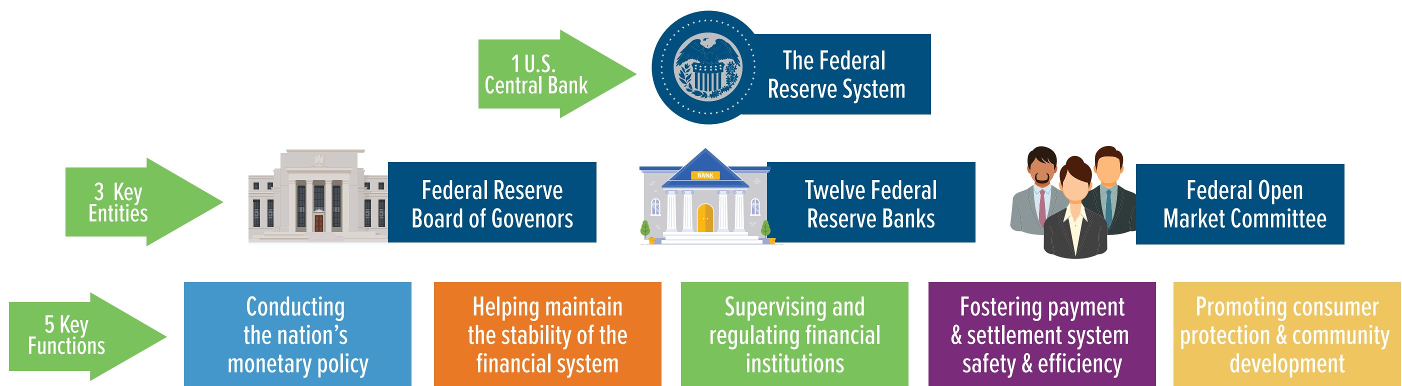

Image Source: https://www.federalreserve.gov/aboutthefed/structure-federal-reserve-system.htm

Capital Requirements for the Largest Banks Must be Strengthened

The only thing standing between a failing bank and a collapsing financial system that requires taxpayer bailouts to prevent an economic crisis is the quantity and quality of capital a bank has to absorb its own losses. If a bank does not have enough capital, then it fails; if it's a systemically important bank like the gigantic Wall Street banks and many of the large regional banks, then their failure will almost certainly lead to the failure of other banks and financial institutions, threatening the collapse of the financial system and, ultimately, the economy itself. That's why they are called "too-big-to-fail" banks

"A bank's capital is what protects banks, the banking system, depositors, taxpayers, and the economy from those catastrophic effects."

and why they were bailed out by taxpayers and the government to the tune of $29 trillion during the 2008 crash.[3]

A bank's capital is what protects banks, the banking system, depositors, taxpayers, and the economy from those catastrophic effects. That's why ***the*** priority for the Fed is to reverse the Trump Administration's needless and baseless weakening of these all-important capital requirements over the past 3 1/2 years.

The weakening of these key rules has taken a variety of forms, including but not limited to: changes in the calculation of supplemental leverage ratio (SLR) for some banks with large custody operations; elimination of a post-stress leverage requirement; and replacing the assumption that banks' asset size could increase under stress in the Fed stress tests with an assumption they will remain unchanged. In addition, the Fed has proposed but not yet finalized a proposal that would lower capital standards for the very largest banks by changing the calculation of the enhanced supplemental leverage ratio requirement.

Importantly, that isn't to suggest reversing those actions alone would necessarily be enough. While U.S. and global capital standards were significantly strengthened following the 2008 global financial crisis (including through the critical innovation of using stress testing to measure capital adequacy[4]), post-crisis capital standards may still not provide enough confidence that systemically important banks can withstand a severe downturn, continue to support the economy through lending to households and businesses, and avoid needing a taxpayer-funded bailout. Many have credibly suggested that even more capital is required.[5] That is not really a surprise given the capital shortfall in 2008, the gigantic bailouts required to stop the crisis, and the fact that many of the systemically significant banks and financial institutions at that time are now significantly larger.

That's why the quantity and quality of capital throughout the banking and financial systems must be materially increased.

[3] *See* Better Markets, "$20 trillion: The Cost of the Financial Crisis," (February 22, 2017), *available at* https://bettermarkets.com/newsroom/20-trillion-cost-financial-crisis-3#:~:text=Better%20Markets%20released%20an%20extensive,States%20more%20than%20%2420%20trillion. *See also* James Felkerson, "$29,000,000,000,000: A Detailed Look at the Fed's Bailout by Funding Facility and Recipient," Levy Institute Working Paper No. 698, (Dec. 2011), *available at* http://www.levyinstitute.org/pubs/wp_698.pdf.

[4] *Id.*

[5] *See* IMF study "Benefits and Costs of Bank Capital" (2016), which finds capital in the range of 15-23%; Federal Reserve Bank of Minneapolis, "Capital Requirements and Bailouts" (2017) and Federal Reserve Bank of Minneapolis, "Ending Too Big to Fail" (2016) both point to a range of 20-30% to prevent 'public recapitalizations'; Simon Firestone, Amy Lorenc and Ben Ranish, "An Empirical Economic Assessment of the Costs and Benefits of Bank Capital in the US" (2017,) a study by three Federal Reserve Board economists who find the 'optimal range' is between 13-26%. See also Anat R. Admati and Martin Hellwig, "The Bankers' New Clothes: What's Wrong With Banking and What to Do About It" (2013).

Liquidity requirements must be restored and strengthened for U.S. and foreign banks operating in the U.S.

A key part of the post-2008 crash reforms are liquidity requirements for banks; that is, requiring banks to keep sufficient readily available liquid funds on hand to cover unexpected outflows of cash.

Minimum liquidity requirements for the largest banks were enacted through the Liquidity Coverage Ratio (LCR), which requires them to hold enough high-quality liquid assets (HQLA)—such as cash, Treasury securities or other securities that can be quickly turned into cash—to withstand 30 days of substantially increased liquidity outflows such as might occur under a period of severe stress – which is what happened in the crash of 2008 and happened again at the beginning of the pandemic selloff in March of 2020.

These requirements are key because a bank can have enough capital but not be sufficiently liquid to quickly pay customer or creditor demands, which means it will have to immediately sell all sorts of assets, resulting in "fire sales" which cause asset prices to collapse. This results in most financial institutions repricing their assets to reflect the downward spiral, which generates substantial losses and feeds on itself, accelerating the crisis. A cushion of readily available liquid assets is, therefore, required, which the Obama Administration well understood.

Yet, under President Trump, the Fed weakened the coverage of the LCR unnecessarily for many large banks, while making certain other regulatory changes required by Congress in the Economic Growth, Regulatory Relief, and Consumer Protection Act in 2019. The Fed, however, went far beyond what was required by the law and dangerously weakened the liquidity requirements, which weakened bank resilience. These need to be undone so that banks again have enough short—term liquidity to withstand severe financial pressures.

"...under President Trump, the Fed weakened the coverage of the LCR unnecessarily for many large banks, while making certain other regulatory changes required by Congress..."

Specifically, the Fed lowered or eliminated the LCR requirement for many U.S. banks, especially those with assets of between $100 billion and $700 billion, causing a reduction of liquidity at these banks estimated by Fed Governor Lael Brainard at the time to be roughly $200 billion. Further, during the same rulemaking, the Fed decided to not include U.S. branches and agencies of foreign banking organizations (FBOs) in the coverage of the quantitative liquidity requirements. Thus, liquidity requirements were imposed only on large FBOs' intermediate holding companies, not on the total U.S. operations of FBOs. Dangerously, no action was taken to enact quantitative liquidity requirements for U.S. branches, which often serve the role of gathering short-term wholesale funding for the overseas parent bank and can face substantial liquidity vulnerabilities as seen during the financial crisis of 2007-2009.[6]

[6] That is one of the reasons so many FBOs received massive bailouts from the U.S. government in 2008, which was in fact a bailout of the FBOs' foreign parent banks. *See* Office of the Inspector General of the Troubled Asset Relief Program, "Factors Affecting Efforts to Limit Payments to AIG Counterparties," (November 17, 2009), *available at* https://www.sigtarp.gov/Audit%20Reports/Factors_Affecting_Efforts_to_Limit_Payments_to_AIG_Counterparties.pdf.

Former U.S. President Barack Obama and former Economic Recovery Advisory Board Chairman Paul Volcker, who the "Volcker Rule" is named after, meet in the Oval Office at the White House on March 13, 2009, in Washington, D.C.
(Photo by Mark Wilson/Getty Images)

Finally, while the LCR has led to significantly better short-term liquidity positions at the largest banks, it was always meant to be supplemented by a rule focused on longer-term liquidity positions. A 2016 Fed proposal for the Net Stable Funding Ratio (NSFR)—a liquidity regulation with a time horizon of one year rather than the LCR's 30 days—has never been finalized. An appropriately designed NSFR rule should be finalized to enhance long-term liquidity standards and complement the LCR.

The Volcker Rule's Prohibitions on Speculative Proprietary Trading by Taxpayer-Backed Banks Must Be Strengthened[7]

Speculative proprietary trading is when a bank makes an often highly leveraged and complex financial bet for its own account rather than on behalf of customers, using low- to no-cost federally insured deposits, thereby exposing depositors and U.S. taxpayers to substantial losses that may be a consequence of that bet.[8] While theoretically any bank could engage in proprietary trading, Wall Street's biggest banks often do so in the most significant amounts and with the greatest frequency because they have balance sheets big enough to support such trading.

Because the potential for quick, short-term rewards to the trader and the bank are often astronomically high, the incentive to engage in this type of trading is often irresistible. However, such trades are little more than gambling and have little, if any, socially useful or redeeming purpose. Indeed, they can threaten the safety, soundness and stability of the bank and the financial system itself if sufficiently pervasive.[9] Moreover, speculative, proprietary activities often infect the culture of a bank with a dangerous, high-risk, swing-for-the-fences attitude of maximizing short-term gains, too often to the exclusion of all else.

That's why Congress included the Volcker Rule in the Dodd-Frank Act: it prohibits high-risk, short-term speculative proprietary trading by banks, and it similarly prohibits bank investments in private funds that would facilitate proprietary trading. Thus, the law prohibited taxpayer-backed banks from directly and indirectly engaging in propriety trading. While imperfect, the Obama Administration

[7] The Volcker Rule is required by the Dodd-Frank Act to be a joint rulemaking and, therefore, needs to be prioritized by the other financial regulators as well.

[8] The best (worst) recent example of this was JP Morgan Chase's so-called "London Whale" trade that cost the bank more than $6 billion in losses. *See* Renae Merle, THE 'LONDON WHALE' TRADER LOST $6.2 BILLION, BUT HE MAY WALK OFF SCOT-FREE, *Washington Post* (Apr. 13, 2017), *available at* https://www.washingtonpost.com/business/economy/the-london-whale-trader-lost-62-billion-but-he-may-walk-off-scot-free/2017/04/12/14b3836a-1fb0-11e7-be2a-3a1fb24d4671_story.html.

[9] That is what happened in the years before the 2008 financial crash when Goldman Sachs, Lehman Brothers, Bear Stearns, Morgan Stanley, Citigroup and other systemically significant banks and nonbanks engaged in substantial amounts of proprietary trading. Indeed, Morgan Stanley lost more than $9 billion in a single proprietary trade, which happened at the worst possible time: in late 2007, when it was also taking huge losses due to the collapse of the subprime credit markets. *See* Better Markets Fact Sheet: The Volcker Rule: Liquidity Impacts and Other Myths Used to Carry Water for the Banks *available at* https://bettermarkets.com/sites/default/files/The%20Volcker%20Rule%20Liquidity%20Impacts%20and%20Other%20Myths%20Used%20to%20Carry%20Water%20for%20the%20Banks%20%28002%29.pdf.

implemented the Volcker Rule in 2014, substantially curbing many types of proprietary trading. This forced banks to reorient their activities away from socially useless trading and back to Main Street lending, which is, after all, why banks are permitted to lend on deposits backed by the U.S. taxpayers and have various forms of liquidity support through the Federal Reserve System.

Disregarding lessons of the 2008 financial crisis, the Fed and its fellow financial regulators under the Trump Administration have weakened the Volcker Rule prohibitions on both direct and indirect proprietary trading, which is now subject to minimal oversight.[10] Wall Street's largest banks, in particular, are likely to seek increased returns and bonuses through risk-enhancing speculative trading.[11] Like before the 2008 crash, these banks will undoubtedly shift their focus away from lending to support the productive economy and be exposed to significant future losses from short-term proprietary trading in securities and derivatives markets (as has happened on numerous past occasions). Unfortunately, this means the U.S. taxpayers eventually will be on the hook for bailouts in one form or another because Wall Street's biggest banks remain too-big-to-fail.

