

BETTER MARKETS

Annual Report



Better Markets' Mission

Better Markets' mission is to fight for the economic security, opportunity and prosperity of the American people by ensuring finance serves society, not be a threat to it. Better Markets works to protect the American Dream of homes, jobs, savings, education, a secure retirement and a rising standard of living, rather than allowing those priorities to be subordinated to the interests of finance.

This is accomplished by fighting for financial reform and a safer, sounder, balanced financial system, less prone to crisis and failure and, thereby, eliminating or minimizing the risk of taxpayer and government bailouts. All Americans and the funding for all our priorities (from health care, education and the environment to housing, inequality and retirement security) depend on a financial system that supports the real economy, jobs and growth.

This must be a national priority because the cost of financial crashes and the economic wreckage they create is incomparable and catastrophic. The 2008 financial crash and the economic devastation it caused will *directly* cost the United States more than \$20 trillion, or more than \$170,000 for every man, woman and child in America. The *indirect* costs of diverting trillions of dollars to the financial sector and away *from* the nation's priorities are incalculable.

Better Markets is a Wall Street and government watchdog that promotes the public interest in the economy, financial markets and financial reform. Focusing on the handful of uniquely dangerous too-big-to-fail financial firms, it is a counterweight to the financial industry throughout the policymaking, rulemaking and lawmaking process in Washington, fighting to make sure policy makers, regulators and prosecutors put the public interest first. It does not do this alone. Better Markets works not only with those same policy makers, regulators and prosecutors, but also with other public and private sector organizations as well as industry, both generally and in finance in particular.

Better Markets is a strong believer in markets and market discipline and believes that the private sector is a key to ensuring that the economy works for everyone. That, however, requires clear rules of the road that are enforced and for people to be held as accountable on Wall Street as they are on Main Street. That is also how financial reform will be sensibly enacted and durable throughout the business cycle, which is the only way to produce sustainable growth and jobs consistently over time without financial crashes and bailouts.



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“Of all the civil society organizations seeking to promote financial stability, Dennis Kelleher’s Better Markets stands out for its major impact through a relentless surge of arguments, comment letters and research. Its report on the cost of the crisis made clear beyond any reasonable doubt that the crisis had profound negative consequences for millions of people.”

– SIMON JOHNSON, RONALD A. KURTZ
PROFESSOR AT THE MIT SLOAN
SCHOOL OF MANAGEMENT, FORMER
COLUMNIST AT THE NEW YORK TIMES
& FORMER IMF CHIEF ECONOMIST



“Think of Better Markets as Occupy Wall Street’s suit-wearing cousin. ... [It] does not march against the banks, or bring loudspeakers to their lobbies. It instead writes detailed comment letters to regulators, meets with them, files friend-of-the-court briefs, puts out studies and testifies before Congress.”

– “FACING DOWN THE BANKERS,” THE NEW YORK TIMES, MAY 30, 2012





Letter from the CEO

Friends,

In just a few short years, Better Markets has become the people's voice in the power centers of Washington, DC, fighting for greater economic security, opportunity and prosperity for all Americans. Our mission is protecting Americans' jobs, homes, savings, standard of living and retirements from an unbalanced, fragile financial system that too often enriches itself from high-risk activities with little social value. Focusing on the handful of uniquely dangerous "too-big-to-fail" financial firms, we advocate for a financial system focused on supporting entrepreneurial individuals and small, medium and large businesses.

In working to enact financial reform to prevent another financial crash and the diversion of trillions of dollars to bailouts, Better Markets has become a potent counterweight to the biggest financial firms on Wall Street, while supporting financial firms that support the real economy, including community banks in particular. We do this at the regulatory agencies, in the courts, before Congress, in the administration and in the media by participating in rulemaking, litigation, legislation, public advocacy and research. (continued...)

While numbers never tell the whole story, they can indicate our focus and direction: In the seven years since our founding, we have participated in more than 225 rulemakings at all financial regulatory agencies, far more than anyone other than Wall Street's lobbyists and trade groups. We have also led or participated in dozens of legal actions, testified innumerable times, been quoted virtually daily across all media platforms and released several groundbreaking reports.

Why does Better Markets do all of this? Because our financial system needs to reflect an updated system similar to the one we created after the Great Crash of 1929 and the Great Depression of the 1930s. Congress then enacted a series of laws that provided *layers* of regulatory, supervisory and structural protections between the high-risk activities of Wall Street and the savings, homes and jobs of America's Main Street – and created executive financial protection agencies to write and to enforce rules to implement those laws.

Remarkably, those laws and regulations worked for almost seven decades to prevent another global financial crash. Even more remarkably, during those decades with the heaviest financial regulation in world history, the U.S. and global economies thrived, the U.S. created the largest middle class and the finance industry itself flourished. Then, an almost two-decade-long Wall Street-led lobby campaign that started in the 1980s dismantled many of those safeguards.

Indeed, by 2000, the bipartisan deregulation of Wall Street was almost complete. This created an environment where the financial industry, as it did in the 1920s, engaged in massive high-risk,

2016 Highlights: By the Numbers

474

UNIQUE PRINT
QUOTES

15

BROADCAST
APPEARANCES

97

PRESS RELEASES

44

NEWSLETTERS

58

BLOG POSTS/
FACT SHEETS

6

COURT FILINGS

28

COMMENT
LETTERS

15

NON-COMMENT
POLICY LETTERS

309

MEETINGS, EVENTS,
CONFERENCES

3

TESTIMONY

5

EXPRESS REFERENCES
IN FINAL RULES

1

MAJOR REPORT

“Dennis Kelleher is one of
the most effective group
CEOs in Washington
DC and Better Markets’
record of achievement
proves that.”

– CAMDEN FINE,
PRESIDENT AND CEO OF INDEPENDENT
COMMUNITY BANKERS OF AMERICA



reckless, predatory and, at times, illegal conduct, which inflated one of the biggest financial bubbles in history. That's what primarily caused the crash of 2008, the worst since 1929 (as detailed in our July 2015 Cost of the Crisis Report, summarized below and in Appendix A).

Better Markets recognizes that the only way to prevent another financial crash and economic catastrophe is to make sure the financial system is rebalanced and refocused to again support the financial needs of America's families, entrepreneurs and businesses of all sizes. Such a system will produce sustainable and durable economic growth, which is the foundation for rising living standards, reduced inequality and broad-based prosperity.

Our organization was founded just months after the July 2010 passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act. However, passing the financial reform law was just the beginning. Dodd-Frank required numerous government agencies to propose, finalize, implement, interpret and enforce financial reform rules.

With their virtually unlimited resources and profit-protection motive, too many in the finance industry were well-prepared to try to win in the regulatory arena what they lost in the legislative arena. Some of their tools included filing litigation to slow down or overturn the regulatory process, lobbying Congress to keep regulatory agencies underfunded and posing repeated challenges in the rulemaking process, which overwhelmed already under-resourced government agencies.

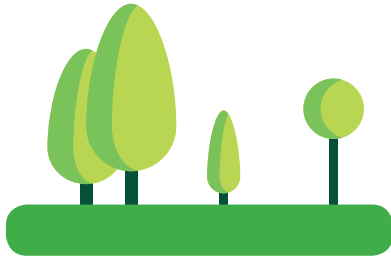
In stark contrast, there was almost no alternative voice or counterweight to these powerful forces: very few were advocating for the public interest in the rulemaking process or defending Dodd-Frank



Dennis Kelleher with Nobel Prize-winning economist Joseph Stiglitz

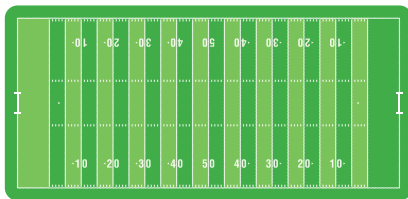
①

NO ONE WOULD PLAY A
SUPER BOWL OR WORLD
SERIES ON THESE FIELDS:



②

THAT'S WHY TEAMS PLAY
ON FIELDS LIKE THIS:



③

THAT'S WHY THESE GUYS
ARE ESSENTIAL:



and the protections it was designed to provide for America's workers, savers, investors, families and communities. Better Markets was created to do just that.

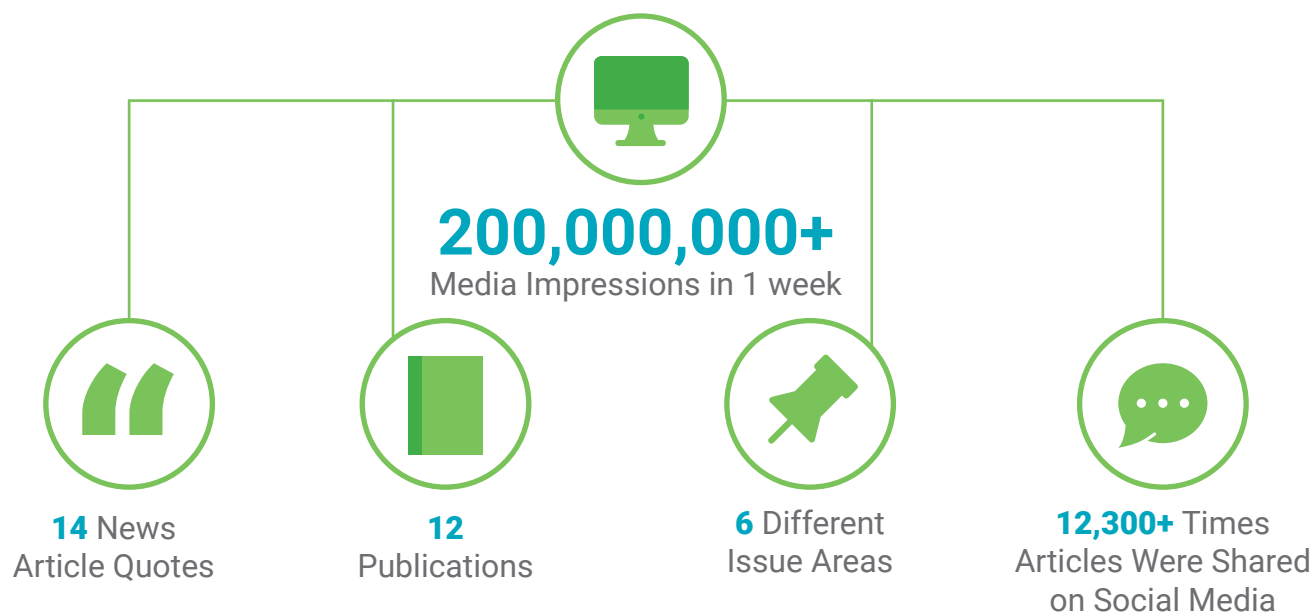
To understand what this means and why is it so important, it helps to think about our economy, financial system and Wall Street as being like professional sports: a level playing field, fair rules known by all, and honest, unbiased referees or umpires are the keys to success. Without them, no one would play or watch sports. For example, no one would play a Super Bowl or World Series on these fields: [see ①](#)

Without lines or boundaries, no one would know which direction to run, where a first down or first base was, if a player was in or out of bounds or even if anyone had scored. Players would be crashing into each other randomly and there would be many injuries. No spectators would watch such foolishness. It would be mayhem and chaos. That's why teams play on fields like this: [see ②](#)

Here the fields are level, the rules are clear, and everyone – players and spectators alike – will generally know what is happening and how it happened. Following the rules will make injuries less likely and less severe if they do happen. People will enjoy watching the games, which will be understandable and clear. Importantly, there can be lots of variations within the rules: football players can be 150 pounds or 300 pounds and they can run, pass or kick. The same is true for baseball where players have different talents and teams win in many different ways. In fact, there's an almost infinite variety of what players and teams can do within the broad but clear rules establishing baselines and a level playing field.

But, as everyone knows, even with all of that, no one would play or watch games unless someone independent and knowledgeable enforced the rules fairly and equally. That's why these guys are essential: [see ③](#)

Better Markets in the Media



The same is true for finance and our financial markets. If they are going to support the real economy and not be a threat to it and all Americans, finance and Wall Street also require a level playing field with clear rules that are enforced so consumers, investors, market participants and, indeed, all Americans can get the benefits of a free market system. That's what Better Markets exists for. Thus, Better Markets equals better banks, better businesses, better jobs, better economic growth and better lives. That will result in more economic security, opportunity and prosperity for everyone.

We know what happens when rules protecting Main Street from Wall Street are repealed or not enforced, when the field is tilted to favor the biggest firms, and when you take the cops off the Wall Street beat: high risk and illegal activities increase, predators roam unchecked, markets crash and banks end up bailed out. That's why Better Markets does what it does and why it is so important to Main Street families' interests, values, concerns and aspirations.

That's also why Better Markets' core programs focus on strengthening Dodd-Frank, increasing financial reform and stability, defending Main Street through support for investor protection rules and agencies such as the Consumer Financial Protection Bureau (CFPB), promoting transparency, holding government agencies and financial firms accountable, and conducting advocacy and outreach through various media outlets and at the regulatory agencies, before Congress, and in the courts.

In 2016, we also had a program focused on the presidential race to ensure that financial reform and protecting Main Street from Wall Street were on the candidates' agenda.

In closing, let me note that many say that we are outgunned, out-manned, out-woman-ed, out-resourced and generally face very high odds, David vs. Goliath, but without the slingshot. While that may be true, we have nonetheless been getting remarkable results, as detailed in the last section of this report. As important, our work holds up the ideas and ideals that make this country great: speaking truth to power, holding powerful people and institutions accountable and ensuring equal justice under the rule of law. That's what Better Markets fearlessly does.

Thank you again for your interest and support. We look forward to continuing to work together in 2017.



Former Representative Barney Frank (left) & Former Senator Chris Dodd (right)

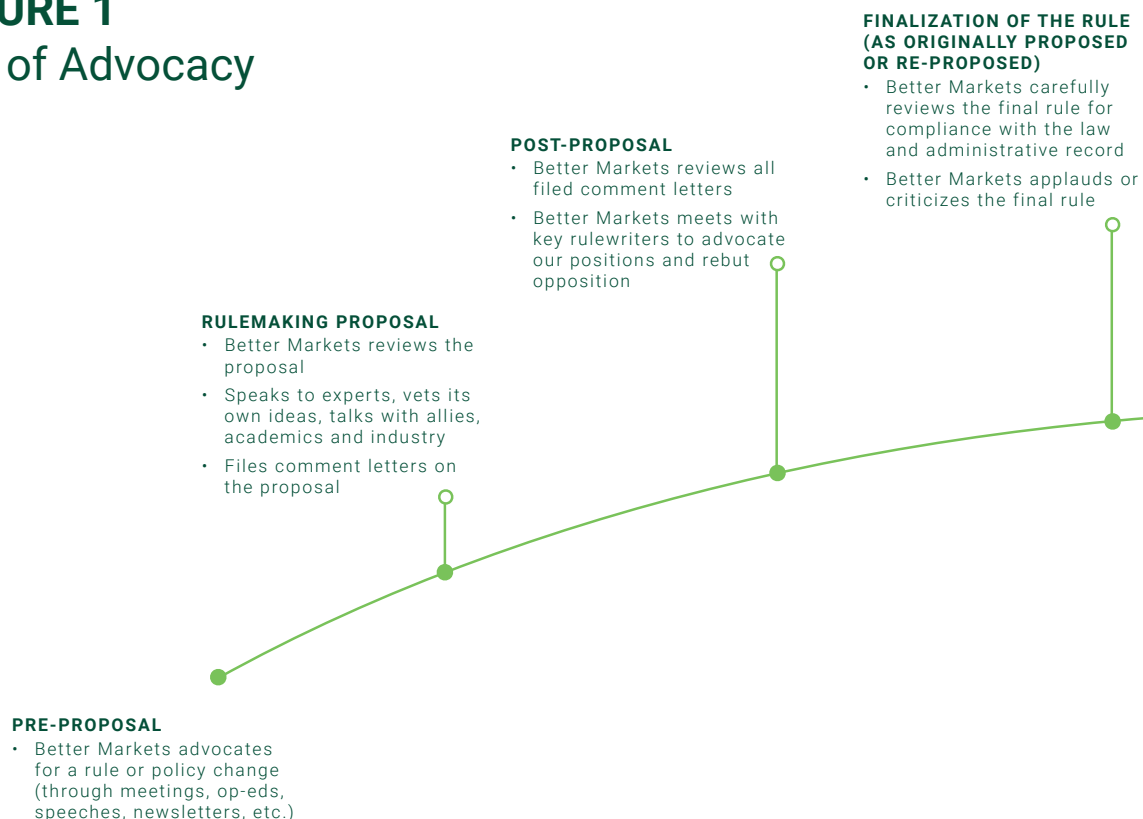


The Policymaking Cycle

It is important to understand that the lawmaking, rulemaking and policymaking processes are dynamic, fluid, interconnected and continuous, requiring simultaneous action in numerous arenas. Better Markets alone is active in all phases of the policymaking cycle with an “arc of advocacy” that involves the following steps:

1. A law or an amendment to a law is considered, proposed, debated, amended and passed.
2. A rule implementing a law is considered for proposal by an agency or department, sometimes with solicitation of public input on possible approaches.
3. An agency (or, often, a group of agencies together) or a department proposes and publishes a rule for public comment.
4. Comment letters are filed during the comment period.
5. After the comment period is closed and all the comment letters filed are made public, Better Markets meets with regulators to advocate in the public interest and respond to industry’s positions.
6. Often throughout this time, Better Markets meets with numerous other outside organizations and people to more effectively advocate for strong rules that implement the law and protect the public interest.
7. The agency considers all the information gathered from the public or otherwise submitted, as required by the Administrative Procedure Act.
8. If the agency finalizes the rule, it is published:
 - a. The agency then turns to implementing, interpreting and providing guidance on the rule.
 - i. Throughout this time, the industry is frequently working with the agency to get the rule implemented and interpreted as favorably as possible, including often in ways contradictory to the rule or to the law itself.