> "Disregarding lessons of the 2008 financial crisis, the Fed and its fellow financial regulators under the Trump Administration have weakened the Volcker Rule prohibitions on both direct and indirect proprietary trading..."

With the Fed in the lead, the prudential regulators must, at the very minimum, reinstate the 2014 Volcker Rule, which instilled stronger risk management programs, incentives, and controls at the largest banks, while having no measurable negative effect across U.S. capital markets. Moreover, there are a number of critical measures that would demonstrably improve the Volcker Rule beyond merely reinstating the 2014 final regulations (e.g., applying the Volcker Rule to unnecessarily excluded or exempted markets and categories of financial instruments). The Fed should undertake a comprehensive review of those measures and implement them as appropriate.

The Fed Must End the Two-Tier Regulatory System that Incentivizes Regulatory Arbitrage by Taking the Lead in Getting FSOC Up and Running

Before the 2008 crash, the U.S. suffered from a two-tier regulatory system: a regulated banking system and a largely unregulated nonbanking system, often referred to as the "shadow banking system." JP Morgan Chase, Citibank and Bank of America are examples of the former and Lehman Brothers, Bear Stearns, AIG and money market funds are examples of the latter.

[10] *See* Better Markets Comment Letter on Prohibitions And Restrictions On Proprietary Trading And Certain Interests In, And Relationships With, Hedge Funds And Private Equity Funds, (April 1, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Inc._Comment_Letter_on_Prohibitions_and_Restrictions_on_Proprietary_Trading_and_Certain_Interests_in_and_Relationships_With_Hedge_Funds_and_Private_Equity_Funds.pdf. *See also* Better Markets Comment letter on Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, (October 17, 2018), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%20Comment%20Letter%20on%20New%20Volcker%20Rule%20Proposal.pdf.

[11] Indeed, it may already be happening and may well account for some of the record-breaking growth in trading revenues and profits at Wall Street's biggest banks during the second quarter of 2020. *See* Liz Hoffman, "Trading Powers Morgan Stanley to 45% Profit Jump," *The Wall Street Journal,* (July 16, 2020), *available at* https://www.wsj.com/articles/trading-powers-morgan-stanley-to-45-profit-jump-11594899199. *See also* Declan Harty, "In Trading Results, Wall Street's Big Banks Find Some Relief From Tumultuous Q2," *S&P Global Market Intelligence,* (July 16, 2020), *available at* https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/in-trading-results-wall-street-s-big-banks-find-some-relief-from-tumultuous-q2-59430160.

> "Unfortunately, from its beginnings, the FSOC has not been very effective... under the Trump Administration, whatever modest progress there was came to a grinding halt and the FSOC was effectively neutered."

Having two different regulatory regimes for finance was extremely dangerous for a number of reasons. First, because of the threat it poses to the entire country, the financial system needs to be regulated holistically, not fragmented into banking or nonbanking parts (particularly where there is significant overlap and interconnection between the activities engaged in by banks and non-banks). Second, whenever an area of finance is less regulated, it's generally less costly and therefore profit maximizers will move their riskiest activities from the more regulated part to the less regulated part to save money. This is called "regulatory arbitrage." Third, a key reason the less regulated part is less costly is because it externalizes the costs of its high-risk activities, thereby dramatically increasing the risks and costs to the public. Fourth, this structure also precipitates a race to the regulatory bottom as the regulated parts lobby for less regulation purportedly to compete with the less regulated parts, igniting a downward spiral of deregulation. Fifth, not only are the less regulated parts less regulated, but they are also less visible and, therefore, risks build up unseen and result in much bigger shocks happening with little if any notice, making the eventual crisis much worse.

To address if not eliminate these dangers, the Dodd-Frank Act created the Financial Stability Oversight Council (FSOC) to designate nonbank systemically important financial firms for increased regulation and to serve as an early warning system among the country's financial regulators.[12] With the Fed regulating systemically significant banks and the FSOC ensuring regulation of systemically significant nonbanks, the FSOC was supposed to end regulatory arbitrage and the race to the regulatory bottom. That, theoretically, should have ended the systemically important threats from the shadow banking system.

Unfortunately, from its beginnings, the FSOC has not been very effective. The Obama Administration used the FSOC far too cautiously and, when the administration did use FSOC, it was under constant assault from the financial services industry. However, under the Trump Administration, whatever modest progress there was came to a grinding halt and the FSOC was effectively neutered. Reflecting a blind deregulatory zeal, not to mention its adoption of Wall Street's agenda, Trump's FSOC immediately moved to de-designate the only three systemically important nonbanks that Obama's FSOC had designated.[13] In light of the innumerable nonbanks receiving massive bailouts in and after the 2008

[12] *See* Better Markets, "Ten Years of Dodd-Frank & Financial Reform: Obama's Successes, Trump's Rollbacks, and Future Challenges," (July 20, 2020), *available at* https://bettermarkets.com/sites/default/files/images/BetterMarkets_DoddFrankReport.pdf.

[13] The Obama Administration had actually designated four, but it de-designated GE after it de-risked and was no long a systemically significant nonbank. *See* "Basis for the Financial Stability Oversight Council's Rescission of Its Determination Regarding GE Capital Global Holdings, LLC," *130 Harvard Law Review 1289,* (February 10, 2017), *available at* https://harvardlawreview.org/2017/02/fsoc-rescission-determination-regarding-ge-capital-global-holdings-llc/

crash,[14] it is objectively ridiculous to think that there were just three or four systemically important nonbanks in the entire country. Yet, the Trump Administration de facto concluded that there was not one single nonbank financial firm that was systemically important.[15]

Thus, the Trump Administration has revived the two-tier regulatory system where nonbanks, however systemically significant, are largely unregulated while banks are not only regulated, but much more so since 2008 due to the Dodd-Frank Act. It has, thereby, also revived not just regulatory arbitrage, but also the shadow banking system and dramatically increased the dangers to the country because those risks are again building up unseen.

Adding insult to injury, Trump's FSOC has changed its policies in an attempt to ensure that it remains neutered as sought by the financial industry lobbyists.[16] First, it changed the entire nonbank regulatory approach and effectively stopped evaluating nonbank entities as systemic threats altogether. It has, instead, adopted a so-called "activities-based" approach that only looks at potentially systemic activities and products, which most independent analysts believe is unworkable. Second, Trump's FSOC also added a quantitative cost-benefit analysis that is biased in favor of industry and will not work,[17] plus a requirement for a speculative assessment of how likely a company is to experience financial distress. These additional self-imposed, unnecessary hurdles that the FSOC has erected all but guarantees it will not be designating nonbank systemic threats regardless of where they come from or how severe of a risk they pose.

"Adding insult to injury, Trump's FSOC has changed its policies in an attempt to ensure that it remains neutered as sought by the financial industry lobbyists."

The neutering of the FSOC under the Trump Administration and the rescinding of systemically important designations since 2016 are a direct threat to the financial system, taxpayers and the economy and must be rolled back. The FSOC must fulfill its mandate of regulating systemically important nonbanks, ending regulatory arbitrage and serve as the early warning system it was created to be.

While the Treasury Secretary is also the Chairman of the FSOC, the Fed Chair is the other key heavyweight at the FSOC table. As the backstop for the bank and nonbank financial system—as proved in 2008 and again in 2020—the Fed simply must take the lead and push the FSOC to do this. With its financial firepower on the line and having to clean up the financial crisis the FSOC is letting fester, the Fed has an enormous interest in an FSOC that fulfills its statutory mandate. While the Fed

[14] *See e.g.* James Felkerson, "$29,000,000,000,000: A Detailed Look at the Fed's Bailout by Funding Facility and Recipient," Levy Institute Working Paper No. 698, (Dec. 2011), *available at* http://www.levyinstitute.org/pubs/wp_698.pdf.

[15] In addition to defying facts and widespread knowledge, this has been proved false by the unprecedented and broad range of actions the Fed has taken to stabilize markets during the COVID 19-caused economic crisis. The Fed's multi-trillion-dollar emergency programs have benefited systemically significant banks and nonbanks alike, proving that the nonbank financial sectors remain as critical to the functioning of the U.S. markets as they were in 2008.

[16] *See* Better Markets Comment Letter Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies (June 3, 2019) *available at* https://bettermarkets.com/sites/default/files/CL_FSOC_Designation_Guidance%205-24-19.pdf.

[17] *See e.g.* Stephen Hall, "Written Remarks of Better Markets for the CFPB Symposium on Cost-Benefit Analysis in Consumer Financial Protection Regulation," (July 28, 2020), *available at* https://files.consumerfinance.gov/f/documents/cfpb_hall_written-statement_symposium-cost-benefit-analysis.pdf.

already has enough to do, making sure the FSOC works is actually key to making sure that the Fed does not have to bail out the regulated banking and unregulated nonbanking sectors in the future.[18] The interests of the public as well as the self-interest of the Fed compel it to step up and act.

Require Banks to Have Strong Risk Management Policies and Publicly Sanction Them When They Fail to Do So

A key to the Federal Reserve's approach to large bank supervision in the wake of the 2008 financial crisis was the so-called CCAR[19] qualitative objection, which enabled bank regulators to restrict a firm's capital distributions to shareholders if the firm was found to have dangerously weak practices in risk management and capital planning. This was a very powerful tool that forced Wall Street banks to properly plan for future crisis scenarios, even if it was costly and required management attention.

"Taking away the ability of supervisors to use this tool has undermined their capacity to hold the largest banks accountable for dangerously bad practices and deprived the public of even knowing of those dangers."

It was also extremely effective because Wall Street's banks did not want regulators to limit their ability to engage in share buybacks or to pay dividends. They also did not want to be publicly identified as having deficient risk management or capital planning processes. The possibility of a limit on capital distributions and, as the banks' lobbyists called it, the related "public shaming" greatly incentivized the biggest banks to make sure that their risk management and capital planning processes were more than adequate.

Unfortunately, under the Trump Administration's relentless push to weaken financial protection rules, the Fed in 2019 effectively all but eliminated the qualitative objection for most large banks, claiming it had been so successful it was no longer needed. If the consequences weren't so serious, that would be laughable. There was no compelling rationale supporting this dramatic policy change, which snatched defeat from the jaws of victory. Taking away the ability of supervisors to use this tool has undermined their capacity to hold the largest banks accountable for dangerously bad practices and deprived the public of even knowing of those dangers.

Rather than gut this powerful tool, the Fed and other banking agencies should expand the use of this type of strong incentive to address other important areas of banks' practices. Additionally, they should commit to providing more information to the public regarding their assessments of the very largest banks and should make greater use of public enforcement actions when the banks fail to meet minimum acceptable standards in critical areas.

[18] This is, of course, what the Fed is doing right now in responding to the economic crisis caused by the COVID-19 pandemic. *See* Better Markets No Financial Crash Yet Thanks to Dodd-Frank and Banking Reforms, (June 24, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_White_Paper_Dodd-Frank_Banking_Reforms.pdf.

[19] The qualitative portion of the Federal Reserve's CCAR assessed the adequacy of the risk management and review process at large banks. Factors under consideration include how well integrated risk management is to the banks' capital management process, how well a firm's capital plan was communicated to the Board of Directors, and the soundness of the bank's internal audit and control framework. *See* Board of Governors of the Federal Reserve System, "Overview of Qualitative Assessment Framework," (June 2019), *available at* https://www.federalreserve.gov/publications/2019-june-ccar-assessment-framework-results-qualitative-assessment.htm.

The SECURITIES *and* EXCHANGE COMMISSION

Top Priorities for the SEC to Fulfill its Mission of Protecting Investors Above All Else and Ensure the Stock Markets are Fair and Free of Fraud and Predators

The SEC enforces the nation's laws that govern the securities markets to protect investors, maintain fair and efficient markets, and help businesses access capital to grow. The SEC is often referred to as the "cop on the Wall Street beat" because it is supposed to police the securities markets and, like cops on Main Street, catch lawbreakers and punish them, ideally deterring others from breaking the law.

Protect Investors by Promoting their Ownership Rights to have a Meaningful Voice in the Management of their Corporations

A publicly listed company is, in theory, owned by the shareholders who get to vote on the directors (including on their compensation as well as management's compensation) and on many material, non-routine issues before the company. Shareholders exercise those ownership rights on issues that the company proposes as well as those that are proposed by shareholders. Shareholders, big and small, often seek the advice of proxy advisors and others in determining what they believe is best for the company when voting on those issues.