FIGURE 1
Arc of Advocacy



1. Even more often, the industry seeks a delay period — for as long as possible — before they have to comply with the rule.
 - ii. Better Markets rebuts the industry throughout these activities.
 - b. The agency must then enforce the rule.
 - i. Better Markets monitors this carefully and advocates for the strongest, most effective enforcement.
9. If the agency does not finalize the rule, it may re-propose a modified version or withdraw the rule:
 - a. This may be due to feedback the agency gets during the comment period or due to congressional or other pressure.
 - b. If the rule is re-proposed, the process starts all over again.
10. If the industry sues the agency, seeking to get the courts to throw out the final rule:
 - a. Often the rule is stayed, pending the outcome of the litigation.
 - b. Better Markets often participates in the litigation, most often by filing a “friend of the court” amicus brief supporting the rule, often focusing on the industry’s key lines of attack.
11. Throughout this process, the industry frequently tries to get its allies in Congress or the executive branch to stop or influence a rulemaking at an agency or department.
 - a. Hearings are held, and often, bills and amendments are filed to kill, weaken or interfere with the rulemaking.
 - b. Better Markets provides expert advice, information, and, often, testimony before Congress regarding challenges to rulemakings.
12. Throughout this process, Better Markets advocates across all media platforms to advance the rules or other public policies and to promote the public interest.

LITIGATION

- If the new rule is challenged in court, Better Markets supports the agency and the process via amicus briefs and other advocacy

IMPLEMENTATION AND INTERPRETATION

- Better Markets monitors how the rule is implemented and how the rule is interpreted by staff and agencies

ENFORCEMENT

- Better Markets monitors the enforcement of the rules
- Better Markets challenges the agency when such enforcement fails to uphold the law or fails to punish and deter lawbreakers

ROLLBACKS

- Better Markets works to defend the rule as either the agency rolls back its own rules or other Congress attempts to weaken the rule



Interview with Better Markets Chairman of the Board Michael Masters

Michael W. Masters is the Founder and Chairman of the Board at Better Markets. A highly-regarded expert on financial markets and financial regulation, Mr. Masters is the founder and managing member of Atlanta-based investment firm Masters Capital Management.

Why did you found Better Markets?

I founded Better Markets in response to the searing tragedy of the financial crash in 2008. I believe that this particular event required market participants like myself to become more involved in how the markets are regulated. Obviously, public markets require public participation and, thus require the trust and confidence of the American people.

My view is that regulation should be the product of a vigorous, informed debate where all sides, pro and con, are represented, including, importantly, the broad public interest.

I believe that's the only process that will generally result in the most informed and well considered regulatory framework which represents the broadest constituency. It's clear after the great financial crisis that policies that only work for intermediaries may not get the support of the broadest group of investors and citizens, which means market functioning will be impaired.

In fact, before the recent crisis, most policy makers and industry participants believed they alone knew the right policies and regulations, which often meant there was virtually no dissent or debate about those views. Frankly, almost any disagreement from outsiders was pretty quickly squelched. I founded Better Markets to try to reduce the likelihood of that situation happening again by creating an independent, substantive organization that could advocate for the public interest throughout the lawmaking, rulemaking and policymaking process. The idea for Better Markets was to ensure there was to be a consistent, real and balanced discussion about the pros and cons of financial and commodities markets policies and regulations, with the public interest foremost in those discussions.

Is that why Better Markets focuses on financial and commodities markets regulation?

Well, yes and no. I don't think of finance or financial and commodities markets regulation in a box separate from the larger economy and society's priorities, values and aspirations. Various kinds of regulation and finance are merely linking the means to certain ends. Finance exists to support the real economy, jobs and growth so all Americans can prosper, achieve their potential and have the ability to enjoy the American Dream.

Financial reform is essential to making that happen, but Better Markets doesn't exist just to fight for rules and regulations. The goals are the economic security, opportunity and prosperity of the American people. The means Better Markets works on to achieve these goals are a balanced, well-functioning financial system, that is less prone to crash and failure and which is focused on the real economy. While that *might* result from financial industry competitors promoting their own particular



economic interests, I think it's more *likely* to result with an independent voice in the process that is solely focused on promoting the public interest. The key is providing balance to the process so that all voices are heard, especially those in the general public that are affected by markets but without the specialized knowledge required to know what's important in the discussion.

It's also important to remember that financial markets require the trust and confidence of investors and the American people. The crash was an investor confidence killer. Making matters worse, not only did people see that the financial system failed them in the crash, they also saw large financial intermediaries bailed out while they were not. Our economic system and, likely our democracy cannot survive for long if people have lost faith in our financial system, economy and government.

So, in promoting the public interest, Better Markets is not only fighting for financial reform and for economic security, but also for a broader goal of helping to rebuild and maintain the broad public's confidence in our markets.

What sets Better Markets apart from other organizations?

Better Markets is unique in many ways, which has enabled it to be effective quickly and in many areas. First, it has a pro-business, pro-growth, pro-wealth, pro-markets philosophy while *also* being pro-rules. Second, many of the staff have substantial private sector experience to complement their public-sector backgrounds. Third, it has a professional, substantive staff with decades of experience and expertise regarding finance, financial reform, the economy and government. Fourth, it doesn't engage in common, but too-often counter-productive political activities. Fifth, it is genuinely nonpartisan, criticizing or praising Democrats and Republicans alike when they take positions on issues that Better Markets covers. Finally, it is independent, which enables it to take positions in the public interest regardless of who may -- or may not -- benefit.

I wanted an organization that understood markets, finance, Washington and the media. One that knew how to partner with people and organizations that shared our beliefs and positions, including, importantly, those in the industry. One that also knew how to get things done. That's Better Markets.

\$20,000,000,000,000

THE AMOUNT THE 2008 CRASH IS GOING TO
COST THE UNITED STATES

It understands that we all need a well-run financial system and talented people working in it, but it also knows that finance left to its own devices can be harmful. We believe that self-regulation by industry simply does not work well for the broad public interest. Finance needs clear rules and then has to be policed and held accountable. Better Markets functions as a counterweight to narrow self-interested entities to make the financial system work better and for the benefit of everyone, including all market participants.

These attributes enable it to be a substantive heavyweight with an informed and balanced perspective. It doesn't engage in name-calling or ad hominem attacks. There's too much stridency in Washington already and too many entities seem more interested in being bombastic and only critical of contrasting views.

Why is the work of Better Markets important?

Well there's the obvious answer, which is to avoid the tragic human suffering that financial crashes cause. We saw that in 2008 and the years that followed. Indeed, millions of Americans are still suffering from the great financial crisis today due to the ongoing aftershocks of this event, including underemployment, wage stagnation, drained savings, underwater homes, destroyed credit and high debt burdens. There's also the need to maintain the trust and confidence of the American people. Without that, our markets and economy can't function.

The less obvious answer is that Better Markets' work in fighting for a robust financial system supporting the real economy and avoiding financial crashes is critical to prevent the diversion of trillions of dollars away from the country's priorities and needs. As a Better Markets' "Cost of the Crisis" study demonstrated, the 2008 crash ultimately cost the United States more than \$20 trillion in bailouts, lower economic growth, and lost wealth.

Moreover, the trillions of dollars that were spent stopping the great financial crisis from becoming a second Great Depression and responding to the human calamities it created were trillions of dollars that could have been spent on many other priorities. Our country has limited public resources. Avoiding catastrophic costly financial events is imperative because that will enable society to devote those resources to other critical pressing social needs like education, health care, poverty, public research and development, and taking care of our environment.

That's why I believe that no matter what issue one cares about most, whether education, health care, poverty or science, one also should care about financial reform. A balanced, effective financial system supporting the real economy should produce growth and jobs, which will subsequently produce tax revenue, reduce social needs, and increase resources for other programs.

“Dennis Kelleher and his team at Better Markets have consistently pushed for financial reform that will help protect the U.S. economy from another financial crash. They are strong partners in the fight to level the playing field for middle class families, and have been persistent fighters for the American people, their jobs, savings and retirements.”



– SENATOR ELIZABETH WARREN

3

Core Programs



Better Markets' five core programs each combine a strategic mix of our core competencies: rulemaking, litigation, media advocacy, government relations, expertise and testimony, coalition building, research and policymaking advocacy. Each program also has an aggressive, multiplatform communications strategy to counter misinformation and fight for fact-based policymaking.

Financial Reform and Stability: Preventing Financial Crashes and Economic Collapse While Protecting Your Pocketbook, Our Shared Prosperity and America's Limited Resources

Ending Bailouts by Ending Too-Big-to-Fail Firms

Regulating Banks

No firm or company is protected from failure in an economy based on a free market, *except* a small group of enormous, uniquely dangerous financial firms. This handful of too-big-to-fail firms get bailed out because they pose a unique threat: If they fail, they could cause catastrophic damage to the country, including a second Great Depression. They want to remain too-big-to-fail because, as long as they are, U.S. taxpayers will have to bail them out, as they did in 2008 and 2009.

Banks Should Have a Plan for Bad Times

Better Markets has consistently advocated for Dodd-Frank rules that strengthen banks by increasing capital and liquidity requirements which reduces risks to all parties. We have also pushed over the years for strong, credible “living wills” from banks, which are blueprints for winding down the banks that do fail.

Living wills are a key step in ending the too-big-to-fail problem and preventing bailouts. Dodd-Frank requires that banks, however large or complex, have a detailed, credible plan that would enable them to be resolved in bankruptcy without significant collateral consequences to the financial system or the broader economy — in other words, have a living will.

Reflecting our years of advocacy, we outlined critically important steps regulators must take to make the living will process more transparent and



credible in a January 2016 policy brief: *Ending Too-Big-to-Fail by Breathing Life into “Living Wills.”* We insisted that the process, which involves regulators and financial institutions, should:

- Disclose publicly more information about living will criteria, purposes and methods;
- Involve creditors because they have the greatest incentives to ensure that bankruptcy, if it happens, works as well as possible; and
- Include public and expert input by establishing advisory committees for the process.

Banks must be required to publicly release significant details of their living wills, and the banking regulators who evaluate the plans must themselves release more information about the conclusions they reach. Such disclosure is essential for market discipline as well as public accountability.

We aren’t there yet, but we are moving in the right direction. After demanding better plans from Wall Street’s biggest banks since 2014, the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve reported in 2016 that the plans of Wall Street’s biggest banks were all credible, proving that when forced to do so, these banks can figure out how to fail without burdening American taxpayers. Also, to their credit, regulators have increased process transparency with each living will review.

Banks Should Have Adequate Capital

The single most important thing that keeps a bank from going bankrupt is its capital or equity cushion. The less capital it has, the quicker and more likely a bank is to go bankrupt — and if it’s too-big-to-fail, taxpayers will have to bail the bank out.

Dennis Kelleher, center, participating in PoliticoPro panel.





THE APPROXIMATE
AMOUNT OF
CAPITAL BANKS
LOST IN 2008



THE CAPITAL
CUSHION BIG
BANKS SHOULD
BE REQUIRED TO
HAVE TO PROTECT
TAX PAYERS.

That's why Better Markets has aggressively advocated for too-big-to-fail financial firms to have adequate capital. Based on independent research, we stress that these big banks should be required to have a 20 percent equity cushion. Notably, 20 percent is approximately what those banks lost in 2008, which was after the U.S. government de facto nationalized the financial system and taxpayers bailed out the banks.

Better Markets has used every arena — including rulemaking and public advocacy — to strengthen this key reform. In an *American Banker* analysis entitled “[Leverage Ratio Emerging as Crux of Post-Post-Crisis Reform](#),” Better Markets framed the issues, shaped the thinking on this key financial protection and pointed out that better-capitalized banks would facilitate lending, thus helping the broader economy.

Nonbanks and the Shadow Banking System

There are also many large, complex financial firms that are not banks but are vitally important to the financial system, the economy and the standard of living of every American. Before the 2008 crash, these firms included mortgage companies, insurance companies, broker-dealers, money market funds, hedge funds, private equity firms, investment banks and numerous others.

These nonbanks are part of what is referred to as the “shadow banking system.” They engage in bank-like activities — but some are partially regulated, some have fragmented regulation and others aren't regulated at all. Pre-2008 financial crisis, regulatory oversight of these areas was either entirely absent or woefully inadequate. They ballooned in size and risk, and during the crisis required massive bailouts. A partly regulated and partly unregulated financial system is fragile and unsustainable. Over time, unseen risk will build and a crash will result.

Ending this unregulated shadow banking system is an essential reform for stability and ending bailouts. Better Markets has advocated for an early warning system for our economy, one that scans the entire financial industry to identify and address any emerging threats. In addition, to the extent that there is a threat from a systemically significant nonbank (meaning one that is so large, interconnected, leveraged or complex that it is essential to the financial system, the economy or the country), some agency had to have the authority to regulate it properly.

Dodd-Frank assigned this dual mission to the Financial Stability Oversight Council (FSOC), a vital early warning system for the American people. Its missions are to identify and respond to emerging risks that threaten the financial stability of the United States and to identify potential systemic risks from nonbanks and designate them for appropriately enhanced regulation. FSOC members include all federal financial regulators and selected state regulators, and it is chaired by the Secretary of the Treasury.

Better Markets has been a consistent supporter of the FSOC since its creation, filing comment letters, writing op-eds, testifying before Congress, meeting with congressional staff and defending it in the media. Most recently, in June 2016, we filed a “friend of the court” amicus brief on behalf of the agency in the *MetLife, Inc. v. Financial Stability Oversight Council* lawsuit. The FSOC had designated MetLife, the global insurance and financial services company, as systemically significant. The FSOC detailed in its 300-plus page explanation that MetLife engages in complex, interconnected, high-risk financial activities, which in the event of financial distress, could adversely affect counterparties and force asset liquidations that transmit instability across our financial system. MetLife’s activities represent a classic shadow banking system giant that, before the establishment of the FSOC, had gone largely unregulated.

However, MetLife didn’t want the increased regulation and sued to overturn the FSOC’s decision. Better Markets has been the leading advocate defending the FSOC and urging the courts to enable the FSOC to continue its vital, unique role. Additionally, Better Markets has aggressively publicized the stakes in the case for the American people, ensuring that elected officials, policymakers and regulators are aware of what is happening in the courtroom.

Testifying about Shadow Banking on the Hill

The finance industry — one of the wealthiest and most politically connected industries in the country — is a constant presence throughout the Washington, D.C. legal and policymaking process, particularly in the Senate and the House. Consequently, Better Markets battles Wall Street there as much as we do at regulatory agencies, in the executive branch, before the courts and in the court of public opinion. This fight takes many forms, including providing expert advice to members of Congress and their staffs and giving oral and written testimony before U.S. House and Senate committees.

For example, in May 2016, Better Markets' securities specialist and legal director, Stephen Hall, testified before the U.S. Senate Committee on Banking, Housing and Urban Affairs' Subcommittee on Securities, Insurance and Investment, at a hearing entitled "[Improving Communities' and Businesses' Access to Capital and Economic Development.](#)"

He noted that money market funds (MMFs) — part of the shadow banking system — create systemic risk throughout the financial system. He warned against industry efforts to roll back recent money market reforms and called for new and more comprehensive measures from the Securities and



“Floating the NAV is necessary to help ensure that money market funds remain stable. It reduces an investor’s incentive to withdraw from a fund at the first sign of stress; it promotes fairness; and it corrects the basic misconception that money market fund investments cannot lose value. This reform should be allowed to take effect, not repealed [as the industry was arguing].”

– STEPHEN HALL, BETTER MARKETS’ SECURITIES
SPECIALIST AND LEGAL DIRECTOR

Over the Years: Testifying on FSOC and Shadow Banking

Frequently, Better Markets can be seen testifying on the Hill countering Wall Street's self-interested arguments and often dubious claims, and defending the interests of American families and taxpayers.

In one such case, CEO Dennis Kelleher testified in March 2015 before the U.S. Senate Committee on Banking, Housing and Urban Affairs at a hearing entitled "FSOC Accountability: Nonbank Designations." Supporting the testimony of Secretary of the Treasury Jack Lew, Mr. Kelleher's written and oral testimony, along with his answers to senators' questions, detailed the importance of the Financial Stability Oversight Council (FSOC), stressing that it is the first line of defense in identifying risks and eliminating dangerous, but unseen, threats to our financial stability.

Recalling the remarkable achievements of the relatively new agency, Mr. Kelleher advocated strengthening the FSOC and noted that the agency had already undertaken a comprehensive review to improve its procedures and transparency. Mr. Kelleher pointed out that the FSOC had conducted a broad-based, open process that involved all stakeholders, including the finance industry.

Exchange Commission (SEC) to fully address the risks they pose. Mr. Hall highlighted the importance of rules requiring MMFs to change to a floating net asset value (NAV) from an artificial and misleading stable net asset value - a reform that will make MMF's more stable in times of market stress. Mr. Hall also testified about other aspects of the shadow banking system, defending reforms to the securitization of real estate loans and cautioning against deregulation of firms that invest in small, and mid-size companies that pose higher risk than normal credit risks and cannot access capital from banks. In a vigorous back-and-forth among the senators and witnesses, Mr. Hall kept the focus on Main Street interests and on a balanced and properly regulated financial system that serves the needs of the real economy. More importantly, he warned of the dangers of returning to the pre-2008 two-tier regulatory system, where systemically significant shadow banks engaged in high-risk activities that resulted in huge losses and required bailouts.





THE DERIVATIVES
MARKETS HAD
BALLOONED TO
MORE THAN

\$700,000,000,000,000

Closing the Dangerous Derivatives Casino

Leveling the Swaps Playing Field

The threat of “weapons of mass financial destruction”:

Derivatives are critically important to the U.S. economy, which has many global aspects like shipping products overseas or importing products or materials into the United States. All this economic activity involves risks, including market, credit and currency risks. The derivatives markets can be very useful in mitigating those risks through hedging and offsetting risk, which facilitates if not enables global commerce in goods and services. Because derivatives markets support the real economy, it is crucial that they function properly.

However, in the 2008 financial crash, derivatives (particularly swaps) played a uniquely destructive role, both as vehicles for packaging and concealing worthless financial products and as conveyor belts for distributing these risks throughout the entire global financial system. That’s why Warren Buffett called them “weapons of mass financial destruction.” By 2008, the derivatives markets had ballooned to more than \$700 trillion, but only a small fraction of that was related to the real economy. The vast majority of this trading was no more than gambling among the too-big-to-fail financial firms, and when those bets went wrong, the derivatives caused massive losses, crippling the firms and resulting in bailouts to prevent bankruptcies.

As a result, an entire chapter of Dodd-Frank is devoted to eliminating or reducing the risk of derivatives trading and to bringing transparency and competition to those markets. Because derivatives are uniquely dangerous and destructive, Better Markets has focused on implementing derivatives financial



Book event for John Kay's "Other People's Money". Left to right: Dennis Kelleher, Matthias M. Matthijs, and John Kay.

reform and has participated in more than 40 rulemakings regarding derivatives — primarily at the Commodity Futures Trading Commission (CFTC), but also at the SEC, the Federal Reserve and other regulatory bodies. Since derivatives and derivatives regulation are complex, often requiring specialized knowledge, Better Markets is almost always the only non-industry participant in these rulemakings.

Policy advocacy:

Beginning as early as 2010, Better Markets has filed comment letters, met with regulators and defended derivatives financial reform in court rooms and in the court of public opinion. It has also issued reports, policy briefs and facts sheets in support of strong derivatives rules. For example, in February 2016, Better Markets issued a policy brief entitled "[Stopping Wall Street's Derivatives Dealers Club](#)," which proposed concrete solutions to some of the biggest challenges remaining in the markets.




A key innovation of derivatives reform was the creation of swap execution facilities (SEFs), which were supposed to be exchange-like trading venues where most – if not all – swap trading could be executed. If regulated properly, SEFs would bring transparency, oversight and competition to the swaps markets. Pre-reform, swaps were unregulated and only a handful of Wall Street’s biggest banks traded virtually 100 percent of them, killing competition with impossibly high barriers to entry among other anti-competitive practices.

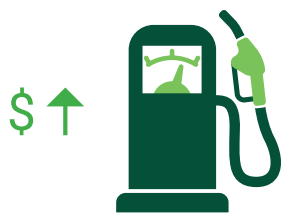
This system gave those few Wall Street banks enormous market clout and unfair advantage, to the detriment of consumers, our financial system and the economy. These practices also amplified the systemic risk by concentrating hundreds of trillions of dollars of nontransparent and unregulated derivatives trading into just a few massive, systemically significant institutions.

The Better Markets’ brief detailed what the CFTC must do to stop key derivatives reforms from being undermined, if not defeated, by those same market participants who do not want a level playing field, transparency or competition. Working with allies, including those in industry, Better Markets has used this brief to advocate for the proper and full implementation of the rules, including the following actions:

- Break up the derivatives dealers’ club oligopoly, which is using its market power to prevent the development of a free market;
- End the anti-competitive, two-tier dealer-to-dealer, dealer-to-customer markets;
- Prohibit post-trade name give-up;
- Regulate fully all derivatives activities within the United States;
- Enforce agency rules on impartial access to SEFs;
- Promote harmonization with global regulators; and
- Act to limit finance industry evasion of U.S. policies.



Main St.



The Battle to Stop Wall Street Speculators from Increasing Prices for Commodities Like Oil, Gas and Cereal

If you put gas in your car, heat or cool your home, or eat cereal for breakfast, you have a personal economic stake in commodity prices, which are dictated by commodities markets. Those markets are supposed to be determined by supply and demand: The more oil there is (supply), the lower gas prices should be (if demand doesn't also rise). However, too often, commodity prices rise and fall regardless of supply and demand. This happens when financial speculators gamble in the commodities markets, which often makes prices swing wildly for no apparent reason.



The 1936 Commodity Exchange Act prohibited "excessive speculation." Enacted to protect producers and purchasers of physical commodities (so-called "physical traders"), the law is supposed to limit financial speculation and prevent speculators from overwhelming and corrupting the commodities markets. Speculators have historically been allowed to participate in the commodities markets for the limited purpose of providing physical traders with sufficient liquidity.



However, following the deregulation frenzy of the 1990's, Wall Street created and marketed a new financial product called "commodity index funds" (which at one point exceeded \$400 billion).



As a result, financial speculators have overwhelmed the commodities markets and created boom-and-bust cycles.

Better Markets' research demonstrated that commodity speculation had increased so much since the early 2000s that it was crowding out physical traders and adding massive volatility, causing swings in prices and hurting consumers. That's why Better Markets has advocated for the CFTC to end excessive speculation under the original Commodity Exchange Act and under new provisions in Dodd-Frank. Those provisions were added in part due to the research and advocacy of Better Markets' founder, Mike Masters, who testified before Congress and the CFTC seven times, detailing how excess speculation harmed producers, hedgers, markets and consumers.

Through reports, comment letters, meetings, public advocacy, work with allies and legal actions, Better Markets has fought relentlessly since Dodd-Frank was passed to restore the commodities markets to their intended purpose: serving physical traders to limit risk and stabilize prices, ultimately for the benefit of consumers. Furthering this work requires the CFTC to strengthen its rules and impose significant limits on speculators in general and commodity index funds in particular.



Pressing the CFTC to Prevent Rising Commodity Costs

Better Markets began its commodities market advocacy at the CFTC with a groundbreaking commodity index fund report in 2008 and followed up with another comprehensive report in 2010. The reports demonstrated how commodity price volatility has impacted American families through increased prices for food, fuel and clothing. Our research showed that this volatility was heavily influenced by the monthly artificial buy-sell activity of the commodity index funds unrelated to the physical supply and demand for any particular commodity, raising costs for everyone.

These reports were followed by numerous meetings with the CFTC, more than ten comment letters filed with the agency on its various commodity position limit proposals over the years — including two in 2016 — and other advocacy initiatives.

Better Markets put the issue of commodity index fund speculation on the policymaking agenda in Congress, at the agencies and in the media.

While the CFTC did finalize a position limits rule in 2011, the industry sued to stop it from being implemented. In April 2012, Better Markets filed an amicus brief with the U.S. District Court for the District of Columbia in support of the CFTC and the rule. However, later in 2012, the U.S. Circuit Court of Appeals for the District of Columbia vacated the rule and sent it back to the CFTC for further consideration. The CFTC re-proposed the rule in 2013, and Better Markets submitted its comments and met with agency staff and commissioners.

The CFTC never finalized that rule and, in early 2016, re-proposed yet another rule. Better Markets again commented on the rule, arguing that it failed to comply with the law and would not curb — much less end — excessive speculation even by traditional speculators.

“Derivatives are weapons of mass financial destruction.”



—WARREN BUFFETT

Inexplicably, the rule did not mention commodity index funds. Additionally, the re-proposal would reduce the CFTC's ability to regulate excessive speculation in the commodities markets by delegating some of the agency's key duties and authorities to the *industry's* for-profit exchanges.

In May 2016, the CFTC released a supplemental position limits proposal that only considered the delegation of authority to the for-profit exchanges. Under that proposal, the exchanges would be allowed to grant bona fide hedging exemptions. Better Markets commented on the proposal to object to such procedures.

In its two 2016 comment letters and in related meetings and advocacy, Better Markets argued that the CFTC should maintain exclusive authority in granting bona fide hedge exemptions because the agency is best able to evaluate and decide who should receive these exemptions in the public interest. Additionally, Better Markets advocated for more stringent position limits and the inclusion of commodity index funds within the scope of the rule.

This is a battle that will continue as Better Markets pushes the CFTC to protect physical traders, the markets and consumers' pocketbooks.

Global Financial Reform on Derivatives

Better Markets works to stop firms from dodging U.S. rules merely by moving operations overseas — because as the saying goes, too-big-to-fail firms “live globally but die locally,” with U.S. taxpayers footing the bill no matter where their operations are located.

This is particularly true for derivatives, which embedded financial time bombs throughout the global financial system. AIG, Goldman Sachs, Lehman Brothers, Bear Stearns, Citigroup, JPMorgan Chase — and so many more — engaged in offshore derivatives activities.

Since Dodd-Frank was passed in 2010, the biggest banks and their allies have fought derivatives rules relentlessly. Nevertheless, Better Markets has achieved significant victories over the years that, while not perfect, have established strong protections for the American people. Building on past rules — and longtime Better Markets advocacy — the latest example came in May 2016, when the CFTC finalized its cross-border margin rule, which stops global derivatives dealers from searching the world for the biggest loopholes for their high-risk trading.

These gigantic banks can no longer evade U.S. rules by making cosmetic changes to their corporate structure, a legal sleight-of-hand referred to as “de-guaranteeing.” The final rule captures foreign affiliates whose transactions may have previously escaped U.S. margin requirements.

Preventing U.S. Financial Firms From Evading U.S. Rules Through “Cross-Border” Regulation

The U.S. government and taxpayers took the lead in stopping the last financial crisis and bailing out the global financial system. Of course, global coordination was key, but without the U.S. carrying the load, the global financial system would have collapsed.

For example, the federal government bailed out the global insurance giant AIG, which sold insurance in the form of credit default swaps. That bailout, which amounted to more than \$180 billion, enabled AIG to pay its 25 counterparties, 17 of which were foreign financial institutions. In addition, many foreign financial institutions received funds from the Federal Reserve. In fact, nine of the top 20 financial firms using Federal Reserve emergency lending facilities were foreign financial institutions.

In the international financial regulatory arena, Better Markets seeks to prevent a global race to the regulatory bottom. National governments often disregard risks as they compete against each other to have the lightest rules, a tactic to attract global banks to their countries, thereby creating jobs, tax revenue and (although it is never admitted) lucrative employment opportunities for ex-politicians and regulators. As a result,

advocating for rules overseas is often as important as advocating for rules in the United States.

Better Markets’ advocacy regarding cross-border regulation has been extensive, including filing over ten comment letters on related rulemakings and sending several additional letters to the CFTC, SEC and U.S. Treasury Department; engaging in traditional and social media advocacy; working with international partners; and filing an amicus brief in the 2014 case of *Securities Industry and Financial Markets Association v. United States Commodity Futures Trading Commission*, supporting the need for cross-border guidance and the application of derivatives rules to cross-border transactions.

To fight for global financial reform rules, Better Markets has partnered with and shares staff with Brussels-based Finance Watch in fighting for global rules. In London, Better Markets also has a senior fellow who is a global voice for financial reform, focusing on the buy side and emphasizing the need for strong global regulatory standards. In addition, President and CEO Dennis Kelleher travels to European capitals to meet with elected officials, policymakers and regulators to advocate for strong, uniform global rules.



Selected International Activities:



Selected International Media:



Over the Years: Better Markets in Brussels, London and Beyond

The financial industry often plays countries and regulators against each other, prompting a global race to the regulatory bottom. Better Markets works overseas with elected officials, policymakers, regulators, industry, NGOs, civil society organizations and others to ensure that U.S. financial rules cannot be evaded and to support stronger cross-border rules.

For example, Better Markets participated in [a conference hosted by its Brussels partner organization, Finance Watch](#). At the “Long Term Financing Agenda” conference, President and CEO Dennis Kelleher delivered a speech that outlined the challenges facing financial reform advocates and reminded the audience why financial reform is not only a crucial step to global economic prosperity and stability, but also a necessary condition for achieving those goals. A key focus of Mr. Kelleher’s speech was countering the false societal choice between economic growth and financial stability. Mr. Kelleher noted that nearly a century of history shows that just the opposite is true: Financial stability is the key foundation for economic growth. Better Markets’ senior fellow, Robert

Jenkins, is also a frequent speaker at conferences throughout Europe on the necessity for setting high global standards for financial reform rules.

European and other global regulators often meet with Better Markets’ staff and attend presentations at Better Markets’ offices in Washington, D.C. when they are in the United States. For example, members of the European Parliament as well as the European Commission meet with Better Markets’ staff to discuss the global state of finance and financial reform. Other global policymakers and regulators — including those from countries in the Middle East and Asia, as well as G20 members and the International Organization of Securities Commissions — also meet with Better Markets to discuss financial markets and financial reform.

There is still significant financial reform work to do in Europe and around the globe. We must work together to the maximum extent and remain vigilant to prevent another global race-to-the-regulatory-bottom and another financial crash.





Better Markets meeting with members of the European Parliament's Committee on Economic and Monetary Affairs.

Over the Years: Exposing the “De-guarantee” Dodge

U.S. derivatives dealers have tried to avoid key derivatives rules by claiming that some of their foreign affiliates are not guaranteed and, therefore, not subject to U.S. rules. This was not due to a limitation in the Dodd-Frank law, which was written to be all-encompassing because derivatives trading pre-crash was done by wholly owned or guaranteed foreign affiliates. Yet, once the Dodd-Frank rules were finalized, each of the major U.S. derivatives dealers erased the word “guarantee” from the governing documents for at least one of their foreign affiliates and then claimed — voilà — that these entities were not covered by the rules because they were not guaranteed and any trading losses would therefore not have to be paid by the U.S. dealer.

This scheme is called “de-guaranteeing” and is nothing more than a phony loophole concocted by Wall Street lawyers seeking to avoid rules necessary to protect U.S. taxpayers from another financial crash. However, the customers, clients and counterparties of the foreign affiliate

understand they are dealing with a “de facto guaranteed affiliate” of the U.S. bank and expect the U.S. bank to stand behind the foreign affiliate regardless of whether the word “guarantee” appears in the official documents. After all, global derivatives parties are not going to enter complex, high-risk, billion-dollar derivatives trades with some “mom and pop” foreign affiliate. If any of them did, there would be a very significant price differential for the risk associated with doing such trades with an unguaranteed affiliate.

To demonstrate that this dodge was nothing more than an industry-created loophole, Better Markets published a “[Cross-Border Fact Sheet](#)” that proposed a relatively simple, market-based solution called the “de facto guarantee test.” This test would enable regulators to determine which foreign affiliates are genuinely not guaranteed and which ones are de facto guaranteed and pose an unacceptable risk to U.S. taxpayers.

Preventing Rollbacks in the Courts

Industry attempts to use litigation to delay, dilute and roll back the Dodd-Frank regulatory framework have posed a constant threat. Members of the finance industry, usually represented by powerful and well-funded trade associations, often view the courts as a critical final frontier.

These legal challenges typically include allegations that the agency acted outside the scope of its statutory authority, acted arbitrarily in its judgments or failed to conduct a sufficiently detailed cost-benefit analysis of a rule – even in cases where Congress clearly did not require the agency to do so.

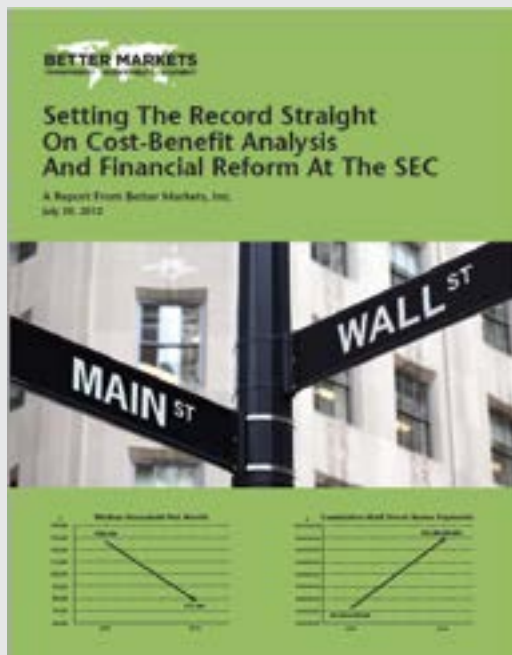
Further, these claims are usually accompanied by unsupported, sky-is-falling predictions that a rule will have devastating consequences for a particular industry, the financial markets or even investors themselves – or, worse, they are supported by paid-for studies relying on incomplete and inaccessible data under the exclusive control of the industry.

Better Markets has been a relentless opponent of these attacks in the courts. Since its founding, it has filed numerous amicus briefs to help defend the financial protection agencies and their most important rules, uphold other agency actions and preserve interpretations of the law that promote stability and accountability in our financial system.