Management, in reality, often run public companies as if they are the owners. Believing they are best suited, management mostly prefers to run the company without the input or interference of shareholders, who are often viewed to be little more than a necessary evil to be, at most, tolerated. This agency-principal tension is a fundamental conflict of interest between management control and shareholders' ownership rights. Making matters worse, this conflict is exacerbated by the collective action problem among the many disparate public shareholders. These issues are what make the SEC's role to protect and empower investors so critically important.

However, rather than protecting, empowering, and promoting the rights of investors, the SEC under the Trump Administration has adopted rules that limit and impair shareholders' rights as owners of the corporation. For example, the SEC has approved rules that limit retail investors' ability to propose

shareholder proposals, including proposals that aim to limit a corporate entity's harmful impact on the environment and the society in which it pursues its profits. Contrary to its mission to protect investors, this SEC has been protecting incumbent management by making it easier for management to reject shareholder proposals. The result is that Main Street investors lose their ability to partake in the corporate governance process of companies they co-own.

In addition, the SEC approved rules that egregiously interfere with the ability of investors to seek and obtain advice independent of management and, indeed, sought to require investors' proxy advisors to submit their opinions (which investors pay for) to management for review and alteration or rebuttal. Even apart from the First Amendment constitutional issues, the new rules curtail the ability of investors to get any independent advice in connection with management's proposals. Put differently, the SEC has prioritized management's interests and wishes above investors.

Because investors and their advocates (including Better Markets) objected so strongly, the SEC finalized a rule that was not as draconian (and unconstitutional) as initially proposed, but it is still contrary to most investors' interests and would weaken the ability of proxy advisory firms to offer independent advice to shareholders who need that advice to make informed and independent decisions. These rules would also give corporate management new powers to suppress the voices of proxy advisory firms, which exist as a market-based solution to supply investors with independent and useful information on how shareholders should vote their proxies.

"...the SEC should focus on empowering investors and encouraging increased corporate accountability."

Proxy advisory firms empower shareholders and increase corporate accountability, and the SEC's rule would weaken both of these important checks on corporate power. Instead, the SEC should focus on empowering investors and encouraging increased corporate accountability. One clear way the Commission could and should empower shareholders is by requiring corporations to use a "Universal Proxy" and improve the proxy voting process so shareholders would have more confidence that their proxy votes are indeed counted.

Protect Investors by Expanding Transparent Public Markets, not Dark Private Markets with Too Few Investor Protections

The shrinking number of public companies is bad for investors as well as for entrepreneurs, innovators, risk-takers, companies, and our economy. Worse, it is creating regulatory arbitrage opportunities by allowing dark private markets to have very little disclosure obligations whereas the investor-friendly public markets require disclosure of all material information on a timely basis.

The SEC has created this situation in which a regulation-lite private marketplace exists alongside the better-regulated public marketplace. And just as the shadow banking system exists alongside the traditional banking system and allows unregulated risk-taking that endangers the financial system, the SEC's failure to regulate the dark private markets is spreading risk throughout the securities markets.

“The SEC cannot be everywhere and so it has to leverage private sector actors whenever possible to help protect investors and markets by detecting and punishing fraud and misconduct.”

During the Trump Administration, the SEC has proposed a package of rules that would expand the exemptions available to issuers that provide little to no information about their business prospects and financial health. These issuers of so-called “exempt offerings” would, according to the proposals and rule changes, gain easier access to retail investors who lack the financial sophistication and wherewithal to understand and withstand high risks associated with investing in unregistered offerings. The SEC’s deregulation would expose retail investors to the risks of investing in companies that have funding challenges and prefer to not disclose information about their financial condition or growth prospects. This includes companies based in China that have a demonstrable record of providing little to no financial information.

Specifically, the SEC has either proposed or approved rule changes that raise the investing and offering limits in crowdfunding, Regulation A and Rule 504 under Regulation D, needlessly changing the definition of the Accredited Investor; significantly weakening limitations on general solicitation; and permitting companies to more frequently issue exempt offerings. The SEC is also proposing to permit companies, including foreign companies such as those domiciled in China, to raise up to $20 million from U.S. investors without providing audited financial statements. Finally, while it applies to public companies, the SEC has approved a rule that will give more discretion to the management of a company in deciding what to disclose.

Taken together, these rule changes would decrease transparency in public markets and create a new Wild West for unregulated securities that will provide retail investors with much less disclosures while exposing them to much greater risks. Moreover, these actions are greatly expanding the private markets and, thereby, bleeding the public markets of listings, directly threatening the robust and deep markets that are critical to the country’s economy and growth.

The irony is that Trump’s SEC constantly bemoans the decline of IPOs and public companies while at the same time takes actions that guarantee that those problems will become much worse. The SEC must reverse course, prioritize transparent public markets and protect investors again.

Strengthen—Don’t Weaken—Wildly Successful Whistleblower Program

The SEC cannot be everywhere and so it has to leverage private sector actors whenever possible to help protect investors and markets by detecting and punishing fraud and misconduct. That’s what makes whistleblowers so important. They provide vital inside information to regulators to help them identify, stop and prosecute fraud and protect investors. The SEC Whistleblower Program has been a game-changer for the agency’s enforcement program and a “$2 billion success” for investors.[20]

[20] *See* Better Markets, “The SEC’s Whistleblower Program: A $2B Success Story Under Threat,” (June 4, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_White_Paper_SEC%27s_Whistlebower_Program_06-22-2020.pdf

"Today's capital markets are needlessly complex and fragmented, which allows too many market participants to siphon off billions if not tens of billions of dollars from the pockets of pensioners, savers and retail investors."

This success didn't happen by accident, and it only happened after the SEC learned a few lessons the hard way. For example, the SEC missed too much illegal conduct and ignored too many whistleblowers and warnings, which would have, for example, exposed the Madoff Ponzi scheme. Congress studied various successful and unsuccessful whistleblower rewards and bounty programs, including the SEC's own prior "insider trading-only" whistleblower program, before drafting the provisions of the Dodd-Frank Act that created the SEC and CFTC's Whistleblower Programs.

The universal lesson drawn from that study was that only those programs that fully protect—as well as amply and predictably reward whistleblowers—are successful. Those that create hurdles, are not user-friendly, and are stingy with their rewards disincentivize whistleblowers and fail. The inevitable result of these programs is that regulators are deprived of the high-quality information that the whistleblowers would otherwise provide. The only people who benefit from them are fraudsters.

This high-quality and often otherwise unobtainable information complements and augments the SEC's capabilities and accelerates its ability to stop, punish and deter fraudulent activities. This enables the SEC to better fulfill its mission of investor protection and instilling market integrity.

Notwithstanding the undeniable success of the program, the SEC has proposed changes that will impair its effectiveness and decrease the incentives for whistleblowers to risk everything to expose illegal, if not criminal conduct. To some extent, this is no surprise: the SEC resisted various aspects of the provisions that created the Whistleblower Program in the Dodd-Frank Act, and it has been under relentless attack by Corporate America and its trade groups.

Nevertheless, it has been wildly successful and the SEC, in the interests of protecting investors, simply must recognize that and let it continue to work. Indeed, the SEC should speed up its processing of whistleblower tips and awards and continue to improve the user-friendliness of the program. It should be improved and strengthened, not weakened.

End Rigged Markets and Protect Investors from Predators by Enacting Market Structure Reforms

Today's capital markets are needlessly complex and fragmented, which allows too many market participants to siphon off billions if not tens of billions of dollars from the pockets of pensioners, savers and retail investors. Using regulatory loopholes, blind spots and inaction, predatory high-frequency traders and other Wall Street financiers enrich themselves at the expense of hardworking

Main Street savers and long-term investors. That's why author and financial journalist Michael Lewis has said that today's markets are "rigged."[21]

This complexity is created by market participants and enabled by the SEC, which inexplicably keeps approving these market structures, practices and order types, many to the detriment of investors. The result is an impenetrable, fragmented market with more than a dozen exchanges and more than three dozen alternative trading systems (including internalizers and dark pools). This needlessly complicated system has caused a technological arms race where computerized algorithms compete with each other in fractions of a second to jump in front of orders or otherwise manipulate the spread or order book. Making all of this worse are the conflict-ridden, for-profit exchanges which, as SROs ("self-regulatory organizations"), are supposed to be key front-line regulators but which repeatedly prioritize profits over investor protection.

The result is that today's markets are like a pinball machine, and an order is like the ball erratically bouncing around, with no one knowing where the orders are going, how they are going to be executed or at what price—except the predatory high-frequency traders gorging themselves in an unpoliced feeding frenzy.

"Remarkably, the SEC is largely in the dark regarding what is happening in today's markets because it is crippled by outdated technology."

Remarkably, the SEC is largely in the dark regarding what is happening in today's markets because it is crippled by outdated technology. Indeed, the SEC is effectively in the early 20th century while the private market participants are moving at 21st century nanosecond speeds. One of the most important innovations designed to change that and revolutionize the SEC's ability to detect and punish illegal and predatory market practices that harm retail investors and pensioners is the Consolidated Audit Trail (referred to as the "CAT").

The CAT has been referred to as a "Hubble telescope" type of tool, giving the SEC the ability to see into the darkest corners of today's fragmented markets and catch predators and lawbreakers. Unfortunately, the SEC outsourced the construction of the CAT to the financial industry, which has a conflict of interest and no incentive to create a tool that will catch it in the act of picking the pockets of investors. In fact, their interests, businesses and wealth are to never have a CAT or anything like it. It's as if the local police department asked all the bank robbers in the city to provide the police with the evidence of their illegal conduct and the escape routes for all of their future robberies.

Unsurprisingly, the industry consortium mandated to create the CAT has repeatedly failed to meet deadlines or implement the CAT. At the same time, the SEC has faced enormous lobbying and legal pressure from the industry and its many allies, including members in Congress, to kill, weaken or gut the CAT. Unfortunately, the SEC has responded with little more than weak, ineffectual half-measures, which have only emboldened the industry to continue its efforts to ensure that the CAT never becomes a reality. The predictable result is that today, more than ten years after the "Flash Crash," the CAT is showing no signs of life.

[21] *See* Michael Lewis, "Flash Boys: A Wall Street Revolt," *W. W. Norton & Company,* (March 31, 2014). *See also* Joseph Saluzzi and Saleem Arnuk, "Broken Markets: How High Frequency Trading and Predatory Practices on Wall Street Are Destroying Investor Confidence and Your Portfolio," *FT Press* (June 3, 2012).

It is long past time that the SEC use all the powers it has and force the industry to create, implement and operationalize the CAT as soon as possible. Failing that, the SEC must seek the funds to directly contract the construction of the CAT, leaving the industry entirely out of the process. The SEC simply cannot continue to operate without the state-of-the-art monitoring and enforcement capabilities of the CAT to stop and punish predatory practices in near-real-time.

While incredibly important, the CAT is not the only market structure issue that the SEC must tackle. Additional harmful market practices arise from the loopholes that allow stock exchanges to offer legalized bribes to stockbrokers in the form of "payments for order flow" and the practice of "maker-taker" payments. In addition, the exchanges' creation and sale of data-rich private data feeds to the highest bidder have made the public SIP a gross disservice to investors. Finally, the exchanges enjoy legal immunity for most of their actions, which means lower accountability and increased conflicts of interest when these exchanges compete with their broker members while at the same time regulating them. While the SEC has made some efforts to fix these market structure challenges, it has nonetheless failed to significantly improve market practices or functioning, leaving tens of millions of investors and savers as prey for predatory market participants. The SEC must prioritize addressing these market structure issues.

Stop Wall Street's Biggest Banks from Incentivizing High-risk if not Illegal Conduct with Out-of-Control Compensation Schemes

It is routine for financial executives and traders to pocket million-dollar bonuses and often even tens of millions of dollars in a single year. That prospect of unimaginable, immediate riches causes too many at Wall Street's most dangerous too-big-to-fail banks to "swing for the fences" and take outsized and unjustified risks, often using the subsidy of federally insured deposits. Worse, while those executives and traders get the upside if their gambles pay off, the financial institution ends up covering the losses when they lose, which is in turn covered by taxpayers if, like in 2008, they lose really big and the very viability of the firm is at risk.

Adding insult to injury, if the financial institution took losses on those trades in the years after the bonuses were paid, there is no legal requirement for those bonuses to be recovered, referred to as "clawed back." The result is that those executives and traders get to keep their ill-gotten compensation, which incentivizes unreasonably high-risk behavior and corporate wrongdoing.[22]

[22] The Sarbanes-Oxley Act (SOX) was enacted after the epidemic of frauds enriched executives at Enron, Worldcom, and Tyco. SOX was potentially a very powerful weapon and deterrent because it enabled the claw-back of compensation from the CEO and CFO even if they were not directly involved in the fraud. However, the claw-back provisions of SOX could only be invoked if the company restated its financial statements. Unsurprisingly, after SOX was passed, the number of restatements dropped dramatically no matter how egregious the conduct or financial impact. For example, notwithstanding the failure or near failure of every major financial firm in the U.S. in 2008, not one of them restated their financial statements, which itself should have caused the SEC to bring enforcement actions for fraudulent financial statements and disclosures. *See* Gretchen Morgenson, "Clawbacks Without Claws," *The New York Times,* (September 10, 2011), *available at* https://www.nytimes.com/2011/09/11/business/clawbacks-without-claws-in-a-sarbanes-oxley-tool.html.