Fortunately, the trend in recent years has seen the courts rejecting baseless and largely speculative industry claims, in whole or substantial part, and often Better Markets' advocacy has made the difference.



Over the Years: Exposing Disingenuous Industry Use of Inapplicable Cost-Benefit Analysis



For years, the financial industry has attempted to indoctrinate policymakers and judges with the notion that all rules, even those enacted by the independent financial protection agencies, must be subjected to rigorous cost-benefit analysis before being adopted. The strategy is clever because cost-benefit analysis has an intuitive appeal: It sounds like a wholesome, reasonable and even scientific way to approach the difficult problem of regulating complex financial markets. It became one of the main weapons in the financial industry's arsenal. They used it on Capitol Hill, in the executive branch, at the regulatory agencies, in the courts and in the media. They also lined up academics and others to sing the praises of cost-benefit analysis, usually without any suggestion of what it would mean to Main Street and hardworking Americans.

2012

In July, Better Markets published the trailblazing and widely influential report "[Setting the Record Straight on Cost-Benefit Analysis and Financial Reform at the SEC](#)." It countered the industry's self-interested, one-sided demands for a one-size-fits-all, quantitative, onerous cost-benefit analysis — at a time when such demands had been gaining traction in the courts and Congress. Better Markets outlined the legislative history, policy rationale and legal precedents of the law, as well as the real-world public-interest impacts of imposing an impossible-to-meet cost-benefit analysis. True cost-benefit analysis would reflect costs imposed on the industry to force them to internalize costs that they had externalized and shifted to the public.

Better Markets' report concluded that cost-benefit analysis really represents an "industry-cost only" analysis that grossly undervalues the public interest in financial protection rules. It is biased toward industry costs, while it minimizes — or ignores — the many hard-to-measure public benefits of regulation, which include preventing financial crashes; avoiding bailouts; ending dangerous, high-risk activities; reducing fraud in the capital markets; avoiding the human suffering that results from financial crashes and fraudulent schemes; and instilling and sustaining investor confidence, the foundation of our capital markets.

Cost-benefit analysis is also conducted on a rule-by-rule basis, an isolated context that ignores the interrelated,

comprehensive and cumulative value of an entire set of rules designed to prevent the multitrillion-dollar costs of another financial crisis. And while cost-benefit analysis offers little genuinely useful guidance in the rulemaking process, it nevertheless consumes enormous agency resources, slowing the rulemaking process to a crawl. On top of all that, cost-benefit analysis sets the stage for an all-too-easy legal challenge in court, where industry can always argue that the agency's analysis was imperfect.

What the industry almost never mentions is that the law already requires financial protection agencies to consider, to varying degrees, the economic impact of their rulemakings. Such a flexible stipulation is appropriate because it allows ample room for prioritizing the public interest rather than just the quantitative costs that industry has to bear, thus ensuring a balanced, reasonably safe and stable financial system. And it helps ensure that the regulated industry internalizes the costs and risks associated with their activities so those costs and risks are not externalized and unfairly shifted to the public.

Without a clear directive in the law and a sound reason for **not** putting the public interest above industry costs, biased "industry-cost only" analysis masquerading as a neutral cost-benefit analysis should not be required or undertaken.

2015

In the courts, at least, a positive trend has emerged. More recent decisions from the federal district and appellate courts have rejected industry insistence that a rule be invalidated because an agency didn't conduct rigorous cost-benefit analysis. Better Markets has submitted amicus briefs in those cases, often focused solely on this critical argument.

For example, Better Markets submitted an amicus brief to the U.S. Court of Appeals for the District of Columbia Circuit defending the risk retention rule developed by the SEC (in *Loan Syndication and Trading Association v. United States Securities and Exchange Commission; Board of Governors of the Federal Reserve System*). The congressional mandate and the rule were designed to eliminate one of the primary causes of the financial crisis: The tactic of assembling thousands of poorly underwritten subprime mortgage loans doomed to fail, packaging them into complex securities or derivatives and off-loading them to unsuspecting investors — with no risk and large profits. The rule requires the financial firms to retain some of the risk in the financial products they sell so that they would have some incentive not to package and sell worthless products to pocket the upfront fees.

The federal district courts hearing the case on remand from the appellate court ruled in favor of the agencies and rejected all of the industry's arguments. It ruled that, as Better Markets had argued, the SEC had no obligation to conduct a cost-benefit analysis and that it had reasonably executed its limited duty simply to consider certain economic implications. The court emphasized, also in keeping with Better Markets' advocacy, that the agencies appropriately refrained from questioning Congress' basic premise that risk retention rules were necessary, even though they would in fact impose costs on the industry. The court explained that the SEC and other agencies had to promulgate a rule and they correctly relied on Congress' determination that the costs of the rule were necessary and appropriate in rehabilitating the securitization markets by requiring securitizers to keep sufficient skin in the game.

“Wall Street keeps pounding Washington. Fighting any attempt to rein in the too big to fail banks. Corporations. Lobby groups. Front groups. Bought and paid for members of Congress. ... Keep the revolving door well oiled. Who’s fighting back? Better Markets.”

Corporate Crime Reporter



Defending Main Street: Protecting Consumers, Investors, Retirees and Financial Markets

Putting Investors and Retirement Savers First

As employers drop traditional pension plans, individuals trying to save for retirement must navigate a bewildering array of complex financial products and services on their own.

Most Americans turn to brokers, insurance agents and other advisers to help them make the complicated decisions to save and invest wisely for their retirement. But they are probably unaware of the conflicts of interest of those advisers, which put their savings and retirement at risk. Every year, these Americans lose tens of billions of dollars.

After years of work, in 2016, Better Markets won a dramatic improvement in the quality of investment advice retirement savers receive from their financial advisers.

Better Markets and a coalition of organizations — against massive industry opposition — supported the Department of Labor (DOL) in finalizing a rule that unequivocally requires all financial advisers to act in the best interest of their clients when offering recommendations about retirement accounts (referred to as the “fiduciary duty,” similar to the duties doctors and lawyers owe their patients and clients).

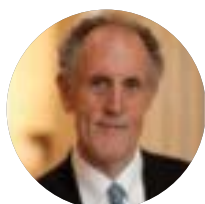
The law had already required anyone providing investment advice to retirement savers to act in their best interests, but over 40 years, the DOL’s rules had been filled with loopholes and evasions that basically nullified the law. Under the Obama administration, the DOL drafted a new rule but, after encountering intense opposition from the financial industry, withdrew it in 2010. Better Markets went to work to make sure the DOL and the administration would follow through and to enact a strong rule to protect America’s retirees and workers saving for retirement.

Countering Industry Arguments

The industry opponents of the rule launched attack after attack, claiming that it would actually hurt retirement savers by increasing the cost of advice, that more disclosure would serve just as well as a strong and clear fiduciary duty rule, and that the DOL was actually usurping the SEC’s role as a regulator of advisory activities.

Better Markets countered all of these false claims in numerous comment letters, briefings, public appearances, panels, testimony at hearings convened by the DOL, testimony before a U.S. House Committee on Education and the Workforce panel, countless media interviews and multiple amicus briefs filed in court cases where the rule was repeatedly challenged.

“Talk about David and Goliath. [Better Markets] is David, and they really are the only ones in many ways. They are the one organization on the line making the pro-reform points that have to be made in order for the regulators to say ‘We passed this regulation because we know this.’”



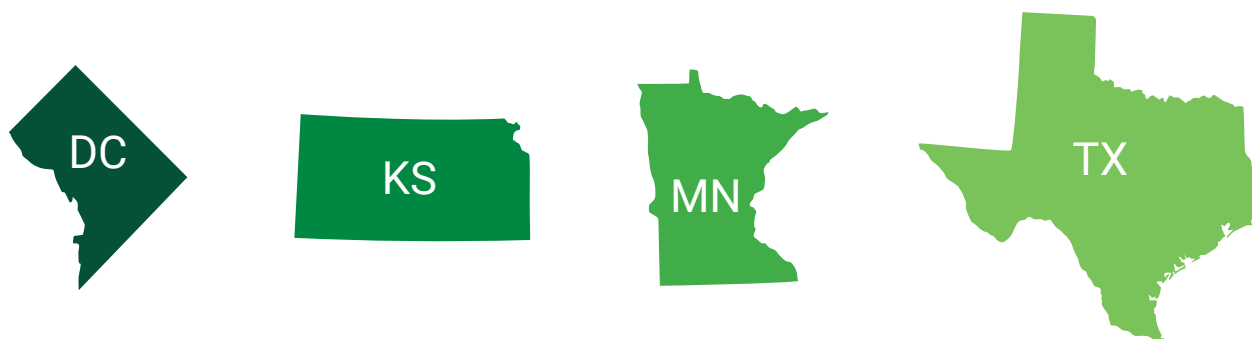
– TED KAUFMAN,
FORMER SENATOR

Working with Partners

When the agency regrouped and began writing a new-and-improved rule, Better Markets convened, organized and helped lead a coalition of consumer, labor and senior citizen advocates to support the DOL's new rulemaking effort. This culminated in the 2016 victory for retirement savers and investors. (See the "Save Our Retirement" sidebar for a timeline of the campaign to finalize the rule.)

The Fight for Retirees Continues in Court

Soon after the DOL published the final rule in April 2016, opponents launched a host of lawsuits in federal courts around the country, including in D.C., Kansas, Minnesota and Texas. Better Markets helped mobilize and coordinate a series of amicus brief filings in those cases. With an emphasis on the extraordinary importance of the rule and a series of arguments exposing the unfounded claims made by the industry plaintiffs, Better Markets and its allies have helped persuade the courts that the DOL conducted a thorough and thoughtful rulemaking process, that its judgments about the need for the rule were well-founded, and that the provisions of the rule were appropriately designed to address conflicts of interest among advisers, notwithstanding the costs that the rule would impose on the adviser industry.



While much litigation continues, every court so far has issued detailed, substantive decisions ruling squarely in favor of the DOL and the rule, and rejecting every one of the industry's numerous attacks.

Save Our Retirement Coalition

To support the Department of Labor (DOL) in writing a new rule to require all financial advisers to act in the best interest of their clients (such as employees managing their own 401k retirement funds), Better Markets sprang into action:



- January 2015: Better Markets, along with six other organizations (AARP; AFL-CIO; American Federation of State, County and Municipal Employees; Americans for Financial Reform; Consumer Federation of America; and Pension Rights Center) publicly announced the “Save Our Retirement” campaign and the launch of a new website dedicated to educating the public and mobilizing support for the rule: www.saveourretirement.org.
- As the industry mounted a fresh assault on the DOL’s rulemaking process, the coalition helped counter that opposition on all fronts: at the DOL, on the Hill, in the White House, in the media and, ultimately, in the courts.
- Throughout the process, we met repeatedly with the principals and staff of the DOL (including the Secretary of Labor) responsible for writing a better, stronger rule.



Supporters of the DOL's fiduciary duty proposal at AARP to recognize White House support

- February 2015: Better Markets and our coalition partners sponsored an event at AARP headquarters with Senators Elizabeth Warren and Cory Booker – and featuring President Barack Obama, who declared his strong support for a new rule and called upon the DOL to issue it without delay.
- April 2015: After the proposed rule was released, we submitted extensive comment letters urging the DOL to hold firm on the many strong provisions in the proposal and to improve it in some areas.
 - While the proposal was under review, we met with the director of the Office of Management and Budget and the administrator of the Office of Information and Regulatory Affairs, the offices charged with reviewing all executive department rules to make sure they comport with executive orders that set forth the administration's rulemaking policies.
- June 2015: President and CEO Dennis Kelleher testified before the U.S. House Committee on Education and the Workforce's Subcommittee on Health, Employment, Labor and Pensions to strongly support the rule and to counter the specious arguments advanced by the adviser industry.
 - Also on the Hill, we held numerous meetings with House and Senate offices, including leadership, to explain why this rule was so urgently needed. Better Markets and others in the coalition conducted Hill staff briefings throughout the process to provide the facts and data demonstrating the need for a rule that requires advisers to act in the best interest of retirement savers.

- August 2015: Our legal director and securities specialist, Stephen Hall, testified at an unprecedented four-day hearing convened by the DOL to gather yet more perspectives on the proposed rule.
 - In the media, we developed a series of educational and advocacy pieces responding to the attacks being launched against the rule. These included fact sheets, letters, op-eds, interviews with mainstream and industry press, and a full-page ad in *Politico* in support of the coalition.

- April 2016: The rule is finalized by the DOL.

Throughout the rulemaking process, and to this day, Better Markets and its coalition partners have filed many comment letters with the DOL, not only in strong support of the rule, but also in strong opposition to recent efforts to weaken and roll back the rule initiated by the new administration.



"Thank you, Better Markets."
-President Obama



WHOSE SIDE ARE YOU ON: WALL STREET OR RETIREMENT SAVERS?

Right now, Wall Street lobbyists are working behind closed doors with some members of Congress to kill a long overdue Department of Labor (DOL) rule that would protect hardworking Americans trying to save for retirement. These special interests want to preserve the status quo that allows some financial advisers to recommend overpriced, underperforming investments that enrich their bottom line at the expense of their clients. It's costing Americans billions of dollars in lost retirement savings every year. The DOL's rule will ensure that investment advice about retirement savings is in the client's best interest, not the adviser's.

**Side with retirement savers, not Wall Street special interests.
Don't block the DOL rule.**

AARP • AFL-CIO • AFSCME • Americans for Financial Reform
Better Markets • Consumer Federation of America • Pension Rights Center

saveourretirement.com

Defending the Consumer Financial Protection Bureau

Consumers are too often the victims of predatory, high-risk, reckless and criminal conduct. For example, the 2008 crash wasn't just a historic financial bubble on Wall Street; it also came with almost 16 million foreclosure filings on Main Street, often resulting from consumers being tricked or lied to about the terms of their mortgages. The foreclosures are egregious, visible examples, but consumers must endure ongoing financial rip-offs year-in and year-out in too many other financial products, including savings and checking accounts, payday loans and credit and debit cards.

That's why Better Markets defends America's most successful consumer protection agency, the Consumer Financial Protection Bureau (CFPB), which in just five years has returned more than \$12 billion to more than 27 million Americans cheated by financial predators. The agency's success has prompted the financial industry to work overtime to kill it. The industry wants to keep the billions of dollars it rips off from the American people and it doesn't want an effective cop on the beat protecting consumers rather than their profits.



To remain effective, the CFPB must be independent, well-funded and aggressive. The financial industry is fighting the agency's ability to be all three, even baselessly questioning the CFPB's legality. When the constitutionality of the agency and the hiring of its director, Richard Cordray, were challenged in court, Better Markets relentlessly advocated for the CFPB, declaring that:

"The CFPB has been effective because the law insulates it from political interference by Wall Street's political allies. The law provides for a single Director with a five-year term who can only be fired for cause and the CFPB's budget is independent. These are key protections for American consumers of financial products who would otherwise have little protection from financial predators."



HISTORIC FINE

TOTAL JOINT
SETTLEMENT

Better Markets also frequently brought other concerns about the industry's attacks on the CFPB to the attention of the public, including in the *Los Angeles Times* and *The New York Times Magazine*. In addition, Better Markets highlighted the agency in an exclusive August 2016 one-on-one interview of President Dennis Kelleher by Jared Bernstein for *The Washington Post*.

In the rulemaking arena, we filed a [comment letter with the CFPB](#) to support its proposal limiting the ability of financial firms to force customers into industry-biased arbitration proceedings, allowing ripped off Americans to keep their right to go to court is a key consumer protection.



Better Markets' advocacy focusing on protecting the CFPB has contributed to big wins for consumers. In September 2016, the agency announced a record-setting \$100 million fine as part of a \$185 million joint settlement with Wells Fargo for engaging in years of fraudulent and illegal activity by creating fake consumer accounts. In TV appearances on CNBC, in an Op Ed in the *American Banker*, in other media outlets such as the *Los Angeles Times* and in speeches, Better Markets outlined the key role the CFPB played in investigating the bank, charging it and bringing the scandal to the public's attention.

Stopping Market Predators

Preventing Another Flash Crash and High-Frequency Trading Abuses

Flash Crash:

Better Markets has been at the forefront of highlighting twenty-first-century risks for investors and markets. The technology shift to a world of primarily electronic trading by algorithm and high-frequency trading has changed the way markets and market participants operate. While partly beneficial — permitting faster execution, lowering some costs and streamlining market operations — this transition significantly increases the risk of major market disruptions and the potential for systematic exploitation of investors through predatory conduct.

For example, in 2010, the stock market lost almost \$1 trillion in just minutes, before bouncing back about \$1 trillion in what has been called the “Flash Crash,” but more appropriately should have been called a “\$1 trillion bungee jump.” The cause or causes of this crash were incredibly difficult to determine and they remain disputed. After an investigation that spanned many months, the financial regulatory agencies jointly concluded that a bad algorithm at a single mid-West financial firm caused the crash. However, in 2015, the Department of Justice and the CFTC charged a “lone wolf” trader in the UK with contributing to — if not causing — the crash, alleging that he worked from home and used slightly modified, store-bought software to manipulate the markets. This raised very serious doubts about the conclusions of the earlier study.

As troubling as this specific case is, it is likely just the tip of the iceberg of predatory high-frequency trading. While the markets and market participants move at the twenty-first-century speed of a



Dennis Kelleher and Themis Trading's Joe Saluzzi

nanosecond, our regulators and prosecutors are still in the nineteenth century horse-and-buggy era.

Advocating for Reform: Congressional Commission

To highlight the need for real reform, in [a May 2015 letter to congressional leaders](#), former Senator Ted Kaufman and Better Markets President and CEO Dennis Kelleher called on Congress to create an independent commission to investigate the Flash Crash. Only a congressionally-created, independent commission with full subpoena power and the ability to hear testimony and recommend reforms will be able to thoroughly investigate what happened, including why the many prior investigations were so deficient.

Advocating for Reform: Consolidated Audit Trail

The Flash Crash made the need for a comprehensive and accessible data trail — a consolidated audit trail (CAT) — imperative. Better Markets called on the SEC to adopt a comprehensive, real-time CAT, which would allow regulators to monitor, track and investigate trading in the securities markets.

In 2016, the SEC proposed a weak, industry-friendly CAT plan for public comment. As the only public interest group to file a comment letter and engage in the rulemaking process, Better Markets argued that the CAT system should be exclusively controlled by the federal government on behalf of the public, with continuously updated and cutting-edge technological capabilities at its disposal.

In November 2016, investors, the public interest and the financial markets won a partial victory. The SEC finalized a CAT plan that will be a nonprofit entity with significant SEC oversight and technological capabilities periodically upgraded to largely keep pace with the industry. The SEC will also have unfettered access to the data, but there remain some troubling aspects of the CAT system that will require vigilance and monitoring.

“It’s good to get some balance into the mix. My mom and your mom don’t usually have somebody [like Better Markets] who’s going to spend the time reading the detailed rules, and do not necessarily have the same resources or desire to be into the minute details that the large financial interests on the other side of this debate do.”

— GARY GENSLE,
FORMER CFTC CHAIRMAN



The Investors' Exchange (IEX): Supporting Private Market-Based Solutions and Investors While Stopping Equity Market Predators



Dennis Kelleher congratulates IEX co-founders Brad Katsuyama and Ronan Ryan on the SEC granting their exchange application, June 2016.

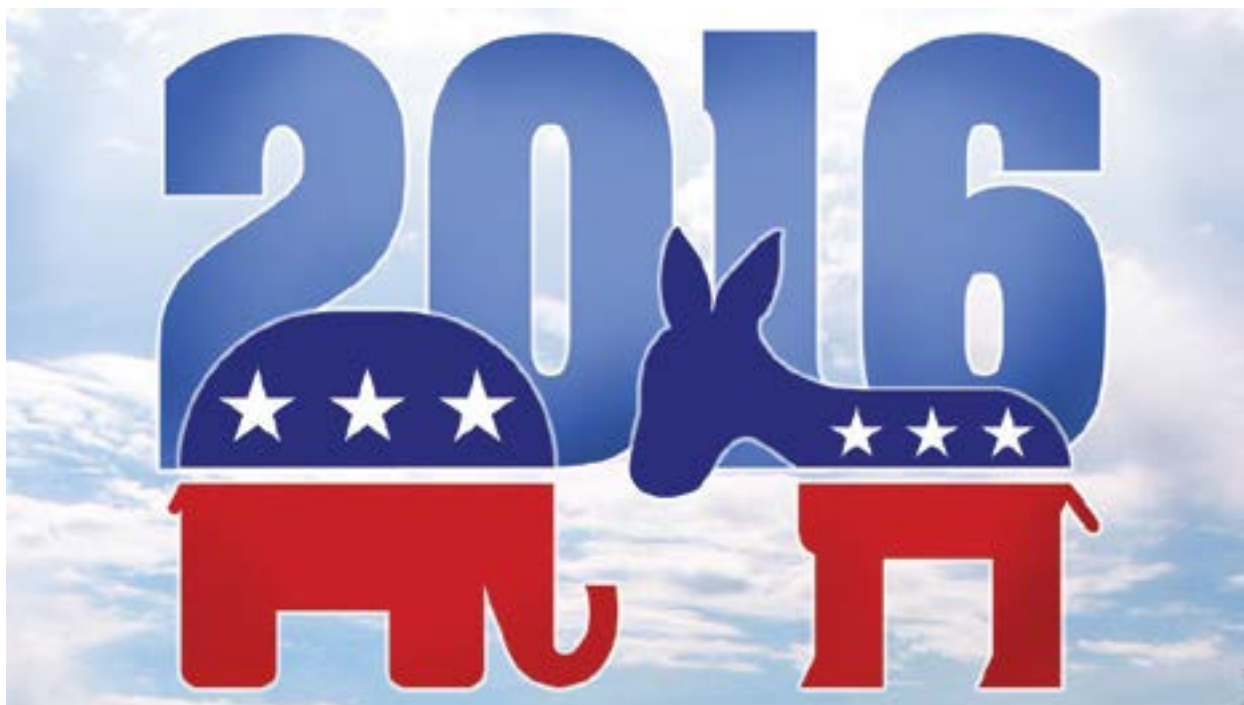
Many market participants are disgusted with the fragmented equity markets and the proliferation of predatory behavior that victimizes investors. Few, however, are willing to do anything about it, and the regulators of the market have been aggressively lobbied by entrenched companies getting rich at the expense of everyone else (and using their riches to purchase allies throughout the political, regulatory and policymaking process). That was the case until a band of brave market participants decided to innovate a solution and create the Investors Exchange, called IEX. From the beginning, Better Markets supported

IEX's efforts to create a level playing field that greatly reduced, if not eliminated, some of the worst predatory behavior.

While IEX slowly and quietly gained some influential supporters, it won widespread credibility in 2014 when Michael Lewis published his book *Flash Boys*, featuring the IEX story and publicly calling the markets "rigged." These events galvanized public attention and catapulted IEX to the top of the debate and Washington's regulatory agenda. This momentum reached a crescendo in 2016, when IEX applied to the SEC to operate as a stock exchange. Among those rallying for IEX's cause was Better Markets, which supported the application in meetings with regulators, policymakers and elected officials, and engaged in extensive media advocacy — because an IEX approval would not only help stop high-speed predators, but also signal to the markets that private, market-based solutions would receive regulatory support.



We all won a significant victory in June 2016 when the SEC approved IEX's application to become an exchange, but with tens of billions of dollars on the line, the anti-IEX forces are not giving up. The fight for fairness and a level playing field in our equity markets will continue, and Better Markets will persevere in leading the fight, including supporting private-sector actors whenever they stand up for investors and our markets.



The People's Voice in the 2016 Presidential Race: Highlighting Financial Reform

During the 2016 presidential race, Better Markets sought to put financial protection rules and the prevention of financial crashes on the political agenda.

The organization began these efforts with a *Huffington Post* op-ed on January 4th directed at President Obama. Entitled “A Stronger State of the Union Begins with Reining in Wall Street,” it made the case for the president to use his last State of the Union address to remind Americans how bad the 2008 crash was, how far we have come, how far we have to go and why it is essential to make sure such a crash never happens again. The op-ed also proposed specific actions to protect America’s families from the most dangerous, high-risk activities on Wall Street.

From there, Better Markets turned its focus to the candidates, seeking to get as many of them as possible on the record regarding financial reform, including prompting them to disclose detailed and concrete plans to voters.

Our strategy aimed to:

- Elevate financial reform issues — such as finalizing Dodd-Frank rules, protecting taxpayers from bailouts and reining in Wall Street — on the candidates' agendas;
- Increase media coverage of these issues;
- Push the candidates to release detailed plans; and
- Review, publicize and suggest improvements to those plans where needed.

The People's Voice: Better Markets' Polling

First, we wanted to hear from voters and present their priorities to the field of presidential candidates. While many Americans in 2016 still struggled with the poor economic conditions caused by the 2008 financial crash — for example, depleted savings, stagnant wages, wrecked credit and student loan debt — many Americans were experiencing a modest economic recovery, albeit one that was uneven and fragile. It was no surprise when polls revealed that voters of both parties strongly supported reforming Wall Street and reining in too-big-to-fail banks.

To hear from voters ourselves, Better Markets commissioned video interviews to be conducted on Super Tuesday, March 1, 2016, in Virginia. We asked voters how, if at all, the 2008 financial crash affected their lives or votes.





We observed that many voters were very emotional, even eight years after the crash, about how economically devastating it was for them and their families. It was clearly still a painful subject. A number of interviewees stated that those circumstances directly affected their primary vote.

The views of these voters reinforced our belief that anyone who wanted to be president of the United States owed the American people a detailed, comprehensive plan showing how they would protect Americans on Main Street from Wall Street's recklessness and make sure that no one had to suffer from another financial crash.

Some Candidates Reveal Their Plans

Better Markets shared the video of the Super Tuesday interviews with interested presidential campaigns and used it to keep the debate focused on the financial reform concerns of real people.

Early in the election primaries, Better Markets called on the candidates to feature financial reform in their campaigns and be clear about their positions.

Democrat and former Maryland governor Martin O'Malley led the way, releasing the first comprehensive plan aimed at preventing another financial crash. Senator Bernie Sanders also focused on regulating Wall Street, releasing policies to fully implement, enforce and strengthen Dodd-Frank while also breaking up the biggest banks.

Secretary of State Hillary Clinton's plan was so strong that we published a July 25, 2016, op-ed in *Politico* entitled "Hillary Clinton's War on Wall Street." Her plan targeted the biggest profit centers of Wall Street's largest too-big-to-fail financial institutions and those parts of financial reform that



they had spent years and tens of millions of dollars killing or gutting. She called for re-enacting the law that most heavily regulated the riskiest derivatives (the so-called “swaps push out”); strengthening the Volcker Rule (which would keep Wall Street from gambling with taxpayer dollars); increasing equity capital; imposing fees on wholesale funding, predatory high-frequency trading and a bank’s liabilities; and focusing regulation on the shadow banking system. She also committed to fully funding regulators, who are the cops on the Wall Street beat, and to attacking the corrupt compensation system on Wall Street, including clawing back bonuses for executives that engage in misconduct or high-risk activities.

Most of the Republican candidates remained largely silent on these key issues. The exceptions included Governor Mike Huckabee, who supported reinstating the Glass-Steagall Act to separate lower-risk traditional commercial banking from higher-risk investment banking and trading. Texas Governor Rick Perry also released a detailed plan for controlling Wall Street.

Advising Both Parties

Better Markets’ advocacy resulted in greater transparency about candidates’ financial reform agendas, and our influence didn’t stop there. In June 2016, President and CEO Dennis Kelleher was invited to testify at a hearing of the Democratic National Convention’s Platform Drafting Committee.

Mr. Kelleher urged that financial reform be a top priority of the next president, regardless of party. He presented specific proposals that any president should adopt to promote economic growth, ensure the stability of the financial system and foster conditions that would create broad-based prosperity.

He offered to testify before the Republican National Convention's Platform Drafting Committee and sent his testimony to them as well.

Candidate Trump Runs the Most Anti-Wall Street Campaign since Franklin Roosevelt

Plans for reform aside, Wall Street played a significant role throughout the primaries for both parties. For example, Donald Trump attacked fellow candidate Ted Cruz for being controlled by Goldman Sachs, one of Mr. Trump's favorite targets.

A big part of Mr. Trump's campaign was based on his claim that he was self-funded and independent, therefore beholden to no one, including Wall Street in particular: "I don't care about the Wall Street guys. ... I'm not taking any of their money." Similarly, Mr. Trump claimed he would "drain the swamp" of Washington special interests, which was filled with influence-peddling lobbyists — again, referring to Wall Street in particular.



On the campaign trail, Mr. Trump blasted the industry, claiming, “I know Wall Street. I know the people on Wall Street. ... I’m not going to let Wall Street get away with murder. Wall Street has caused tremendous problems for us.” Mr. Trump also relentlessly attacked Mrs. Clinton, claiming that Wall Street had “total control over Hillary Clinton” and that “Hillary will never reform Wall Street. She is owned by Wall Street!”

By election day, Mr. Trump had run the most anti-Wall Street campaign since Franklin Roosevelt. He had framed the election as a choice between Hillary Clinton as representative of Wall Street and him, an independently wealthy businessman who would stand up to Wall Street. Mr. Trump closed his campaign with a dark two-minute-long commercial identifying the greatest threats to America and American families, which included Goldman Sachs and its CEO Lloyd Blankfein. As the narrator ominously cited the threat posed by “those who control the levers of power” and “the global special interests,” a picture of Mr. Blankfein filled the screen.

The American people voted for the most anti-Wall Street candidate. He didn’t disclose a detailed plan, but he outlined his beliefs and made it clear he was going to be very tough on Wall Street. Better Markets will work to make sure Mr. Trump turns his campaign rhetoric into governing reality: reining in Wall Street and protecting Main Street.



“I know Wall Street. I know the people on Wall Street. ... I’m not going to let Wall Street get away with murder. Wall Street has caused tremendous problems for us.”

–CANDIDATE DONALD TRUMP



Accountability: Returning the Law to Wall Street While Watching the Watchdogs and Defending Democracy, Transparency and Open Government

Challenging “Slap on the Wrist” Corporate Settlements

When Main Street Americans commit crimes, they are investigated, arrested, prosecuted and, if convicted, fined, jailed or both. But when rich, powerful and politically connected bankers on Wall Street commit crimes, they are not held accountable. Instead, they negotiate sweetheart settlements with the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), which let them use shareholders’ money to pay large fines to buy the executives “get out of jail free” cards. These settlements are PR shows designed to appear tough, generate big headlines and fool the public.

To combat this injustice, Better Markets has become the leading Wall Street watchdog while engaging in relentless oversight of financial regulatory agencies and prosecutors — including the DOJ, SEC, CFTC, DOL, Federal Reserve and FSOC. We monitor their actions — and, also importantly, their **inaction** in these areas — to enforce the law and protect consumers, investors, retirees and our markets.

We work nonstop to bring their failings to the public's attention, and when necessary, we take legal action to hold them accountable. Two cases in particular highlight our fight for justice, the rule of law, transparency and accountability: a Better Markets lawsuit against the DOJ over its settlement with JPMorgan Chase and a legal fight against another settlement between the SEC and Citigroup. Both settlements were grossly deficient, and all the parties — the government and banks alike — tried to get their sweetheart deals approved quickly and with a minimum of public knowledge. But, through its legal challenges and the enormous coverage they generated, Better Markets made sure the public knew exactly what was happening.



What's Wrong with Sweetheart Settlements?

The settlement agreement has become the primary tool to resolve financial crimes, but these settlements are unfair, insufficient and result from a deeply flawed process designed more to conceal than reveal. This process results in sweetheart deals that prevent public oversight and accountability of those regulators and prosecutors, as well as the lawbreaking banks and bankers, leaving the public in the dark. The deals:

- Are negotiated entirely behind closed doors;
- Usually escape all judicial review or, at best, receive a rubber stamp; and
- Produce a very limited and almost always misleading factual record that contains little information about the crimes committed, the offenders, the benefits reaped and, above all, the true magnitude of the damage done to investors, the markets and the public interest.

In terms of substance, these settlements:

- Impose fines that appear large to get favorable headlines but are so small they are meaningless in comparison to the institution's revenues or profits;
- Are smaller than they appear because they are often mostly tax deductible and have other terms that permit the financial firm to reduce the amounts paid;
- Hold no individuals accountable and often don't even identify a single director, executive, supervisor or other individual involved in the crimes;

- Rarely include admissions of wrongdoing, which are essential for customers and investors seeking to recover damages in private actions;
- Include toothless injunctions and other conduct remedies that are window dressing and almost never enforced; and
- Routinely are reached simultaneously with government waivers of other collateral consequences that should be part of the punishment (such as prohibitions on certain business activities).

Worst of all, without adequate information, the public will never know what happened or even who broke the law — or if the lawbreaking banks and bankers were in fact punished or held accountable. This broken process also prevents the public from knowing enough to hold their elected representatives, prosecutors and regulators accountable.

These effects are not accidental. They occur by design and are the objectives of the entire process: Keep the public in the dark, cut a sweetheart deal and move on, with no one but the insiders ever knowing the truth. That's why this is a Better Markets priority and why Better Markets will never stop fighting to bring transparency and accountability to the settlement process.

Over the Years: Fighting the Power and Might of the SEC and Citigroup

In October 2011, the Securities and Exchange Commission (SEC) joined with Citigroup — one of the biggest, wealthiest and most powerful global banks in the world — to come up with a settlement resolving Citigroup's egregious illegal conduct in the years leading up to the financial crash of 2008. Citigroup was at the center of innumerable illegal activities that directly contributed to the crash, including packaging, selling, distributing and shorting billions of dollars of toxic and worthless derivatives. The settlement was indefensible and an injustice. Better Markets went to court to prevent approval of the settlement, disclose the true scope of Citigroup's illegal conduct and hold both Citigroup and the SEC accountable.

The settlement, a mere \$265 million (only \$95 million of which was a penalty) was presented to the court as settling only one deal in which Citigroup fraudulently packaged and sold worthless securities to investors in a \$1 billion collateralized debt obligation (CDO). That sounds like a lot of money, but Citigroup had revenue of more than \$20 billion in just three months and more than \$80 billion during the year it settled.