To change these perverse incentives, the Dodd-Frank Act required the SEC to implement a rule that would have required the claw-back of compensation from executives when their companies restate their earnings. In an attempt to make this law more effective than the ineffective claw-back provisions of the Sarbanes-Oxley Act (SOX), the provisions of the Dodd-Frank Act are broader in several ways: it is not limited to the CEO and CFO, does not require a misconduct to be the basis for the restatement, and would apply to all financial restatements with a look-back period of three years. However, to this day, the SEC has not enacted a rule regarding even these limited claw-back provision improvements.

Additionally, the Dodd-Frank Act required the SEC with the other financial regulators to prohibit compensation arrangements that incentivize excessive risk-taking. That goes to the heart of the short-term bonus culture on Wall Street, which thrives on a corrupting set of incentives. However, these rules also have not been finalized or implemented.

Reining in excess compensation from high-risk activities and pay packages that virtually beg traders to break the law must be a top priority for the SEC.

"Reining in excess compensation from high-risk activities and pay packages that virtually beg traders to break the law must be a top priority for the SEC."

End the Conflicts of Interest and Protect Investors by Requiring All Brokers and Financial Advisors to Have a Fiduciary Duty Requiring Them to Put Their Clients' Best Interests First

Today, securities brokers and too many other financial advisors are permitted by law to put their economic interests above their clients' best interests when investing their clients' hard-earned money. For example, it is legal today for a broker to recommend a product that pays them a high fee even if there is an identical or similar product that pays them a much lower fee, which would cost the client that much less. Worse, typically the higher fees are on the poor performing products because they require that incentive (or bribe if you will) to get the salesperson to sell them. These very powerful conflicts of interest are costing tens of millions of Americans tens of billions of dollars a year due to excessive fees and the poorly performing products.

Making matters worse, the law currently is needlessly complex and full of loopholes. For example, the law allows brokers and advisors to use virtually any title they want, including those intended to give customers false comfort, when they are really no more than sales staff. Many have more than one designation, often referred to as "duel hatted," which means that they sometimes act as fiduciaries and sometimes not.

Good luck to Main Street investors trying to figure this out and protect their hard-earned money and best interests in getting the advice they need that is in fact in their best interests.

That is why the SEC must adopt a simple, straightforward and uniform fiduciary duty rule that requires brokers and advisors, regardless of title, to put their clients' best interests first when they recommend investments.

Unfortunately, Trump's SEC adopted a misleadingly labeled "Regulation Best Interest" (Reg BI), proclaiming that it would protect investors from the rampant conflicts of interest among brokers and financial advisors. Proving how baseless that was, virtually every investor, consumer and senior advocacy group in the U.S. opposed the rule; tellingly, the financial industry overwhelmingly supported the rule.

In reality, Reg BI will only maintain the status quo under the weak "suitability" standard that's already the law, which allows the conflicts of interest to thrive and survive. Moreover, Reg BI relies primarily on ineffective and often confusing disclosures and preserves multiple baffling standards for different types of advisors even though they all deliver essentially the same type of financial advice. Again, adding insult to injury, Reg BI actually makes the current anti-investor advice architecture worse by allowing brokers and advisors to claim they are complying with "Regulation Best Interest," thereby lulling unsuspecting investors into thinking they have an actual fiduciary's best interest obligation when they do not.

"Unfortunately, Trump's SEC adopted a misleadingly labeled 'Regulation Best Interest' (Reg BI), proclaiming that it would protect investors from the rampant conflicts of interest among brokers and financial advisors." But in fact it will not.

If the SEC ever had any intent to actually put investors' interests first—rather than the industry, which profits enormously from the current loophole-laden scheme—then the SEC simply must establish a genuine, uniform fiduciary duty for anyone providing advice to investors.[23]

[23] *See* Better Markets Comment Letter on Regulation Best Interest, (August 7, 2018), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%20Comment%20Letter%20Reg%20BI%20%208-7-18%20Final.pdf. *See also* Better Markets Comment Letter Improving Investment Advice for Workers and Retirees, (August 6, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letteron_DOL_Best_Interest_Rule_8-6-20.pdf.

Top Priorities for the CFTC to Protect the Public, the Financial System and the Economy

Many ingredients of life's essentials are commodities: the gas you put in your car, the wheat in the cereal you eat for breakfast, the inputs for plastic in children's toys. However, long before they reach your home, those commodities are subject to lots of variables in getting from the oil well or farm to the local store. Commodity derivatives markets were created for producers and purchasers to deal with the risks from those variables, but those markets will not function as intended if there is excessive speculation and a lack of market integrity.

Trading in commodities began as a reasonable way for oil well operators, farmers and producers of raw materials to manage their risks. However, once Wall Street saw the opportunity to profit from the paper trading of commodity contracts, the practice quickly became a profit center for big banks and hedge funds, which use their size and influence to push the markets to operate in their favor. Worse, they created highly profitable products, like swaps and "commodity index" products, which were designed largely to facilitate regulatory arbitrage and leveraged risk-taking through various types of related financial assets as well as speculation on the prices of life's essentials.

The CFTC is the financial regulator charged with regulating the commodities and related futures and options markets. After unregulated swaps and other over-the-counter derivatives played a key role in igniting, spreading and amplifying the 2008 financial crash, the Dodd-Frank Act gave the CFTC the mandate to also regulate the multi-trillion-dollar swaps markets. The goal was to rein in what Warren Buffett correctly referred to as "financial weapons of mass destruction," but Trump's CFTC has significantly deregulated them and thereby increased risks to the public, taxpayers, the financial system and the economy.

The CFTC Must Stop Outsourcing the Protection of U.S. Taxpayers to Foreign Regulators with Conflicts of Interest, Competing Priorities, and a History of Failing to Protect their own Citizens

Derivatives dealers operate globally but look to the U.S. government and taxpayers to bail them out when they get in trouble, as has repeatedly happened, most recently in 2008. As profit maximizers, derivatives dealers seek the least regulation to engage in the highest risk activities wherever that

"Trump's CFTC is basically allowing Wall Street's biggest derivatives dealers to avoid the protections of the Dodd-Frank Act through booking gimmicks and other loopholes and instead comply with other countries' derivatives regulations."

may be around the globe. As a result, before 2008, Lehman Brothers and most other Wall Street derivatives dealers conducted much of their derivatives activities in London, which bragged about its "light-touch" regulation (which was part of a global race to the regulatory bottom).

However, while London and other foreign jurisdictions benefited from the employment, taxes and economic activities of this derivatives dealing, the U.S. got the bill when those same dealers failed in 2008 because they and the markets generally were not properly regulated. The Dodd-Frank Act was designed to stop that by requiring the CFTC to regulate derivatives activities wherever they occurred if they have a direct and significant connection with activities in, or effect on, commerce of the U.S. This is referred to as "cross-border" regulation. After all, if the U.S. taxpayers were going to have to pay the bill when the dealers' high-risk derivatives activities blew up, then the U.S. had a right to regulate those activities to reduce the likelihood of that happening in the first place.

The Obama Administration enacted regulation of cross-border derivatives activities posing these types of direct and significant risks to U.S. commerce, basically requiring them to be regulated as if they were done in the U.S. The CFTC struck a balance in ensuring that (1) It respected the statutory limits on its authority and (2) Derivatives risks did not jeopardize the financial stability of U.S.-based or U.S.-located financial institutions and the U.S. financial system as a whole. Importantly, it also incentivized non-U.S. regulators to adopt U.S.-comparable regulatory standards, thereby reducing global regulatory arbitrage and ending the competition among countries for financial business based on the lowest possible regulation regardless of the dangers posed.

However, in 2020, Trump's CFTC finalized cross-border regulations that will undermine the Dodd-Frank Act's swaps markets reforms in a number of areas, including swap dealer registration, clearing, trading, and reporting. Trump's CFTC is basically allowing Wall Street's biggest derivatives dealers to avoid the protections of the Dodd-Frank Act through booking gimmicks and other loopholes and instead comply with other countries' derivatives regulations. This may happen where the jurisdiction in question does not have actual comparable regulations in place. It may also happen where a jurisdiction is supposed to have in place "comparable" regulations but does not in important respects. In effect, Trump's CFTC has outsourced the protection of U.S. taxpayers and the entire U.S. economy to foreign regulators who have a miserable and lengthy record of failing to protect their own taxpayers.[24] It is

[24] *See* Better Markets Summary Presentation: Cross-border Derivatives Regulation, (June 21, 2013), *available at* https://bettermarkets.com/sites/default/files/CFTC%20Cross-border-%206-21-13.pdf.

absurd to think that they can and will protect U.S. taxpayers. This is a gross abdication of the CFTC's duties and responsibilities.[25]

The CFTC must, at a minimum, remedy the substantial deviations from the prior cross-border framework, which was consistent with the Dodd-Frank Act's requirements. It should then go further and close the other cross-border loopholes that enable too much derivatives dealing to leak overseas and avoid proper regulation and oversight.

Stop Excess Speculation by Wall Street Traders in Essential Commodities Like Gas, Oil, Coffee and Cereal by Imposing Meaningful Position Limits

As mentioned above, the commodity markets exist for the benefit of actual physical producers and purchasers to manage the risks associated with providing Main Street Americans with essential goods and products. Speculators are only allowed into those markets to fill a limited role of supporting that risk management when there are insufficient actual physical producers and purchasers to ensure appropriate and adequate trading.

However, it has always been recognized that speculators pose a risk to those markets and those market participants if their activities become excessive, undermining the fundamental purposes of the markets. In effect, the speculators would turn the commodity markets into a casino where their trading too significantly influences prices and, ultimately, they win and everyone else loses. That is why excessive speculation has been prohibited in many derivatives on physical commodities and why the CFTC has been mandated to protect the integrity of the market by eliminating excessive speculation. This mandate was reaffirmed and expanded in the Dodd-Frank Act, which also empowered the CFTC to regulate the so-called commodity index funds and other collective activities that disrupt the markets.

"Because speculation is such a lucrative activity for Wall Street's biggest banks and others, the industry's fight against the CFTC's regulation of commodities has been ferocious."

Because speculation is such a lucrative activity for Wall Street's biggest banks and others, the industry's fight against the CFTC's regulation of commodities has been ferocious. The result is that the CFTC's regulations have taken too long, been too narrow and weak, and been tied up in the courts and CFTC's divisions for years. Even the CFTC's never-finalized position limits proposals already suffered from numerous deficiencies. For example, the CFTC proposed to improperly exempt certain trading activities as "risk management" or "hedging," even though the activities are not necessarily

[25] There is nothing inherently wrong with deferring to genuinely comparable foreign regulations, but such regulations have to be in fact comparable in form, substance, enforcement and over time. *See* Better Markets' Comment Letter on Proposed Interpretive Guidance and Policy Statement: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, (August 27, 2012), *available at* https://bettermarkets.com/sites/default/files/CFTC-%20CL-%20Cross%20Border%20Application%20of%20swaps%20provisions%208-27-12.pdf; *See also* Better Markets Letter to CFTC Commissioner Mark Wetjen, (June 24, 2013), *available at* https://bettermarkets.com/sites/default/files/Letter-%20CFTC-%20Cross%20Border-%206-24-13.pdf; *See also* Better Markets Letter to CFTC Chairman Gary Gensler and SEC Chair Mary Jo White, (July 3, 2013), *available at* https://bettermarkets.com/sites/default/files/Letter-%20Gensler%20White-%20Cross-Border-%207-3-13.pdf.

U.S. President Donald Trump signs H.J. Res. 41 in the Oval Office of the White House on February 14, 2017 in Washington, D.C. The resolution *nullifies* a rule in the Dodd-Frank Act that "requires resource extraction issuers to disclose payments made to governments for the commercial development of oil, natural gas, or minerals." (Photo by Olivier Douliery-Pool/Getty Images)

conducted by genuine end users managing risks in the physical markets. In addition, it refused to regulate commodity index and similar funds that provide speculative exposures to commodity prices. For these and a host of other reasons, the CFTC's proposals have been insufficiently broad and clear to make a measurable and meaningful difference, as required by law.