In addition, the settlement disclosures drafted jointly by the SEC and Citigroup were grossly inadequate, making it impossible to determine who did what to break the law, who was hurt, what the damages were, what the profits were and what, if anything, happened to those Citigroup bankers who did break the law. Hiding these facts made it impossible for the court or the public to see what a sweetheart deal this

settlement really was. Better Markets discovered that Citigroup had designed, created and shorted this CDO to fail as fast as possible, enabling the bank to make between \$600 and \$700 million dollars and causing investors to lose more than \$847 million on just this one deal.



But Citigroup didn't just conduct this one toxic deal. The bank was the largest placement agent in the world for CDOs and accounted for more than 10 percent of the entire global CDO market in the years leading up to the 2008 crash. Better Markets also discovered that, shockingly, the SEC had secretly agreed not to pursue any other charges against Citigroup. Thus, without telling the court or the public, the SEC was using this settlement for one CDO deal to settle all of its claims against Citigroup for its major role in causing the 2008 financial crash. The settlement amount was a trivial — indeed, laughably small — sum to one of the biggest banks in the world. (It was later revealed by *The American Lawyer* that the SEC had engaged in a similarly undisclosed deal with Goldman Sachs over the infamous Abacus deal.)

We filed a motion to intervene in the case — to bring to the district court’s attention these and many other damaging facts that the parties omitted from their court filings — and argued that the settlement had to be rejected for numerous reasons. While the court did not allow the intervention, it did agree with Better Markets that the settlement was not fair, adequate, reasonable or in the public interest. The court focused largely on the fact that the record provided by the parties was so incomplete and so unreliable that the court couldn’t determine whether the settlement actually met the legal standard. The court rejected it.



Citigroup and the SEC filed an immediate appeal to the U.S. Court of Appeals for the Second Circuit in New York, seeking to have the district court’s opinion thrown out. Better Markets quickly filed papers in the circuit court, pointing out that this was a complete breakdown in the adversary system, upon which the justice system depends. This case did not feature two opposing sides vigorously contesting the issues, which is the norm in litigated cases. In this case, Citigroup and the SEC were advancing the same positions and were seeking the same result: persuading the

court to rubber stamp their sweetheart settlement without publicity, scrutiny or questioning. This was a fatal breakdown in the adversary process, which depends on the two clashing opponents to surface all the facts for a court to consider and come to an informed decision.

Because of this circumstance, Better Markets argued that the circuit court had to appoint a special counsel to represent the unrepresented public interest in the appellate proceedings. The circuit court ordered, as Better Markets requested, the appointment of an independent counsel to defend the district court’s decision rejecting the settlement. There was **no precedent** for a federal appeals court to take such action under such circumstances. As Better Markets also requested, the court recognized that the SEC and Citigroup were on the same side and ordered that the briefing and argument be split evenly, with the SEC and Citigroup on one side and the independent counsel on the other. This too was unprecedented.

On the merits of the appeal, Better Markets filed an amicus brief in support of the district court’s rejection of the settlement. Although the Second Circuit ruled that the settlement should be approved, it rejected the SEC’s extreme position that district courts must rubber stamp any settlement the SEC presents. The ruling held that courts had a limited but nevertheless important role in reviewing settlements.

Over the Years: Suing the Department of Justice over the JPMorgan Chase Settlement

In a November 2013 settlement for what was claimed to be \$13 billion, the DOJ granted JPMorgan Chase blanket civil immunity for its role in the 2008 financial crash. The attorney general himself negotiated the agreement behind closed doors with JPMorgan Chase's CEO. No one but the two of them knows what was said or agreed to in those meetings. The publicly released settlement agreement disclosed virtually none of the key facts about the illegal conduct, and the settlement was not subject to court review or approval. In fact, it was not reviewed or approved by anyone other than the DOJ and JPMorgan Chase. The settlement, therefore, was a mere contract between the two parties, even though it resolved claims at the heart of the worst crash since the Great Crash of 1929 and involved the biggest bank in the world.

Moreover, while the settlement amount trumpeted by the DOJ and JPMorgan Chase appeared large, it was a fraction of the bank's revenue for a single year. The actual settlement amount was much smaller, because much of it was tax deductible and more than \$4 billion was for in-kind mortgage assistance — some of which the bank would have paid anyway and most of which would cost the bank much less than \$4 billion. In fact, the settlement probably cost JPMorgan Chase less than \$7 billion dollars.

Given the lack of transparency and accountability, Better Markets [filed a lawsuit](#) in the U.S. District Court for the District of Columbia alleging that the DOJ violated the U.S. Constitution and federal law by using a contractual agreement with JPMorgan Chase

FINANCIAL TIMES

WEDNESDAY FEBRUARY 12 2014

EDITORIAL COMMENT

The people versus Wall Street banks

Lawsuit raises concerns about out-of-court settlements

One of the reasons that James
remains unpopular with the
American public is because

of his unwillingness to deal with
the problems resulting
from the strength of Wall Street

and to get away without admitting
any significant defects about the
past and, indeed, the intentions of

to settle claims of historic importance without subjecting the deal to any independent judicial review. Arguing that the attorney general and the DOJ could not act unilaterally, we asked the court to declare the agreement unlawful and to prohibit its enforcement until it was reviewed and approved by a court after a full hearing and analysis. We argued that the public interest required a full and complete public disclosure of all the key facts, including who at the bank engaged in the illegal conduct, how much the bank profited and how much its clients lost. In addition, we argued that the public was entitled to know the actual out-of-pocket settlement cost for JPMorgan Chase, not the inflated PR number in the

settlement announcement. Only then, we argued, could anyone determine if the settlement was fair, adequate, reasonable and in the public interest.

Ultimately, the case was dismissed on purely procedural grounds, the district court holding that Better Markets lacked standing to bring the claim. Nevertheless, Better Markets' lawsuit attracted a great deal of high-profile media attention to the key issues raised in the case. *The New York Times* and the *Financial Times*, in particular, featured the lawsuit and the profound issues it raised. In fact, the *Financial Times* ran a double editorial highlighting the critical questions of justice — or the lack thereof — raised by the lawsuit.



“It’s more important than ever that consumers and taxpayers have strong advocates like Dennis and Better Markets to stand up for ordinary Americans.”



– SENATOR SHERROD BROWN,
RANKING MEMBER,
SENATE BANKING COMMITTEE

Unsealing Court Records so the Public Knows What Its Government Is Doing



The substance of the historic *MetLife, Inc. v. Financial Stability Oversight Council* case is discussed in Section 1 of this report (see “Nonbanks and the Shadow Banking System”). However, the case raised another important issue centered on transparency: The parties to the litigation, MetLife and the FSOC, agreed to file most of the record under seal. That amounted to over 1,900 pages, including portions of the parties’ briefs, documents cited by the parties in their briefs 90 times and even material cited by the district court in its decision on the merits. As a result, the public was left in the dark and would not be able to judge for itself the basis for the parties’ claims or the court’s disposition of the important issues presented.

In 2015, Better Markets [filed a motion to intervene](#), invoking the common law right of every citizen to gain access to judicial records. We sought a court order requiring MetLife and the FSOC to state in detail, with respect to every document under seal, the basis for any claim of confidentiality, and we asked the court to then evaluate those claims and independently determine whether the documents should remain hidden from public view. Better Markets argued that

especially in such a consequential case, the court must ensure that the maximum amount of information be made publicly available.

In March of 2015, the district court issued its decision on the merits, ruling in favor of MetLife and against the FSOC, overturning FSOC’s expert judgment that MetLife could threaten the financial stability of the United States and its decision to designate MetLife for enhanced supervision. But, with more than two-thirds of the record still secret, the public did not know and could not know the basis for the court’s decision and could not evaluate the court’s rationale in light of all the evidence.

The MetLife logo, consisting of the word "MetLife" in a bold, black, sans-serif font. The "M" is significantly larger and more prominent than the other letters.

In May of 2015, after resolving the merits, the district court turned to Better Markets’ motion to intervene. Although it granted that motion, it also denied Better Markets’ request for the parties to file particularized confidentiality claims and for the court to independently scrutinize those claims before depriving the public of its right to know.

Better Markets appealed that decision to the U.S. Circuit Court of Appeals for the District of Columbia. It has been fully briefed, argued and awaits a decision.

Ending Backdoor Industry Lobbying by Prioritizing the Public Interest in Regulatory Advisory Committees

Good policy originates with multiple perspectives and views, but advisory committees at financial regulatory agencies are almost always dominated by the industry. Moreover, these committees too often become just another backdoor method for the industry to gain access to regulators and to influence policies and rules without transparency, oversight or accountability.

Better Markets has long advocated for much more open and inclusive advisory committees that, at a minimum, have some representation by non-industry advocates, academics or other independent professionals. While this has been an uphill struggle, the CFTC now has non-industry voices, including Better Markets, represented on most of its committees:

- Global Markets Advisory Committee — Better Markets' public interest viewpoint is represented by John Parsons, senior lecturer at the MIT Sloan School of Management and executive director of the MIT Center for Energy and Environmental Policy Research, and Caitlin Kline, former Better Markets' derivatives specialist. Wally Turbeville, another former derivatives specialist for Better Markets, also served on the committee.



- Market Risk Advisory Committee — Better Markets' viewpoint is represented by Anat Admati, professor of finance at Stanford University Business School. Marcus Stanley, the policy director of Americans for Financial Reform, is also a member of the committee.
- Technology Advisory Committee's Subcommittee on Automated and High-Frequency Trading (HFT) — Joseph Saluzzi is a partner and co-founder of Themis Trading (an independent, institutional agency brokerage firm) and an expert on market structure and high-frequency trading, is a member of the committee representing the public interest. Mr. Saluzzi issued an opinion that dissented from the otherwise unanimous industry-dominated views on the subcommittee. His opinion was the only perspective prioritizing the public interest above maximized private profit.

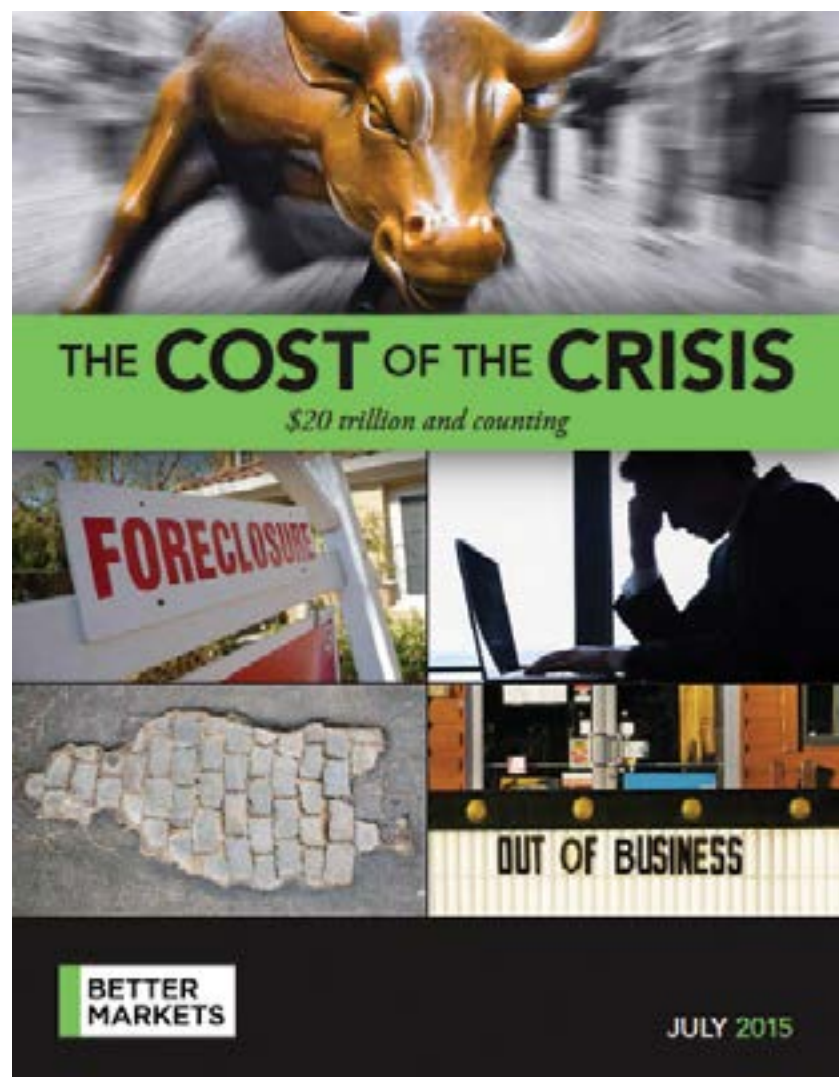
In addition to gaining representation on advisory committees, Better Markets works to expose the biases and misconduct of those on or connected to such committees. For example, in October 2015, Better Markets submitted [a letter to the Securities and Exchange Commission](#) (SEC) detailing that the firms of three members of the agency's Equity Market Structure Advisory Committee had been sanctioned by the SEC for serious violations of the laws that the committee was purportedly seeking to improve. We were the only organization to research the committee membership, identify the lawbreakers and bring these issues to the attention of regulators and the public. As much as we hold the agencies and departments accountable to the public, we also work to inform the public of the backgrounds, connections, biases and track records of the advisory committee members, who are typically industry participants working to maximize their profits rather than prioritize the public interest.



Caitlin Kline speaks at the CFTC's Global Markets Advisory Committee.

Advocacy and Outreach: Informing the Public, Rebutting Industry Claims and Setting the Record Straight

In addition to our policy and legal advocacy, Better Markets uses its agenda-setting research in educational reports and its innovative outreach methods to counter the industry's presentation of its views as indisputable facts. Rebutting industry spin is one of Better Markets' most important activities.



Over the Years: The Cost of the 2008 Financial Crisis **Not** to Wall Street but to Main Street — \$20 Trillion and Counting



Then-Secretary of the Treasury Jack Lew speaks at Better Markets' 5 Year Anniversary of Dodd-Frank event.

In July 2015, on the fifth anniversary of the signing of Dodd-Frank, Better Markets released a report titled *The Cost of the Crisis*. While there are many lenses through which one can illustrate these costs — financial, economic and human — a primary lens is lost gross domestic product (GDP, all of the goods and services produced by the work and effort of the American people and American businesses). By that one measure, the cost of the 2008 crash is going to be more than \$20 trillion dollars — or more than \$170,000 for every woman, man and child in the country.

Until Better Markets released its report, the primary, if not exclusive, focus of the discussions about the financial crisis and

financial reform, particularly since Dodd-Frank was passed in 2010, was on the impact on financial institutions. No one was talking about or researching the dramatic, indeed horrific, impact on communities. It was as if the American people hadn't suffered grievously and as if everyone should be worried only about the financial institutions that caused the crash and inflicted the harm.

To counter this one-sided, incomplete and misleading focus, Better Markets' report detailed the human and economic costs of the crisis, including historically high unemployment; underemployment; long-term unemployment; foreclosures; homelessness; underwater mortgages; bankrupt large and

small businesses; lost savings; deferred or canceled retirements; and delayed, disrupted or denied educations. The report explored the lives of Americans who are still suffering from the impact of the crisis in lost jobs, homes and security.

The report also included a first-time analysis of the crash's impact on the deficit, government debt and the diversion of funding from all other social programs and priorities to bailing out the financial system and mitigating the economic shocks. Moreover, the report, also for the first time, reviewed what happened to the charitable nonprofit sector, which saw historic decreases in endowments and annual contributions.

Due to the dramatic increase in public-sector debt (and the accompanying calls for austerity) and the simultaneous decrease in private charitable sector resources, the priorities of the American people — such as housing, education,

health care, anti-poverty programs, infrastructure, and research and development — were underfunded. This was not a one-time or one-year event. Indeed, as a direct result of the costs of the 2008 financial crash and the economic catastrophe it caused, this underfunding continues to this day.

The report made clear the necessity of fully implementing and aggressively enforcing the financial reform law and making sure that public funds are never again diverted from social priorities to bailing out reckless financial institutions.



Shaping the news,
amplifying the
public's voice and
analyzing new
policies so Main
Street doesn't get
left behind.



Over the Years: Exposing Phony Research



A constant but unfortunate characteristic about Washington, D.C., policy debates is that they are often fact-free or little more than self-interested spin, usually by hired guns (many of whom pose as objective, unbiased experts). It is part of Better Markets' mission to expose, rebut and counter the misinformation that too often pollutes the policymaking process.

Dismantling the "Harvard Study"

Industry lobbyists love to present what seems like an apparently credible, independent, fact-based study to support their positions. Too often, however, the authors of these studies are "purchased" allies who fail to disclose their current or past industry affiliations, remunerations or biases.

In March 2015, one such research paper, a so-called "Harvard Study," claimed that "Dodd-Frank [was] hurting small banks." It was widely reported in the media and used on the Hill and elsewhere to support one of the industry's most common complaints. Except it wasn't from Harvard, it wasn't a study, and it didn't show that Dodd-Frank hurts small banks.

Better Markets quickly issued a fact sheet and pointed out that on the first page of the document, the "study" stated that it didn't reflect the views of Harvard and had "not undergone formal review or approval" by Harvard. In fact, it was no more than a "working paper" written by a former officer of JPMorgan Chase, the biggest too-big-to-fail bank in the world.

As Better Markets' CEO Dennis Kelleher discussed in a lively debate on Bloomberg TV, the working paper also contained multiple significant factual and analytical flaws that thoroughly discredited its assertions. Most remarkably, it ignored the crushing impact of the financial crash of 2008 on the country and, of course, on community banks. The report also claimed – without basis and contrary to fact – that the “post crisis” period began on January 1, 2010, and then claimed that all disadvantageous events for small banks occurring thereafter were due to Dodd-Frank. However, Dodd-Frank wasn't enacted until seven months later, on July 21, 2010, and it required years of rulemaking, litigation, implementation, interpretation and enforcement before any of its provisions even took effect.

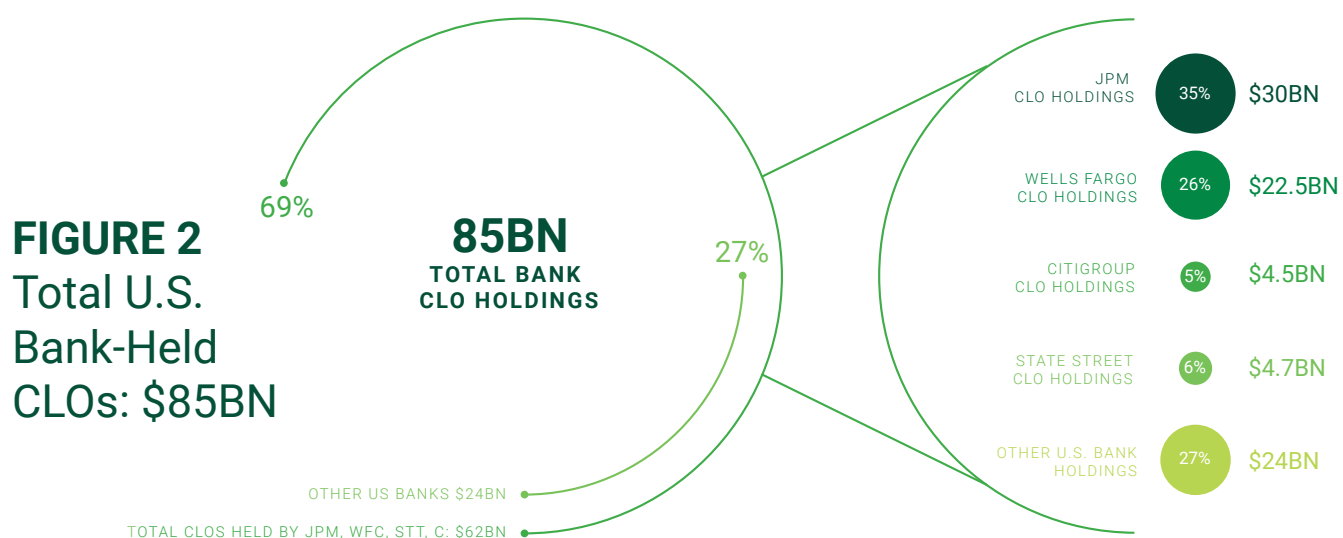
This wasn't a study of how financial protection rules hurt community banks; this was a study in how the policymaking process can be corrupted by biased, tendentious

“research” that always “just happens” to support the self-interested claims of the biggest Wall Street banks.

Blowing Big Banks' Cover on CLOs

Speaking of big banks and corrupting the policymaking process, the financial industry also inserted false claims into the debate over the Volcker Rule's ban on proprietary trading, which (among other things) required banks to divest high-risk collateralized loan obligations (CLOs). Industry argued that banks should not have to dispose of these financial products or at least should have many more years to do so because most CLOs were held by community banks who would be hurt by the rule.

Better Markets investigated and, in January 2015, distributed a fact sheet showing that 69 percent of CLOs were actually held by four of the biggest banks in the country (as depicted in the chart below).



These facts destroyed the industry's argument and revealed, once again, that the biggest banks in the country were trying to use community banks as a Trojan horse to gut or weaken financial protection rules.

Working with Allies to Expose and Rebut Industry Paid-For Research

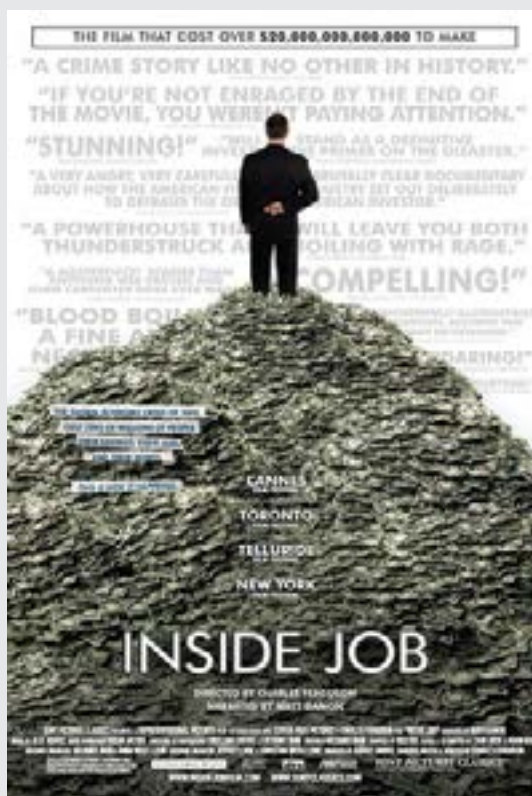
When Politico published a pro-high-frequency trading (HFT) op-ed from a Columbia University professor, Better Markets noticed that it was decidedly one-sided and failed to consider numerous studies that disproved its conclusion that HFT was great for investors. On cue, HFT lobbyists began sending the piece to policymakers and elected officials to show that an independent professor at an elite university had proved their claims: HFT is good; the critics are wrong; there's no need to regulate the industry to protect investors from being ripped off.

Working with Joseph Saluzzi and Sal Arnuk of Themis Trading, we quickly identified the flaws of the article and researched the author, discovering that he had been paid by one of the biggest HFT firms in the country. The failure to disclose this fact was remarkable, particularly because such conduct by Columbia University professors was infamously exposed in the Oscar-winning documentary of the 2010 crash, *Inside Job*.

We contacted the publication's editors and pointed out the conflicts of interest, the nondisclosures and the false or misleading statements. They readily agreed to publish

an op-ed from Mr. Saluzzi and Mr. Arnuk to present the other side of the story. The Themis Trading co-founders — authors of the book *Broken Markets*, about HFT and market structure — then revealed how the pro-HFT op-ed ignored, skewed or misrepresented the facts.

Purchased research, hired guns, phony studies and undisclosed conflicts of interest are unfortunately all too common in the lawmaking, policymaking and rulemaking process. Better Markets remains on watch, ready to rebut and counter this corruption and misinformation.







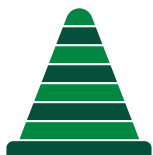
Using Videos to Tell Stories

Better Markets often uses videos to tell important stories (as with the “Welcome to Better Markets” video on our homepage, detailing what we do, why we do it and for whom we do it) and to drive home crucial points (as with the video interviews with voters on Super Tuesday; see Section 3, “The People’s Voice: Better Markets’ Polling”).

Informational Videos

Our 2016 production began with a video about President Obama’s last State of the Union speech. Released before the speech, it focused on topics that Better Markets felt the president should address, including the ongoing impact of the financial crisis and the importance of continuing to rein in Wall Street.

An example of Better Markets’ longer, original videos is our award-winning “Rules of the Road,” which attempts to show metaphorically what reckless bankers do and to explain what we do in a visually interesting and humorous way. The video shows a too-big-to-fail Wall Street trader in a large SUV, careening through a quiet, residential neighborhood while distractedly talking on his phone, conducting trades. Our trader almost runs over some furniture movers, smashes through a child’s lemonade stand and clips some out-of-work people looking for jobs in classified ads at a coffee shop. The banker is not mean or trying to harm anyone, but he recklessly and carelessly inflicts a great deal of damage as he seeks to maximize his profits.



The banker-driver distractedly zips past an SEC/CFTC speed trap and comes to a screeching halt, face to face with a representative of the rules of the road: a crossing guard holding up a “stop” sign to allow students to cross the road. The banker stops in the nick of time. Realizing the importance of the rules of the road for everyone, the banker drives off slowly, driving responsibly. As he does, he sees workers with Better Markets hard hats installing guardrails and other essential protections that make driving safe for everyone.

Everyone understands that our roads and highways need stop signs, traffic lights, speed limits, lines painted in the roads, guardrails and so much more for everyone’s protection. We know that we also need traffic cops to enforce the rules so that lawbreakers are caught and punished.

The video points out that the same is true in finance: When America’s too-big-to-fail banks ignore the financial protection rules of the road, the American people pay the price, as they did after the 2008 crash. Just like a reckless banker-driver, our financial markets need sensible rules and effective enforcers to ensure that the risks are reasonable and the dangers are contained.





Better Markets Gets Results

Financial Reform is Working to Protect the American People and Support the Real Economy

Substantial objective evidence proves that U.S. banks and financial institutions are much stronger and more stable today as a direct result of the Dodd-Frank Act and the financial protection rules it required, which Better Markets has been fighting to implement. Moreover, those financial firms are in a much better position to support the real economy, economic growth and jobs.

While thankfully there have not been any global financial crashes since 2008 to test the new financial reform architecture, there have been significant episodes of stress and distress. These incidents — for example, plunging oil prices and significant stock market volatility — have been real-time, real-world tests of Dodd-Frank and its new financial rules.

Meanwhile, market analysts and pundits continue to compete with each other to identify the “next financial crisis,” and they have eagerly pointed to a sky-high stock market potential “bubble,” actions by the Federal Reserve, negative interest rates, possible deflation, Brexit, a slowdown in China’s economy and a myriad of other financial and geopolitical events. Some think that growing student debt will be the “next subprime crisis,” and some think that crisis will be subprime auto loans.

Others think that crisis will come via trouble in the leveraged loan market or a stampede to the exits when investors in fixed-income funds decide they want out. To these analysts, troubles in the Eurozone are also a perennial favorite.

Yet there is one obvious suspect of possible instability that none of them point to: the U.S. too-big-to-fail financial firms. These gigantic, U.S.-based, systemically important financial institutions (SIFIs) were at the core of causing and spreading the 2008 financial crash. They are also *the* lethal threat to the financial system, the economy and our standard of living, which is why they received trillions of dollars in taxpayer funded bailouts.

There is no dispute that the U.S. SIFIs are significantly more resilient today than they were in 2008. We can attribute that change to Dodd-Frank and its financial rules, which Better Markets has advocated for throughout the policymaking process. But, you don't have to take our word for it. No less an authority than National Economic Council Chairman Gary Cohn, who spoke to Bloomberg TV in 2016 when he was serving as President of Goldman Sachs, said as much when there was significant distress in the European markets due to the parlous condition of European financial SIFIs:

“On the front-lines of this effort is Better Markets, a relatively new advocacy group pushing to ensure new regulations are as strong as possible.”





“Almost all US banks took our medicine [recapitalizing, restructuring and implementing financial reform rules] early. We went out and raised capital really early in the process and then we went out and raised capital a second time....We really built our balance sheet up. We really de-leveraged ourselves. We really built enormous excess liquidity....And we made ourselves as financially secure as we could. We’re subject to enormously robust stress tests here in the United States, and I give the Fed enormous credit for what they’ve done in stress testing the major banks here in the United States. [It’s t]o the point where no one should question the viability of the big U.S. banks. I think some of the European banks have been slow to getting themselves recapitalized and getting their financial balance sheet in the best place it can be.”

Mr. Cohn was talking about what the U.S. SIFIs did because of Dodd-Frank and the rules it required. That is why, unlike their European counterparts, the U.S. SIFIs were and remain stable, and indeed, are thriving. That remains true through the end of 2016 and into 2017.

Confirming Mr. Cohn’s analysis, the following changes are proof of the law’s — and Better Markets’ — positive effect. For example, U.S. SIFIs now:

- Are much better capitalized than they were before the financial crisis — their capital has doubled, which means that they are better able to withstand losses without failing or turning to the taxpayer or the Federal Reserve for a bailout;
- Have much greater liquidity than they did before the financial crisis — specifically, three times the liquidity they had, which means that they can meet demands for cash without having to resort to asset fire sales to pay off their creditors;

- Clear most of their derivatives trades through central clearing houses, which helps mitigate the risk that any one SIFI is building up unknown and unmanageable exposures;
- Post collateral against their derivatives trades, which protects counterparties, reduces asset fire sales and runs, and helps limit the leverage that these institutions can take on through these instruments;
- Are prohibited from engaging in proprietary trading and must limit investments in hedge funds due to Volcker Rule restrictions, which prevents them from loading their balance sheets with huge risks that could blow up the firms;
- Are subjected to rigorous stress-testing by the Federal Reserve, requiring them to demonstrate that they have the resilience to withstand significant financial, economic and political shocks and stresses without failing, requiring bailouts or threatening the collapse of the financial system; and
- Have “living wills,” which force them to a detailed blueprint demonstrating that they could go bankrupt without requiring government bailouts or jeopardizing the financial system or economy.

The Work Is Far from Complete

The above list by no means suggests that the battle for financial reform is over, that Dodd-Frank has been fully and effectively implemented, or that it’s time to declare victory over future financial crises. Even though the U.S. SIFIs are safer, these same institutions have fought — and continue to fight — the regulators’ efforts to finish the Dodd-Frank rules, implement and enforce them. Though the war goes on, many battles have been won, and financial reform, so far, is working.

Remarkably, many in the financial industry and their political allies continue to attack Dodd-Frank and even the most sensible financial protection rules, claiming that the law and rules stunt economic growth, job creation and the financial industry. The facts prove, however, that durable, sustainable economic growth *requires* effective financial protection rules that ensure a balanced, competitive financial sector working in support of the real economy and the American dream of homes, jobs, savings, education, a secure retirement and a rising standard of living.

For example, lending is at record levels. The *American Banker* reviewed the evidence and concluded:

“Republicans have repeatedly asserted that the 2010 financial reform law has increased the cost of consumer lending and cut off access to credit. ... Yet the available data indicates otherwise. Consumer credit has roared back in the six years since Dodd-Frank, with a 46% jump in outstanding consumer credit to \$3.8 trillion. ... [T]he fact remains that mortgage, auto and credit card lending have all gone up since 2010. [Mortgage] lending standards are as loose as they’ve been since the downturn. ... Auto lending has been on a tear since the financial crisis Credit card lending has returned to pre-crisis levels with total lending hitting an all-time high of \$996 billion. ...” (“Four Myths in the Battle over Dodd-Frank,” March 10, 2017; emphasis added)

LOAN BALANCES
FOR COMMUNITY
BANKS ARE UP AN
ASTONISHING



YEAR-OVER-YEAR

Bloomberg reached a similar conclusion:

“Lending declined initially after 2008, when the entire banking industry was almost wiped out by the collapse of the U.S. housing market. But it’s grown steadily since then, expanding by 6 percent a year since 2013, *far faster than the economy*. Banks now have a record \$9.1 trillion of loans outstanding.” (“Trump Cites Friends to Say Banks Aren’t Making Loans. They Are.” February 4, 2017; emphasis added)

The Federal Deposit Insurance Corporation reported that the financial sector is seeing record profits, the rate of loan growth for the industry remains above the growth rate of GDP, and loan balances for community banks are up an astonishing 7.7 percent year-over-year (“Quarterly Banking Profile: First Quarter 2017”). As former Federal Reserve Board Chair Paul Volcker recently remarked at a Bretton Woods Committee conference:

“[C]laims that Dodd-Frank and other regulatory approaches have somehow gravely damaged the effective functioning of American financial markets, the commercial banking system, and prospects for economic growth simply do not comport with the mass of the evidence before us. Here we are in 2017 with a near fully employed economy, close to stable prices, bank profits at a new record, and the return on banking assets again exceeding one percent. Loans at



both large and small banks are at new highs, double the pre-crisis years. In fact, loan growth has again been exceeding growth in nominal GDP.” (Volcker Alliance, “The Future of the Global Financial System,” April 19, 2017)

These data, gathered years after the Dodd-Frank financial reform law was passed and implemented in almost all significant areas, provide evidence that the financial protection rules have not damaged the banks or the economy. Rather, they have created the conditions for economic growth and prosperity, which, if the financial protection rules are allowed to work, should become durable and sustainable. The rules are doing exactly what they were meant to do: eliminate or reduce the threat to the greatest extent of the “too-big-to-fail” SIFIs while strengthen and maintain the stability of the entire financial system, which enables lending, growth and profitability.

That’s what Better Markets has fought for and continues to fight for.

Better Markets Has Decisively Helped to Make Financial Reform a Reality

But, has Better Markets, specifically, been effective? According to a recent but very limited academic study, Better Markets has been decisively important in turning the ideas of the Dodd-Frank financial reform law into a reality. That study referred to Better Markets as an “applied think tank” that is part of what the authors call a “stability alliance,” which opposes the euphemistically labeled “self-regulation alliance” of the financial industry. The study, “After Dodd-Frank: The Post-Enactment Politics of Financial Reform in the United States,” finds:



“that recent reforms in U.S. financial markets hinge on intellectual resources and new organizational actors that are missing from existing concepts of regulatory capture or business power. In particular, small advocacy groups have proven significantly more successful in opposing the financial-services industry than existing theories predict. By maintaining the salience of reform goals, elaborating new analytic frameworks, and deploying specialized expertise in post-enactment

debates, smaller organizations have contributed to a diffuse but often decisive network of pro-reform actors. Through the rule-writing process for macroprudential supervision and derivatives trading, these small organizations coalesced with other groups to form a new stability alliance that has so far prevented industry groups from dominating financial regulation to the degree that occurred in earlier cases of regulatory reform.” (Institute for Research on Labor and Employment, March 2016)

The study's conclusions are also particularly important:

“The small, dedicated groups that offered an alternative knowledge regime were able to assemble a diffuse but influential stability alliance. This new stability alliance has so far blocked the return of the purely self-regulatory approach **and has, in significant ways, given reform a chance.**”

The study singled out Better Markets many times:

“In October 2010, **the applied think tank, Better Markets**, started proposing particular policy recipes through commenting on specific rules. Partly because it was led by a former litigator, **Better Markets** was particularly well positioned to engage in the legal maneuvering that began as soon as an agency published a proposed rule.”