Now, Trump's CFTC has proposed a position limits rule that won't end excess speculation and won't protect actual physical producers and purchasers, much less their customers and consumers. In fact, based on a series of proposed exclusions, exemptions and loopholes, most existing speculators would not have to reduce their speculative positions or activities if the rule were to be finalized as proposed. Put differently, it appears to be a pro-speculator "no limits" position limits rule.[26]

It is past time to end excess speculation in the commodity derivatives markets, including excess speculation relating to commodity index and similar so-called passive investment funds. The CFTC must enact a rule that serves actual physical producers and purchasers and protects the commodity markets from the speculators.

Reduce Risk While Protecting Customers and Markets by Requiring All Standardized Swaps to Trade on Transparent, Accessible Exchanges; Not Dark Markets Controlled by Wall Street Dealers

Before the last crash, derivatives, mostly swaps, were unregulated and traded privately, which is referred to as "over the counter" or "OTC." Those dark markets enabled the unseen buildup of massive risks that exploded and almost crashed the entire financial system, which is why the Dodd-Frank Act required derivatives to be properly regulated. One primary reform was to require most derivatives be traded on exchange-like platforms called swap execution facilities (SEFs).
The SEF and trade execution framework for swaps, although imperfect, are cornerstones intended to

[26] *See* Better Markets Comment Letter on Position Limits for Derivatives, (May 15, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letter_on_Position_Limits_for_Derivatives_Upload.pdf (RIN 3038-AD99). *See also* Better Markets Fact Sheet "Elements of the CFTC's Proposed Cross-Border Regulations Facilitate Regulatory Arbitrage, If Not Evasion, of U.S. Law," (March 11, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_One-Pager_on_the_CFTC%27s_Proposed_Cross-Borders_Regulations.pdf. *See also* Dennis M. Kelleher Press Release, "With WTI Oil Futures Prices Negative, Something Is Fundamentally Wrong in The Oil Derivatives Markets—The CFTC Must Investigate Speculative Oil Trading Activities," (Apr. 22, 2020), *available at* https://bettermarkets.com/newsroom/wti-oil-futures-prices-negative-something-fundamentally-wrong-oil-derivatives-markets-cftc. *See also* Dennis M. Kelleher Press Release, "The CFTC Must Investigate 27% Drop in WTI Oil Prices Caused By Speculators and Review NYMEX's Actions to Limit Excessive Speculation," (Apr. 28, 2020), *available at* https://bettermarkets.com/newsroom/cftc-must-investigate-27-drop-wti-oil-prices-caused-speculators-and-review-nymex%E2%80%99s-actions. *See also* Better Markets brief as Amicus Curiae in Support of Defendant Commodity Futures Trading Commission, *Int'l Swaps and Derivatives Ass'n v. Commodity Futures Trading Comm'n*, (D.D.C. 2012) (No. 11-CV-2146-RLW), *available at* https://bettermarkets.com/sites/default/files/Corrected%20Brief%20of%20Better%20Markets%20as%20Amicus%20Curiae%20in%20Support%20of%20Defendant%20CFTC%20Apr.%2030%2C%202012_0.pdf.

support impartial access to the markets, diversify liquidity providers, increase pre-trade transparency, and facilitate sound risk management within regulated marketplaces. Independent research has demonstrated that these reforms have reduced costs for users of the swaps markets and there is no question that they have reduced risk while increasing transparency and oversight of derivatives.

However, the derivatives markets remain a work in progress and require additional regulation to more effectively reduce risks, protect market participants, and increase systemic stability. That must include: (1) Requiring more standardized swaps to be cleared and traded on SEFs and exchanges, which would increase transparency and reduce costs of trading; (2) Increasing efficiency and risk management through infrastructure and interconnectivity requirements across clearinghouses, trading venues, reporting firms, and clearing members; (3) Increasing the types of firms that must register as SEFs; and (4) Increasing pre-trade transparency by eliminating unnecessary exemptions and requiring multilateral execution within SEFs for the most liquid standardized swaps categories.

"...the derivatives markets remain a work in progress and require additional regulation to more effectively reduce risks, protect market participants, and increase systemic stability."

Ensure Derivatives Dealers Maintain Sufficient Capital to Absorb Losses, Prevent Failure, and Limit the Risk of Contagion and Other Disruptions to U.S. Financial Markets

Just as they are for banks and other financial institutions, capital requirements are critical to the safety and soundness of swap dealers and the U.S. financial system. Approximately half of the current 100-plus registered swap dealers will be subject to the CFTC's capital requirements, and some of those registrants are non-bank affiliates within Wall Street's too-big-to-fail bank holding companies. Proper calibration of this critical loss absorbing cushion is therefore paramount. The capital regulations must be appropriately tailored to the nature of commodities and other derivatives risks undertaken by the CFTC registered entities.

In 2020, the CFTC finalized capital requirements for swap dealer (and others) setting forth an initial framework that requires less capital than likely would have been required under the CFTC's 2016 proposed capital requirements.[27] The actual application and effects of these new capital requirements will remain speculative, however, until capital-related financial reporting provides information necessary for objective analysis.[28] The CFTC must strengthen capital regulations once financial reporting has commenced and the CFTC has an informed basis to amend the capital framework in a manner that serves safety and soundness and systemic risk-reduction objectives.

[27] *See* CFTC, "Capital Requirements of Swap Dealers and Major Swap Participants," (Adopted July 22, 2020), voting draft *available at* https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_5_CapMargin/index.htm.

[28] *See* Better Markets Comment Letter to the CFTC Capital Requirements of Swap Dealers and Major Swap Participants, (Mar. 3, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Inc._Comment_Letter_on_Capital_Requirements_for_Swap_Dealers_and_Major_Swap_Participants_RIN_3038-AD54_%28March_3_2020%29.pdf.

Rein in High Frequency and Predatory Trading

Market participants increasingly transact in the U.S. derivatives markets using automated trading strategies. This shift toward electronic trading has carried with it some significant benefits for individual market participants, for example, compressing spreads, reducing execution risks, and streamlining market controls and practices. These benefits are qualified, however, by the significantly increased risks of electronic trading-related disruptions, like the 2010 Flash Crash or the 2020 trading anomalies leading to negative prices in the U.S. oil futures markets as well as the potential for systematic exploitation of certain order types, infrastructure advantages and market participants.

> "The CFTC must establish a comprehensive framework to address risks posed by electronic and automated trading across derivatives markets."

The CFTC must establish a comprehensive framework to address risks posed by electronic and automated trading across derivatives markets. That comprehensive framework should include, at a minimum, revised measures from the now withdrawn 2015 and 2016 Regulation AT proposals. The currently pending, minimal, and so-called principles-based regulations for electronic trading, even if adopted, would be largely duplicative of weak and inadequate existing law while deferring far too significantly (in fact, almost entirely) to exchanges to decide for themselves how to address electronic and automated trading risks. That will never work to protect the public interest or the markets because the for-profit exchanges have financial incentives to accommodate if not incentivize suboptimal electronic and automated trading risks because that trading generates significant revenues for their shareholders and compensation for their executives. The CFTC must start with the proposed Reg AT, strengthen it and propose a rule that will in fact promote market integrity and customer protection.

Top Priorities for the CFPB to Restore Important Financial Protections for Consumers

The widespread abuse and exploitation of financial consumers was a key ingredient of the 2008 financial crash. While there were many consumer protection laws on the books, they were largely unenforced, neglected or ignored by the financial regulatory agencies, particularly the Federal Reserve, but also the OCC and others. The Dodd-Frank Act created the Consumer Financial Protection Bureau (CFPB) to change that and ensure that protecting consumers from unfair, deceptive or abusive practices was the only priority for a federal agency. Under the Obama Administration, the CFPB was a remarkable success, returning more than $12 billion to more than 25 million ripped off Americans. Unfortunately, Trump's CFPB has prioritized the industry's interests and protected financial predators at the expense of consumers, in violation of the letter and spirit of the law. The CFPB requires new leadership and a complete reorientation back to the reason it was created: protecting consumers.

Reinstate Payday Lending Underwriting Requirements to Prevent Predatory Debt Traps

Payday lenders sell themselves as primarily helping consumers meet emergency cash needs with short-term loans. But in fact, the payday lender business model relies on trapping consumers in an endless cycle of debt.[29] They make initial loans knowing that consumers cannot afford to repay them, which inevitably results in those consumers repeatedly rolling over those loans and racking up hundreds or even thousands of dollars in interest and fees (often more than the original loan amount). Of course, because they could not afford the original loan, they also can't afford the subsequent loans and de facto become trapped in a debtor's prison without bars.

In 2017, the CFPB (under the leadership of President Obama's Director) finalized a rule that, among other things, would put a stop to this with a commonsense principal: payday lenders could only make loans after verifying a consumer's ability to repay the loan without having to take on more debt.[30] This

[29] *See* Better Markets Comment on Letter Payday, Vehicle Title, and Certain High-Cost Installment Loans, (May 15, 2019), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20CFPB%20Payday%20Underwriting%20Rescission%205-15-2019_0.pdf.

[30] *See* CFPB Executive Summary of the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule, (October 5, 2017), *available at* https://files.consumerfinance.gov/f/documents/201710_cfpb_executive-summary_payday-loans-rule.pdf.

"(Payday lenders) make initial loans knowing that consumers cannot afford to repay them, which inevitably results in those consumers repeatedly rolling over those loans and racking up hundreds or even thousands of dollars in interest and fees..."

is a standard underwriting requirement for all loans: make sure the person you are giving a loan to can repay you. That is the very definition of a loan.

However, in July 2020 (under Trump's pro-industry, anti-consumer director), the CFPB rescinded those commonsense rules, which was exactly what the industry lobbyists wanted. In doing so, the CFPB affirmatively ignored the massive body of evidence of consumer harm amassed by the CFPB during the original five-year rulemaking process.

The CFPB must reinstate the 2017 underwriting and other requirements that protected consumers from these debt traps.[31]

Stop Debt Collectors from Harassing and Misleading Consumers

"Third party" debt collectors—entities who purchase past due debts for pennies on the dollar and then attempt to collect that debt—have every incentive to engage in abusive behavior. This is why Congress passed the Fair Debt Collection Practices Act (FDCPA) in 1977—to rein in debt collectors who were engaging in shocking behavior, including threatening physical violence against debtors.

The law made strides in preventing the worst behavior, but the absence of clear rules along with a hodgepodge of often conflicting court interpretations left consumers insufficiently protected. The CFPB issued two proposals that it claimed would provide a clearer set of rules governing debt collectors: one in 2019 and a supplemental proposal in 2020. However, these rules give debt collectors far too much leeway to continue engaging in abusive tactics.[32]

For example, the CFPB would allow debt collectors to call consumers up to seven times per week per debt—in other words a consumer with two debts in collection could receive 56 calls in a single month about those debts, and the proposal would not treat that as harassment.

The CFPB also proposed industry-friendly rules applicable to the collection of stale debts—debt for which the statute of limitations has run and for which a consumer cannot be sued. Even worse, it places the burden on the consumer to determine whether the debt is stale rather than on the debt

[31] *See* Better Markets Comment on Letter Payday, Vehicle Title, and Certain High-Cost Installment Loans, (May 15, 2019), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20CFPB%20Payday%20Underwriting%20Rescission%205-15-2019_0.pdf.

[32] *See* Better Markets Comment Letter on Debt Collection Practices, (September 19, 2019), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%2C%20Inc.%20%20Comment%20Letter%20on%20RIN%203170-AA41%2C%20Debt%20Collection%20Practices%20%28Regulation%20F%29%20dated%20September%2018%2C%202019.pdf.

collector. It is unconscionable that the CFPB is working with the debt collection industry to undermine longstanding rules that protect poor people from being harassed by debt collectors literally into the grave. While debt collectors may never give up preying on the poor, the CFPB should not help them by enabling and legitimizing such predatory behavior. The CFPB must strengthen protections against harassment by debt collectors, and it must outlaw efforts to collect on debt that is time-barred under the law.[33]

Ensure the Cops Are on the Consumer Beat to Remedy, Punish and Deter Violations that Harm Consumers

Even the most well-constructed rules are only as good as the willingness of the agency to punish those who violate them. For years, under former Director Richard Cordray, the CFPB's enforcement program was among the most successful in the government, returning, as mentioned above, billions of dollars to millions of consumers and signaling to the industry that violations of the law would not be tolerated. However, as soon as Trump's regulators got control of the CFPB, enforcement activity essentially slowed to a halt as the Bureau sought industry input through a "Request for Information" on how to make the CFPB's enforcement activities even less of a burden on them. Since then, enforcement activity began to creep up but only marginally.

The result is that billions of dollars of redress for millions of consumers is being left in the hands of wrongdoers. Perhaps more troublingly, industry is receiving the signal that it is open season on consumers. The CFPB must not impose new procedural steps that further slowdown and weaken the agency's enforcement actions. Rather, it must immediately ramp up its enforcement activities to ensure that it is actually fulfilling its mission to protect consumers and not protect financial predators.[34]

> "...as soon as Trump's regulators got control of the CFPB, enforcement activity essentially slowed to a halt as the Bureau sought industry input through a 'Request for Information' on how to make the CFPB's enforcement activities even less of a burden on them."

Protect the Public Consumer Complaint Database

The CFPB's public consumer complaint database allows an unprecedented level of transparency into how ordinary consumers interact with the largest financial services providers, and particularly the types of disputes that frequently arise in those interactions. This transparency has helped countless consumers educate themselves and avoid fraud and abuse as well as obtain redress from financial institutions.

At the same time, it has made the public complaint database the bane of the industry, which too often prefers to hide their patterns of misconduct from public view. It is precisely for this reason, however, that the CFPB must not only maintain the database but also ensure that it remains easily accessible to the public.

[33] *See* Better Markets Comment Letter on Debt Collection Practices Supplementary Rulemaking, (August 4, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letter_on_Debt_Collection_Time-Barred_Debt.pdf.

[34] *See* Better Markets Comment Letter on CFPB Request for Information: Bureau Enforcement Processes, (May 14, 2018), *available at* https://bettermarkets.com/sites/default/files/CFPB-%20CL-%20Enforcement%20Process%20-%20Final%205-14-2018.pdf.

While the Trump Administration has so far refrained from cutting off public access to the database, the agency has buried the narrative details of complaints and made them difficult to find. These anti-consumer actions are unjustified, and the CFPB must restore easy access to that important information.[35]

Eliminate Industry-Biased Task Force

President Trump has made it clear from the beginning that he does not believe in protecting financial consumers and that the CFPB should be neutered. Indeed, he appointed an acting director who openly stated his belief that the CFPB should not even exist.[36] The result has been a CFPB focused on protecting financial predators, not consumers. That signal and attitude were confirmed when Trump nominated a permanent director who had absolutely no consumer financial services experience.[37] The predictable and undoubtedly intended result is the transformation of the Consumer Financial Protection Bureau into the Financial Predator Protection Bureau.

"President Trump has made it clear from the beginning that he does not believe in protecting financial consumers and that the CFPB should be neutered."

In addition to taking many other deregulatory actions, the CFPB is now establishing a so-called "Taskforce on Federal Consumer Financial Law." While it always behooves a regulatory agency to seek input on the areas it oversees from informed parties, the taskforce is really about undermining consumer protections. It is entirely focused on providing regulatory relief to the industry. Moreover, it is chaired by Todd Zywicki, a law professor whose primary research focus, since the establishment of the CFPB, has been attacking the CFPB.[38] This task force, as currently constituted, cannot possibly be expected to provide recommendations that will further the goal of consumer protection.[39]

The task force should be dismantled, or at the very least, repurposed to ensure its goals are consistent with the CFPB's mission of protecting financial consumers. Furthermore, it must be reconstituted to ensure it is composed of members and leaders who have not built their reputations on tearing down the CFPB.[40]

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[35] *See* Better Markets Comment Letter on CFPB Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information ,(June 4, 2018), *available at* https://bettermarkets.com/sites/default/files/CFPB-%20CL-%20Consumer%20Complaint%20Database%20Final.pdf.

[36] *See* Nicholas Confessore, "Mick Mulvaney's Master Class in Destroying a Bureaucracy From Within," *The New York Times,* (April 16, 2019), *available at* https://www.nytimes.com/2019/04/16/magazine/consumer-financial-protection-bureau-trump.html.

[37] *See* Better Markets, "Grossly Unqualified, Anti-Consumer New CFPB Director Kraninger Confirmed," (December 6, 2018), *available at* https://bettermarkets.com/newsroom/grossly-unqualified-anti-consumer-new-cfpb-director-kraninger-confirmed.

[38] *See* Kate Berry, "CFPB names longtime agency critic to chair consumer task force," *American Banker,* (January 9, 2020), *available at* https://www.americanbanker.com/news/cfpb-names-long-time-agency-critic-to-chair-consumer-task-force.

[39] *See* Better Markets Comment Letter on Request for Information to Assist Task Force on Federal Consumer Financial Law, (June 1, 2020), *available at* https://bettermarkets.com/rulemaking/better-markets-issues-comment-letter-response-cfpb-request-information-assist-task-force.

[40] *See* Better Markets Comment Letter on Request for Information to Assist the Taskforce on Federal Consumer Financial Law, (June 1, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letter_on_CFPB_Request_for_Information_to_Assist_the_Taskforce_on_Federal_Consumer_Financial_Law.pdf.

Top Priorities for the FDIC to Restore Safety and Soundness to the Banking System, Prevent Crashes, Protect Taxpayers and Reduce the Risk of Bailouts

The FDIC is an independent regulatory agency that shares responsibility for maintaining the stability of, and the public's confidence in, our nation's banks. Many Americans know the FDIC from their personal banking—FDIC's logo and promise of insurance coverage for up to $250,000 per account are a familiar sight at banks all across the country. The FDIC also examines and supervises banks to ensure they are sound, properly managed and well-capitalized, and it takes over failing banks to ensure that the impact on their customers is minimized.

End Too-Big-To-Fail Once and For All by Strengthening the Living Will and Orderly Liquidation Authority Process

The most important priority for the FDIC should be a renewed focus on ending too-big-to-fail once and for all, so taxpayers and the economy are not held hostage to the performance of the largest banks and other systemically important financial institutions. There are two main components to these efforts: 1) Making the largest financial institutions resolvable in the event of bankruptcy, which is discussed in this section, and 2) Increasing their financial resilience to reduce the likelihood they will fail, which is discussed under the Federal Reserve section above.

The Orderly Liquidation Authority (OLA) provisions of the Dodd-Frank Act are a direct response to the chaotic failure of Lehman Brothers in 2008, which triggered the financial crisis. When Lehman was collapsing into bankruptcy, financial regulators lacked the tools to facilitate an orderly liquidation of the bank. It was bankruptcy or bailout, with no middle ground. As a result, Lehman's failure was catastrophically disorderly. It triggered the contagion leading to the financial crisis that resulted in trillions of taxpayer dollars being handed over to the biggest banks on Wall Street and led to the worst economic disaster since the Great Depression.[41]

[41] *See* B. Chu, "How Lehman Brothers Helped Cause 'the Worst Financial Crisis in History,'" *The Independent*, (September 12, 2018), *available at* https://www.independent.co.uk/news/business/analysis-and-features/financial-crisis-2008-why-lehman-brothers-what-happened-10-years-anniversary-a8531581.html.

To stop that from happening again, the Dodd-Frank Act created a process to facilitate the orderly wind-down of a major financial institution when all else failed. To do so, the law gives the FDIC the authority to take over a failing institution and temporarily support it with government funds so that it can be liquidated over time in an orderly fashion that doesn't cause one bank's failure to precipitate other failures and lead to a catastrophic crash. Once the FDIC has over time liquidated the bank in an orderly fashion, it is required by law to recover from the financial industry any funds lost in connection with that liquidation.

From the beginning of his administration, President Trump has targeted the living will process for elimination. He signed an Executive Order directing Treasury Secretary Steven Mnuchin to review the OLA process, misleadingly calling it one of the "damaging Dodd-Frank regulations that failed to hold Wall Street firms accountable."[42] He also said of the OLA process, "These regulations enshrine 'too-big-to-fail' and encourage risky behavior," which ignores the fact that OLA was created to respond to a real-life example from very recent history where the absence of such authority contributed to the financial crisis and in fact "enshrined" too-big-to-fail.

"From the beginning of his administration, President Trump has targeted the living will process for elimination."

Under the Trump Administration, the Federal Reserve and FDIC have also proposed rules that would undermine so-called "living wills," i.e., resolution plans the largest banks have to prepare in the event of a bankruptcy filing. These dangerous proposals would significantly reduce the frequency and required content of resolution plans that certain banks are required to submit to regulators. The proposal created four categories of firms, ranging from large, globally systemically important banks (GSIBs) to smaller banks with $100 billion in consolidated assets.

Under the proposal, even the largest Category I firms—U.S. GSIBs—would only need to file a resolution plan once every two years, instead of annually. In addition, every other filing would be a "targeted plan," which would exclude key information such as descriptions of the covered company's collateral management processes, practices relating to its derivatives activities, and identification of major counterparties. The proposal has been finalized, largely as proposed.

This was a needless and dangerous weakening of the resolution planning regime, a regime that was an important part of the financial protection rules enacted in the Dodd-Frank Act. GSIBs—the largest and most complex banking organizations—would only be required to file a full resolution plan once every four years, while slightly smaller Category II and III firms would only be required to file a resolution plan once every three years. Finally, Category IV firms—banks with assets that exceed $100 billion—would not be subject to any resolution planning requirements at all.

The final rules should be rescinded, because they undermine the entire purpose of the resolution planning requirement.[43] The Agencies—led by the FDIC—should instead strengthen the current

[42] *See* Remarks by President Trump at Signing of Financial Services Executive Orders, (April 21, 2017), *available at* https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-financial-services-executive-orders/.

[43] *See* Better Markets Comment Letter on Resolution Plans Required, (June 21, 2019), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20FRS%20FDIC%20Resolution%20Planning%206-21-2019.pdf.

"The failure to prohibit those payments helped weaken the banks, hasten their near-demise, and increase the magnitude of the taxpayer bailouts they needed to survive."

LEFT: A person holds a "Bail Us Out"sign outside of the New York Stock Exchange in protest of the taxpayer bailouts banks received following the 2008 crash. (Photo by Spencer Platt/Getty Images)

resolution plan framework, which is critical to the protection of taxpayers and the financial system. GSIBs should again be required to submit a complete plan no less than every two years, and non-GSIB banks larger than $250 billion should submit full plans every two years. The FDIC should also provide greater information and clarity about the purposes, methods and criteria that underlie the "living wills" process and require greater public disclosure of the information contained in each bank's plans.

The Definition of Eligible Retained Income Should Not Be Changed to Allow Banks to Reduce Their Capital

The FDIC, along with the Federal Reserve and the OCC (together, the "Agencies") established an interim final rule that revised the definition of eligible retained income for all depository institutions, bank holding companies, and savings and loan holding companies subject to the Agencies' capital rule. The revised definition of eligible retained income will make any automatic limitations on capital distributions that could apply under the Agencies' capital rules more gradual even in the face of severe stress.

The rule is dangerous, and it is especially unwise under the extraordinary circumstances facing the country and the financial system today in light of the COVID-19 pandemic and the economic crisis it has caused. The rule is designed and intended to make it easier for banks to continue making capital distributions in the form of dividends and discretionary bonuses even if their profits plummet and their capital buffers threaten to fall below important thresholds. Changing a capital rule at this time to facilitate banks' using capital on shareholder distributions and bonuses is needlessly risky, undermining the safety and soundness of the banking system.

The rule is not only flawed on its face, it ignores the painful lessons of recent history. Just 12 years ago, as the 2008 financial crisis was devastating U.S. financial markets and the economy, banks were allowed to continue paying out billions in dividends and other capital distributions until they reached the very brink of collapse.[44] The failure to prohibit those payments helped weaken the banks, hasten their near-demise, and increase the magnitude of the taxpayer bailouts they needed to survive. For this reason, among others, many prominent economists and current and former policymakers today are calling upon regulators to prevent, not facilitate, such distributions.

Rather than changing the rules to facilitate the diversion of capital to shareholders and executives via dividends and bonuses, especially in the midst of economic stress and uncertainty, the Agencies

[44] *See* Beverly Hirtle, "Bank Holding Company Dividends and Repurchases during the Financial Crisis," *Federal Reserve Bank of New York Staff Reports*, (March 2014), *available at* https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr666.pdf.

should immediately restrict all common equity-related capital distributions by the largest banks, and banks should cut discretionary bonus payments to senior executives for the duration of the crisis.[45]

The Exemption from Initial Margin Requirements on Derivatives Transactions Between Derivative Dealing Banks and Their Affiliates Should be Rescinded

The FDIC, along with the other prudential regulators (the Federal Reserve, OCC, FCA and FHFA) have eliminated the requirement to post initial margin on certain derivatives transactions between dealer banks and their affiliates.

> "In short, if implemented as proposed, the prudential regulators' final rules would facilitate avoidance or evasion of U.S. statutory requirements in violation of a critical Congressional mandate..."

Interaffiliate initial margin requirements serve a critical safety and soundness objective and prevent the importation of foreign derivatives dealing risks to the U.S. financial system. In fact, under the rule and by conservative estimates, at least $40 billion in capital will no longer be in place to protect against the risks associated with such interaffiliate transactions. In addition, the rule clearly violates the Dodd-Frank Act, which required the prudential regulators to impose margin requirement on "all" swaps, without exception.

In short, if implemented as proposed, the prudential regulators' final rules would facilitate avoidance or evasion of U.S. statutory requirements in violation of a critical Congressional mandate, reverse their own longstanding legal and policy views, and implement unsupported regulatory changes with significant implications for the safety and soundness of U.S. financial institutions and the U.S. financial system.[46] The rule should be immediately rescinded.

The FDIC Should Not Allow Non-Bank Financial and Commercial Enterprises to Acquire Industrial Banks

On March 31, 2020, the FDIC proposed a rule that would facilitate the acquisition of industrial banks by both financial firms and nonfinancial commercial enterprises, violating the fundamental axiom in banking law that commerce and banking should remain separate. This would pose significant risks that cannot be adequately mitigated through any regulatory framework. This combination of commerce and banking increases the likelihood of instability in industrial banks, poses undue risk to taxpayers and the Deposit Insurance Fund, fosters unfair competition, and will likely contribute to systemic instability.

The FDIC should abandon the proposal and impose a moratorium on applications by both non-bank financial and commercial firms to acquire industrial banks.[47] Additionally, rather than facilitate the

[45] *See* Better Markets letter to Senate Banking Committee, (July 28, 2020), *available at* https://bettermarkets.com/resources/better-markets-sends-letter-senate-banking-committee-urging-them-not-weaken-bank-capital.

[46] *See* Better Markets Comment Letter on Margin and Capital Requirements, (December 9, 2019), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Inc_Letter_on_Margin_and_Capital_Requirements_for_Covered_Swap_Entities_12-9-2019.pdf.

[47] *See* Better Markets Comment Letter on Notice of Proposed Rulemaking with Request for Public Comment, Parent Companies of Industrial Banks and Industrial Loan Companies, (July 1, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letter_on_Parent_Companies_of_Industrial_Banks_and_Industrial_Loan_Companies-RIN_3064%E2%80%93AF31.pdf.

acquisition and control of industrial banks by non-bank financial firms and commercial enterprises, the FDIC should call upon Congress to eliminate the carve-out for industrial banks that was put into the Bank Holding Company Act in 1987. That amendment to the Bank Holding Company Act has been repudiated as unwise in light of the evolution of industrial banks in size and complexity and changes in our financial markets over the last 30-plus years. Until Congress takes that step, the FDIC should re-impose an explicit moratorium on such arrangements just as Congress and the FDIC deemed necessary and appropriate for a substantial portion of the last 15 years.

The FDIC Should Not Expand Access to Brokered Deposits

The FDIC has issued a proposal that would make it easier for banks that are not well-capitalized to access "hot money" in the form of brokered deposits.

Brokered deposits pose enhanced risks to banks and to the wider financial system as demonstrated by their history.[48] A Dodd-Frank Act mandated FDIC study confirmed the inherent riskiness of brokered deposits as a funding source—the use of brokered deposits was associated with rapid growth, investment in riskier assets, increased risk of bank failure, and increased loss in the event of bank failure.[49] Additionally, brokered deposits have already received permissive regulatory treatment. Despite a lack of any evidence that it would produce any benefits or that a change in policy would serve the public interest in any way, the proposal would create huge loopholes in the decades-old restrictions on brokered deposits.

At a minimum, any changes to the current regulatory regime—such as narrowing the scope of what is considered a brokered deposit or specifically excluding certain products from the definition of what is considered a brokered deposit—should only be undertaken upon a strong showing that such changes are consistent with the public interest, and in particular, that these changes will not materially increase risk to the financial system nor pose a threat to the Deposit Insurance Fund.[50] The FDIC should withdraw the proposal and conduct further analysis.

End the Use of 'Rent-A-Bank' Schemes that Allow Payday Lenders and Debt Collectors to Prey on Borrowers

The FDIC, along with the OCC, has issued a rule aimed at knocking out state laws put in place to protect borrowers from predatory lenders that charge shamefully high interest rates and fees. The result is that nonbanks will have a greater ability to evade state usury prohibitions and extract every last dollar from borrowers by partnering with federally regulated banks.[51]

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[48] *See* Better Markets Press Release. "The FDIC's Proposal on Brokered Deposits will Weaken Banks and Cost Taxpayer Money - For No Good Reason," (June 12, 2020), *available at* https://bettermarkets.com/newsroom/fdic%E2%80%99s-proposal-brokered-deposits-will-weaken-banks-and-cost-taxpayers-money%E2%80%94-no-good.

[49] *See* FDIC, "Study on Core Deposits and Brokered Deposits," (July 8, 2011) *available at* https://www.fdic.gov/regulations/reform/coredeposit-study.pdf.

[50] *See* Better Markets Comment Letter on Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, (June 9, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letter_on_Brokered_Deposits_6-9-2020.pdf.

[51] *See* Brendan Pedersen, "States Sue FDIC Over 'Rent-A-Bank' Partnerships," *American Banker*, (August 20, 2020), *available at* https://www.americanbanker.com/news/states-sue-fdic-over-rent-a-bank-partnerships.

> “The FDIC, along with the OCC, has issued a rule aimed at knocking out state laws put in place to protect borrowers from predatory lenders that charge shamefully high interest rates and fees.”

For years, federally regulated banks have been able to override state consumer protection rules against charging outrageously high interest rates on consumer loans. Now bank regulators want to ensure this preemption of state law extends beyond just banks and applies to all manner of nonbank entities, which often seek to form alliances with banks to evade state consumer protection rules or buy banks' overdue loans for collection.

The issue took on renewed importance after the Second Circuit ruled in 2015 that preemption of state law does not and should not apply to an independent, nonbank debt collector that buys loans from federally regulated banks: Madden v. Midland Funding, LLC, 786 F.3d 246 (2d Cir. 2015). That decision made some banks and their would-be partners nervous. They want to make sure that nonbank financial firms— ranging from online lenders to payday loan sharks and debt collectors—can continue with their "rent-a-bank" schemes, piggybacking on the charters of federally regulated banks to evade state usury laws.

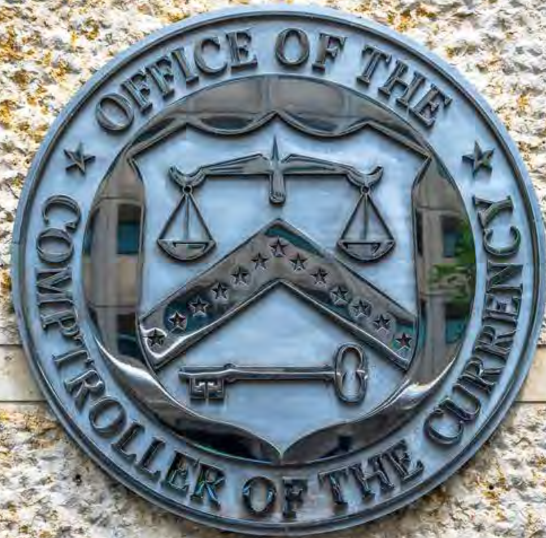
Now they have prevailed on the OCC and the FDIC to issue rules attempting to nullify the Madden decision. As the court in Madden correctly observed, however, that essentially amounts to an "end-run" around important consumer protections that many states have adopted to protect their citizens from abuse.

The rule is not just bad policy that will expose millions of consumers to gouging, sky-high interest rates, but it's also bad rulemaking. For example, nowhere in the rulemaking process did the FDIC adequately address the clear threat to consumers this rule represents. The agency essentially ignored the vulnerabilities of consumers and instead worried that the Madden ruling "could adversely affect" the emerging rent-a-bank business model.[52] Moreover, the FDIC offered scant data at best to support its claim that the Madden decision has created uncertainty that could interfere with the ability of banks to sell loans, maintain liquidity or manage risks. In fact, in a startling admission, the FDIC conceded in the rule proposal that it was aware of no significant negative effects resulting from the Madden decision. In the final rule release, the agency essentially retreated to the claim that it should adopt a "prophylactic rule" to prevent supposed problems in the future.[53] The rule should be rescinded.[54]

[52] *See* Better Markets Comment Letter on Federal Interest Rate Authority, (February 4, 2020), *available at* https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letter_on_Federal_Interest_Rate_Authority.pdf.

[53] *See* Federal Register, Vol. 85, No. 141 Federal Interest Rate Authority, (July 22, 2020), *available at* https://www.fdic.gov/news/board/2020/2020-06-25-notice-dis-c-fr.pdf.

[54] *See* Better Markets Comment Letter on National Banks and Federal Savings Associations as Lenders, (September 3, 2020), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%20Comment%20Letter%20on%20OCC%20True%20Lender%20Proposal%20OCC%E2%80%932020%E2%80%930026.pdf



The **OFFICE** *of the* **COMPTROLLER** *of the* **CURRENCY**

Top Priorities for the Comptroller of the Currency to Restore Safety and Soundness to the Banking System, Prevent Crashes, Protect Taxpayers and Reduce the Risk of Bailouts

The Office of the Comptroller of the Currency is an independent regulator within the Department of the Treasury that regulates national banks, savings and loans and branches of foreign banks.

Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements

Capital and liquidity requirements are all that stand between a bank and failure. Maintaining strong requirements are key to ensuring that taxpayers are not on the hook for significant bailouts. Yet, the OCC, along with the Federal Reserve and FDIC (together, the "Agencies") issued rules that would enable some of the largest banks to hold less capital and have less liquidity—making those large, systemically important banks more vulnerable to failure and ultimately threatening financial stability and likely putting taxpayers on the hook for more bailouts.

The Agencies' proposal is an ill-advised attempt to scale back enhanced prudential standards applicable to some of the largest and most systemically risky banking organizations with little substantive analysis supporting it. This omission of meaningful analysis is especially difficult to justify in light of the fact that the current requirements have already been tailored with bank size and other risk factors taken into account. The negative impact of the proposal will be intensified because it will contribute to a much broader collection of de-regulatory measures that collectively pose a substantial threat to financial stability. The underlying motivations for the risk-enhancing aspects of the proposal—decreasing compliance costs for the industry and streamlining regulation—are considerations found nowhere in the relevant statutory standards governing the Agencies' exercise of discretion. The Agencies' primary mandate in establishing or amending any enhanced prudential standards is to ensure that Americans are protected from the extraordinarily damaging consequences of another financial crisis, not to help financial companies make (even greater) profits.

"Since this success, stress testing has been a key feature of ensuring the safety and soundness of the banking system. However, the OCC, along with the Federal Reserve and FDIC...have sought to weaken the stress testing regime."

The rule should be withdrawn, and the Agencies should refrain from diluting the current requirements for bank holding companies, especially those with $100 to $250 billion in assets. Instead, the Agencies should be focused on preserving, if not enhancing, the current enhanced prudential standards to the fullest extent allowed by statute. The Agencies should undertake a robust, factual, detailed, objective, independently confirmed, and data-driven empirical analysis supporting the changes in the proposal. At the very least, the Agencies should stay their de-regulatory hands until the current set of prudential standards has been tested through a full business cycle.

Company Run Stress Testing Should Become More Robust, Not Less

Credible stress tests of the largest banks in 2009 helped reduce the panic in the financial markets by providing a transparent view into the condition of those banks and the amount of capital they needed to continue to withstand the ongoing crisis. Since this success, stress testing has been a key feature of ensuring the safety and soundness of the banking system. However, the OCC, along with the Federal Reserve and FDIC (together, the "Agencies") have sought to weaken the stress testing regime.

This includes their proposal to reduce the frequency of company-run stress tests, requiring that such tests be conducted every other year, rather than annually. This change is unnecessary—the annual stress test framework has not proven overly burdensome for banks which are safer while consistently earning record profits.[55] Reducing the frequency of those tests means they will be outdated in material ways and therefore be less credible, defeating a key purpose for creating them in the first place.[56]

Instead of drastically reducing the frequency of stress tests, the Agencies should conduct a robust, factual, detailed, objective, independently confirmed, and data-driven empirical analysis of the appropriate stress test frequency.[57] Until such time, the frequency of stress testing should remain annual or even be increased.

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[55] *See* Better Markets Blog Post: "Better Markets Defends Stress Tests at Key Fed Conference," (July 8, 2019), *available at* https://bettermarkets.com/blog/better-markets-defends-stress-tests-key-fed-conference

[56] *See* Better Markets Press Release, "Fed's Stress Test Actions Allowing Capital Payouts in the Middle of an Historic Economic Crisis Undermines Its Credibility and Makes Bank Failures and Bailouts More Likely," (July 29, 2020), *available at* https://bettermarkets.com/newsroom/fed%E2%80%99s-stress-test-actions-allowing-capital-payouts-middle-historic-economic-crisis.

[57] S*ee* Better Markets Comment Letter on Amendments to the Stress Testing Rules for National Banks and Federal Savings Associations, (March 14, 2019), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%20CL%20OCC%20%20National%20Banks%20Stress%20Testing.pdf.

The OCC's Proposed "True Lender" Rule Allowing Predatory Lenders

The OCC has proposed a rule that would define when a bank can be considered the "true lender" in a loan transaction. If implemented, this proposal would make it easier for predatory lenders to evade state consumer protections. National banks have sought to profitably rent out the various benefits of a national bank charter, especially a preemption of state law that they enjoy. They do this by issuing a loan, often with an interest rate or terms that are illegal under state laws, and then immediately sell it pursuant to an agreement with a nonbank, allowing the nonbank to get around state consumer protection laws and letting the national bank turn a quick profit. Often, the nonbank pays for marketing, processes applicants, sets the loan terms, and is contractually obligated to purchase the loan as soon as it is issued while the national bank merely puts its logo on the contracts and provides the up-front capital. It is all form over substance just to avoid state consumer protection laws.[58]

Most courts have determined that these are schemes where the nonbank is in fact the "true lender" given the national bank's tangential role, and that state laws therefore apply. In this proposal, the OCC seeks to effectively overturn these rulings and make rent-a-bank schemes universally effective by declaring that a national bank can be considered the true lender so long as it is named in the loan documents or funds the loan.

"...the OCC seeks to effectively overturn these rulings and make rent-a-bank schemes universally effective by declaring that a national bank can be considered the true lender so long as it is named in the loan documents or funds the loan."

This proposal would have a major and adverse effect on the powers of state governments to enforce consumer protections in their local credit markets. Yet the OCC has failed to even acknowledge the impact of this rule on consumer protection, much less attempt to estimate the impact. The OCC also fails to identify any benefits the proposal would bring.[59] It defends the proposal by hypothesizing that the current true lender doctrine is ambiguous and therefore may discourage banks from lending. Tellingly, it does not cite any evidence to prove that the status quo has had any negative consequences for credit markets. The proposal should be withdrawn, and instead, the OCC should promulgate rules that make clear that national banks should not engage in such schemes and should not rent out their charters for the purpose of evading state consumer protection laws by nonbanks.

[58] *See* Center for Responsible Lending Press Release, "Consumer & Civil Rights Advocates to OCC: Your Proposed 'True Lender' Rule Would Help Fraudulent, Predatory Lenders Evade State Interest Rate Laws that Protect Families," (September 3, 2020), *available at* https://www.responsiblelending.org/media/consumer-civil-rights-advocates-occ-your-proposed-true-lender-rule-would-help-fraudulent.

[59] *See* Better Markets Comment Letter on National Banks and Federal Savings Associations as Lenders, (September 3, 2020), *available at* https://bettermarkets.com/sites/default/files/Better%20Markets%20Comment%20Letter%20on%20OCC%20True%20Lender%20Proposal%20OCC%E2%80%932020%E2%80%930026.pdf.

"The OCC rushed through its review of public comments on the proposal and issued a final rule that maintains loopholes in the law that allow banks to dodge their responsibilities to lend to lower-income communities."

Restoring the Community Reinvestment Act

In May 2020, the OCC issued a new rule that makes sweeping changes to one of the nation's most important fair housing laws, the Community Reinvestment Act. The OCC rushed through its review of public comments on the proposal and issued a final rule that maintains loopholes in the law that allow banks to dodge their responsibilities to lend to lower-income communities.[60]

Under the OCC's new rules, banks can get a passing rating under the CRA by lending to borrowers in communities that are already well-served by banking institutions, clearly defeating the intent of the law. Presumably, that is why the other financial regulators have refused to join the OCC (at least, so far). It is troubling that the OCC would ram through such a proposal at a time when the racial wealth gap is widening across the country and particularly given the economic disruption of the COVID-19 pandemic among communities of color.

The OCC should publicly commit to revisiting this ill-considered rulemaking and restart the process with the end goal of ensuring that lower-income communities are served by banks as Congress intended when it passed the CRA.

[60] *See* Press Release from National Community Reinvestment Coalition on CRA Rule Changes, (May 21, 2020), *available at* https://ncrc.org/joint-statement-on-cra-rule-changes-from-occ/.

Appendix

The following is a chronological list of many of the deregulatory rulemakings undertaken by the financial regulatory agencies during the Trump Administration with links to Better Markets' related comment letters.

The Federal Reserve Board

August 9, 2017: Proposed to amend the supervisory expectations for boards of directors at financial institutions. Better Markets' comment letter.

December 7, 2017: Proposed a trio of changes to stress testing model disclosures. Better Markets' comment letter.

April 19, 2018: Proposed rule weakening capital requirements for large banks. Better Markets' comment letter.

April 25, 2018: Proposed rule undermining stress testing requirements. Better Markets' comment letter.

July 17, 2018: Proposed rule weakening the "Volcker Rule" ban on proprietary trading. Better Markets' comment letter.

November 21, 2018: Proposed rule exempting many large banks from crucial supervision requirements. Better Markets' comment letter.

December 21, 2018: Proposed rule lowering capital requirements for many banks. Better Markets comment letter.

January 8, 2019: Proposed rule unnecessarily reducing the frequency of stress tests. Better Markets' comment letter.

April 4, 2019: Proposed rule relating to total loss absorbing capacity of large banks. Better Markets' comment letter.

March 15, 2019: Proposed rule lowering supervision requirements for foreign banks. Better Markets' comment letter.

March 24, 2019: Proposed rule weakening capital requirements for large banks. Better Markets' comment letter.

November 7, 2019: Proposed rule eliminating important margin requirements on inter-affiliate swaps. Better Markets comment letter.

February 28, 2020: Proposed rule further weakening the "Volcker rule" ban on proprietary trading. Better Markets' comment letter.

March 20, 2020: Interim final rule making it easier for banks to continue to pay dividends during the height of the Covid-19 pandemic. Better Markets' comment letter.

March 23, 2020: Interim final rule once again bailing out money market funds. Better Markets' comment letter.

May 11, 2020: Rule finalizing the decision to enable bank dividends during the Coivd-19 pandemic. Better Markets' comment letter.

The Securities and Exchange Commission (SEC)

March 15, 2017: Proposed rule enhancing disclosures for municipal securities underwriting. Better Markets comment letter.

March 19, 2018: Proposed rule to weaken liquidity disclosure requirements for investment companies. Better Markets' comment letter.

March 26, 2018: Proposed pilot program to explore the possibility of ending the "maker-taker" rebate system. Better Markets' comment letter.

May 9, 2018: Proposed rule creating insufficient disclosure requirements for broker-dealers and investment advisors. Better Markets' comment letter.

May 9, 2018: Proposed rule implementing the confusing anti-investor "best interest" standard for broker-dealers and investment advisors. Better Markets' comment letter.

September 20, 2018: Proposed rule undermining the departments wildly successful whistleblower program. Better Markets' comment letter.

October 19, 2018: Proposed rule attacking limits on high-risks derivatives trading. Better Markets' comment letter.

February 21, 2019: Proposed rule changing disclosure requirements for variable annuity and life insurance contracts. Better Markets' comment letter.

February 28, 2019: Proposed rule creating dangerous loopholes in securities offering rules. Better Markets' comment letter.

March 9, 2019: Proposed rule reducing accounting and audit requirements and public companies. Better Markets' comment letter.

March 10, 2019: Proposed rule weakening the cross-border swap framework. Better Markets' comment letter.

August 22, 2019: Proposed rule removing investor protections in asset-backed securitization. Better Markets' comment letter.

August 23, 2019: Proposed rule altering SEC reporting requirements. Better Markets' comment letter.

September 9, 2019: Proposed rule modifying the planned implementation of the Consolidated Audit Trail. Better Markets' comment letter.

October 11, 2019: Proposed rule changing fee-setting rules for SROs. Better Markets' comment letter.

October 30, 2019: Proposed rule changing but no repealing an anti-consumer loophole in OTC securities regulations. Better Markets' comment letter.

November 11, 2019: Proposed rule for the use of derivatives by registered investment companies. Better Markets' comment letter.

December 4, 2019: Proposed Rule to silence proxy advisors. Better Markets' comment letter.

December 4, 2019: Proposed rule attacking shareholder voting rights. Better Markets' comment letter.

December 18, 2019: Proposed rule making it easier for US companies to engage in illicit payments abroad in exchange for access to natural resources. Better Markets' comment letter.

December 18, 2019: Proposed rule weakening investors protections. Better Markets' comment letter.

March 24, 2020: Proposed rule as part of the implementation of the consolidated audit trail. Better Markets' comment letter.

March 31, 2020: Proposed rule allowing the expansion of dangerous dark markets. Better Markets' comment letter.

May 13, 2020: Proposed rule allowing companies to assign "fair values" to assets that do not have market prices. Better Markets' comment letters.

The Federal Deposit Insurance Corp (FDIC)

December 28, 2018: Proposed rule unnecessarily reducing the frequency of stress tests. Better Markets' comment letter.

February 6, 2019: Proposed rule weakening restrictions on brokered deposits. Better Markets' comment letter.

March 21, 2019: Proposed rule weakening "living will" requirements for large banks. Better Markets' comment letter.

December 6, 2019: Proposed rule undermining state payday loan laws. Better Markets' comment letter.

February 10, 2020: Proposed rule removing important restrictions on brokered deposits. Better Markets' comment letter.

March 31, 2020: Proposed rule allowing business to create and acquire banks. Better Markets' comment letter.

The Commodities Futures Trading Commission (CFTC)

May 8, 2017: Proposed rule weakening accountability for chief compliance officers. Better Markets' comment letter.

June 20, 2017: Proposed rule implementing changes to document access required by FOIA Improvement Act of 2016. Better Markets comment letter.

June 12, 2018: Proposed rule exempting billions of dollars of derivatives trading from important regulations. Better Markets' comment letter.

November 30, 2018: Proposed rule weakening swap registration requirements. Better Markets' comment letter.

July 23, 2019: Proposed rule exempting many foreign firms form US derivatives registration requirements. Better Markets' comment letter.

September 18, 2019: Proposed rule offering non-US derivatives clearing organizations de-facto exemption from many US laws and regulations. Better Markets' comment letter.

September 20, 2019: Proposed rule modifying rulemaking procedures at the CFTC. Better Markets' comment letter.

December 19, 2019: Proposed rule altering capital requirements for swap dealers: Better Markets' comment letter.

December 31, 2019: Proposed rule repealing anti-competitive post-trade name give-up rules. Better Markets' comment letter.

January 8, 2020: Proposed rule creating avenues for avoiding or evading US derivatives laws. Better Markets comment letter.

February 19, 2020: Proposed rule creating massive delays in swap trade reporting. Better Markets' comment letter.

February 27, 2020: Proposed rule implementing ineffective position limits for derivative trades. Better Markets' comment letter.

May 12, 2020: Proposed rule expanding exemptions from swap clearing requirements: Better Markets' comment letter.

June 12, 2020: Proposed rule reforming bankruptcy procedures for commodity brokers. Better Markets' comment letter.

July 15, 2020: Proposed rule effectively outsourcing the regulation of electronic trading to for-profit companies. Better Markets' comment letter.

The Consumer Financial Protection Bureau (CFPB)

February 14, 2019: Proposed to delay the implementation of the CFPB's payday lending rule. Better Markets comment letter.

February 14, 2019: Proposed to rescind the CFPB's payday lending rule. Better Markets comment letter.

March 21, 2019: Proposed rule creating weak and ineffective consumer protections against debt collectors. Better Markets' comment letter.

March 3, 2020: Proposed rule allowing debt collectors to harass consumers over legally unenforceable "time-barred" debt. Better Markets' comment letter.

The Office of the Comptroller of the Currency (OCC)

February 12, 2019: Proposed rule unnecessarily reducing the frequency of stress tests. Better Markets' comment letter.

November 21, 2019: Proposed rule undermining state restrictions on payday loans. Better Markets' comment letter.

July 22, 2020: Proposed rule allowing national banks to collaborate with non-banks and payday lenders to evade state usury laws and other consumer protections. Better Markets comment letter.

The Department of Labor (DoL)

March 2, 2017: Proposed to delay the implementation of the retirement fiduciary rule. Better Markets' comment letter.

August 31, 2017: Proposed to further delay the implementation of the retirement fiduciary rule. Better Markets' comment letter.

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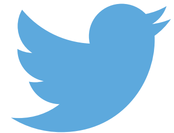

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