“And in the key cases of adjudication, where industry associations made substantial investments in blocking new rules, **it was the small think tank, Better Markets, rather than insurgent industry actors**, that supported the CFTC’s [Commodities Futures Trading Commission] legal arguments.”

“In these cases, the loosely affiliated experts in the stability alliance supplied much of the key independent information and support that helped the CFTC make the case for its rules. **The comment letters and briefs filed by Better Markets were the best example of this pattern**, though AFR and Demos also commented and met periodically with CFTC officials.”

“Absent underlying changes in **the statutory foundation for reform, however, the smaller groups such as Better Markets were serious opponents for their better-resourced counterparts in the self-regulatory alliance**. The best evidence comes from the industry groups that **Better Markets** decided to challenge. The law firm most regularly retained by the industry associations, **Gibson Dunn, clearly took the amicus briefs from Better Markets seriously**. In the case on position limits, the attorneys at Gibson Dunn issued a direct reply within twenty-four hours to the amicus brief filed by Better Markets in support of the CFTC. **Another prominent law firm, Cadwalader, regularly tracked Better Markets, Inc.**, in its blog updates for financial-services clients.”



THE NUMBER OF
RULEMAKINGS
BETTER MARKETS HAS
PARTICIPATED IN

“Writing retrospectively about the CFTC’s work before Gary Gensler stepped down in December 2013, one of Cadwalader’s senior partners wrote of a ‘tango between the CFTC (under former Chairman Gensler) and **Better Markets**.’ Through this tango, he contended,

‘Regardless of the burden of regulation the CFTC would propose, Better Markets would write a comment letter asserting that the CFTC should impose a greater burden. Then, ... the CFTC would quote from Better Markets’ letters extensively... . In effect, under former Chairman Gensler, Better Markets served as a device to provide the CFTC with cover for virtually any position.’

“These assertions indicate clearly that the industry’s allies saw Better Markets as an effective opponent. They also reinforce the view that industry newcomers did not alone provide sufficient external support for the agency’s efforts to establish its expanded mission. **That task also depended upon the provision of independent expertise from the applied think-tank, Better Markets,** and the other small but important organizations in the stability alliance.”

“For rules at this level, the CFTC relied on several of the organizations in the stability alliance, **as best exemplified by Better Markets**. The critical type of expertise was a combination of financial sophistication and, in some of the key battles, litigation capability.”

Remarkably, the authors reviewed only two sets of rules and concluded that Better Markets played an outsized role in turning financial reform into a reality. However, Better Markets has participated in more than 225 rulemakings. Thus, the study barely touched on the broad and deep impact Better Markets has had in implementing financial reform.

Another, less academic confirmation of how effective Better Markets has been came in an announcement on November 19, 2015, when the financial industry created a new organization to oppose Better Markets. As reported in *Politico's* must-read “Morning Money” newsletter:

“NEW FIN REG GROUP FORMED - The Main Street Growth Project is a ‘new 501c4, that is defending small business, community banks, regular banking customers ... essentially the little guy who’s caught in the crossfire in effort to prevent another crisis. We’re looking to change the narrative around financial regulation. We think **Better Markets** and others aren’t focused on the ‘collateral damage’ here.” (emphasis added)



THE BLOG 03/07/2016 04:33 pm ET | Updated Mar 08, 2017

Financial Reform Is Working

The name “Main Street Growth Project” is misplaced because the organization is packed with long-time, well-known Wall Street defenders and, unsurprisingly, turned out to be a big supporter of Wall Street’s biggest firms and activities. The “collateral damage” they are really worried about is what Better Markets has done to their arguments, lobbying and spin, because Better Markets genuinely defends the parties the industry-supported organization only purports to.

When this latest organization was created, there were already more than 30 organizations in Washington promoting and pushing Wall Street’s and the finance industry’s agenda. The creation of yet another organization to oppose Better Markets is concrete recognition that Better Markets poses a very significant threat to their ongoing attempts to bend laws, rules and policies to benefit the biggest systemically significant institutions in the U.S. After all, as the study above demonstrates, without Better Markets, Wall Street would be almost entirely unopposed – the exact climate before the 2008 crash.

“It’s David versus
Goliath, but at least
David’s there.”



– BYRON DORGAN,
FORMER SENATOR



Financials

FIGURE 3
2016 Program Expenses

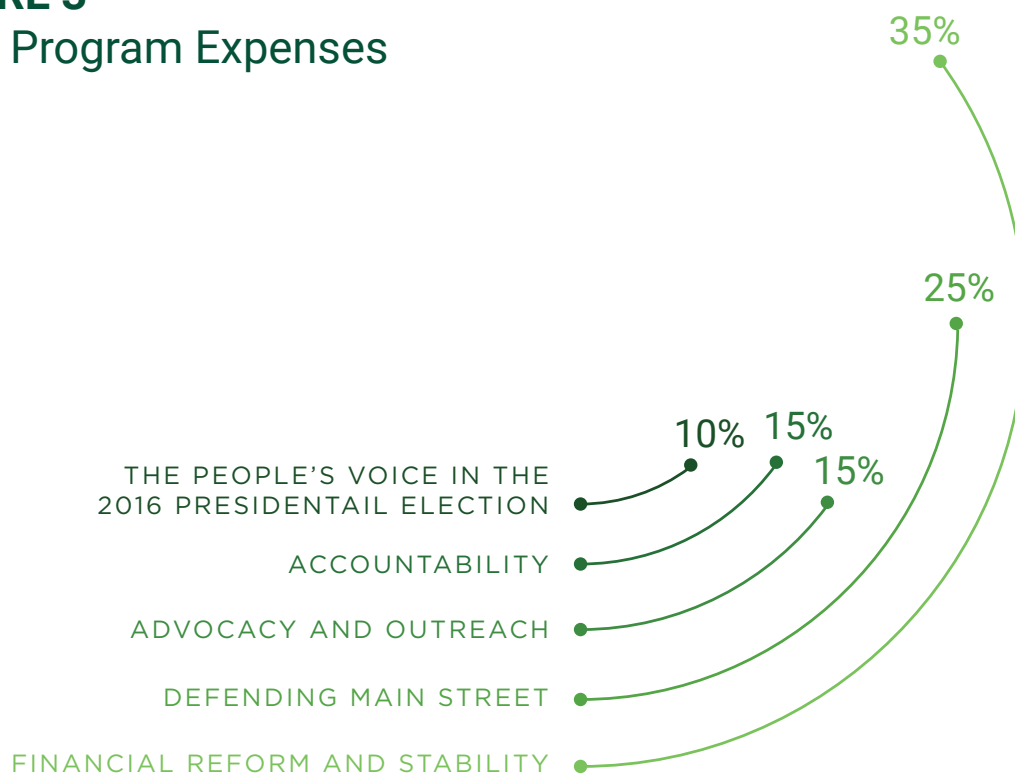
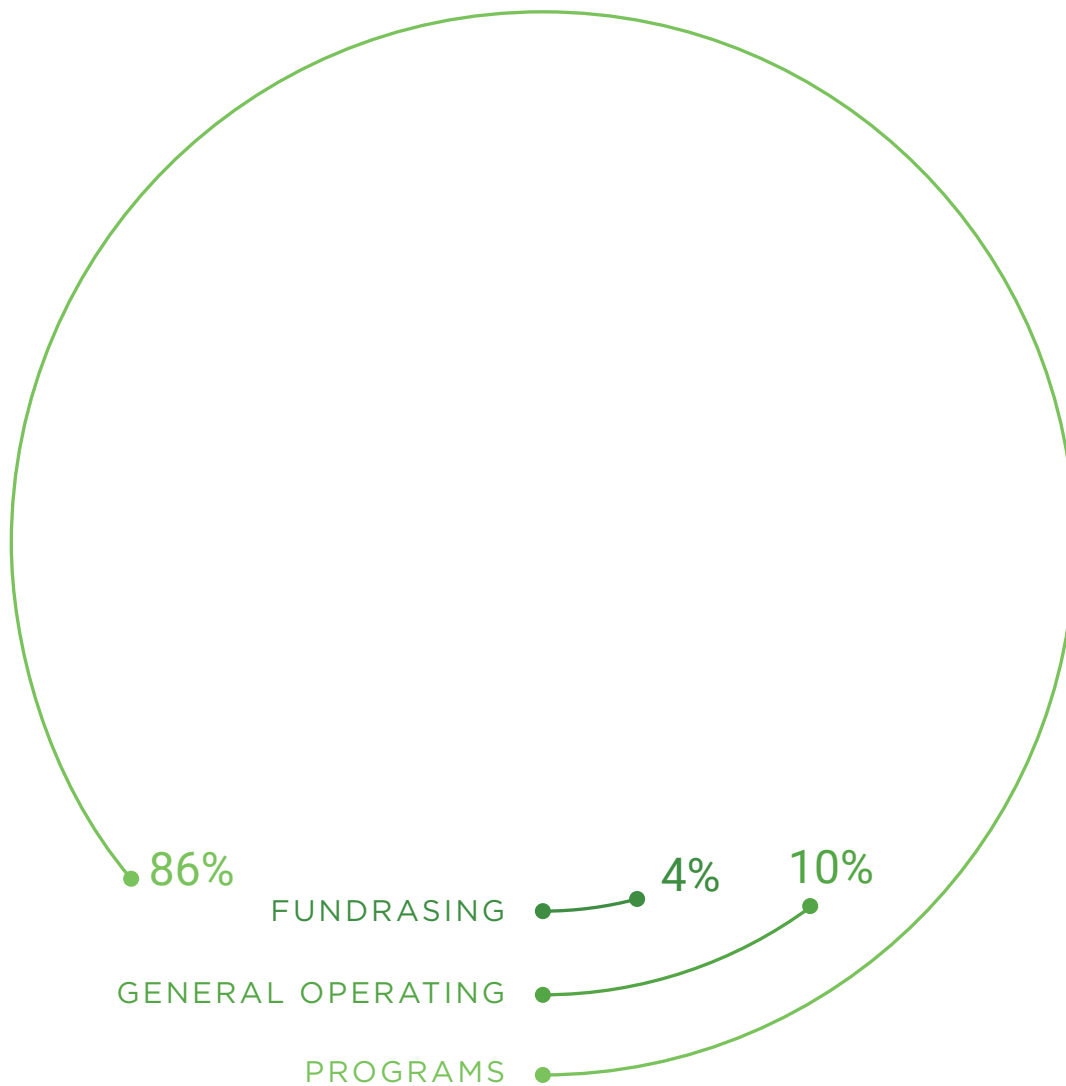


FIGURE 4

2016 Total Expenses

Better Markets' 2016 operating budget was \$2,830,855, which was donated by individuals contributing directly or through their foundations. Better Markets raises its annual budget each year through contributions and does not have an endowment.





Board and Staff Photos

Better Markets Board of Directors



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Founder, managing member
Masters Capital Management;
Founder and Chairman of the
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DAVID DESJARDINS

Philanthropist, Mathematician
and Software Engineer



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President and CEO, Better
Markets



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Former Chief Compliance Officer,
Alcoa; former Vice Chairman
Global Banking, Citigroup;
Former partner, Skadden, Arps,
Slate, Meagher & Flom



JENNIFER TAUB

Professor, Vermont Law
School



ADAM WHITE

Director of Research, Masters
Capital Management

“Financial reform warriors.”

– BETTY LIU,
BLOOMBERG TV HOST



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JEREMY MURPHY

Researcher



NICK JACOBS

Communications Director



VICTORIA DAKA

Attorney and Derivatives Policy Analyst



BOB JENKINS

Senior Fellow, London



CAITLIN KLINE

Derivatives Specialist



LEV BAGRAMIAN

Senior Securities Policy Advisor



DEMETRIUS PERKINS

Executive Assistant to the President and CEO



Remembering Former Founding Staffer Wally Turbeville

Wallace “Wally” Turbeville was one of Better Markets’ first staffers. Better Markets was launched in October 2010 and he joined almost immediately and worked with us for a little more than a year. He would have been with us much longer, but we were building an office in Washington, D.C. and he couldn’t move from the city he loved or the sports teams he was a fanatic about. I can still see that big smile on his face when he arrived at the office on his first day: he proudly had his “Yankees Way” street sign under his arm. That was no vice at an office where the Red Sox, Patriots and Bruins were followed with close attention.....oh, and a few other teams!

During the time Wally was with Better Markets, he was invaluable to getting us off the ground and jumping into the Dodd-Frank rulemaking process with passion and effectiveness. No matter the subject and no matter how much or little Wally knew about it, he’d dig in, work incredibly hard, master the topic, write compelling comment letters, commentary or testimony, and off we’d go to a meeting with regulators, policymakers or lawmakers.

Wally unfortunately lost his fight with cancer in early 2017, but his many tremendous contributions fighting for financial reform and social and economic justice won’t be forgotten. He accomplished a great deal at and for Better Markets and has a prominent place in the history of the fight over Dodd-Frank, captured in his many comment letters, commentary, testimony and so much more. But, more importantly, his contributions are not limited to those activities. He was also instrumental in building the foundation of Better Markets upon which we have all constructed a powerhouse advocacy organization. After Better Markets, Wally continued the fight and went on to do fantastic, important work, both on his own and for years as a senior fellow at Demos.

We will all always be in Wally’s debt for his hard work, many contributions and infectious passion. He will be greatly missed by us and all those who care about a safe and sound financial system that supports and serves the real economy and all Americans.



Appendix A

The Historic Human and Economic Wreckage of the \$20 Trillion Costs of the 2008 Financial Crash

In 2016, it is difficult to remember the dark days of September 2008 and the months and years that followed. It's difficult to remember how incredibly bad the economy was and the ongoing damage it caused even now, eight years later.

First, the damage it caused was deep and long-lasting. The trillions of dollars used to bail out Wall Street coupled with the increased spending necessary for social programs caused enormous **public deficits and debt**. On the private philanthropic side, endowments were crushed and **charitable giving plummeted** to the lowest levels in 50 years. The result was a double whammy for the priorities of the American people because both public and private resources were diverted to bail out finance and respond to the human suffering caused by the financial crash.

"Melissa Berman, president and chief executive officer of Rockefeller Philanthropy Advisors, says charitable giving decline worst in 50 years."

– BLOOMBERG NEWS (FEBRUARY 22, 2010)

Consequently, spending for every other priority - like education, research and development, science, medical advances, infrastructure repair, and so much more - was significantly reduced in both the

public and private sectors. Literally trillions of dollars were re-directed away from those priorities to deal with the crash and crisis. That is why, no matter what issue one might care about most, everyone has a personal interest in making sure that a financial crash does not happen again.

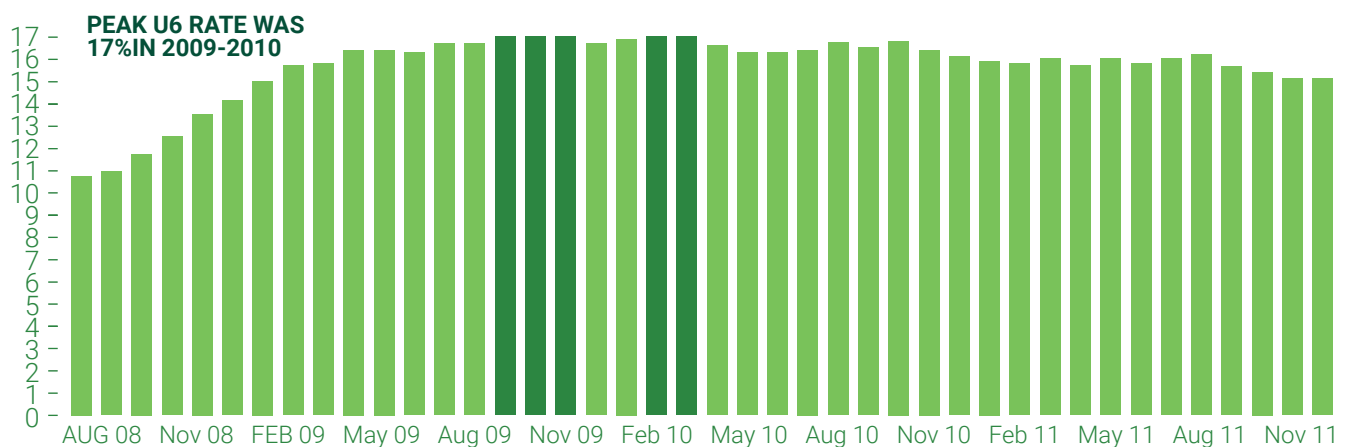
“The worst economic crisis since the Great Depression resulted in the biggest reduction in U.S. foundation giving on record. In 2009, the nation’s more than 75,000 grant making foundations cut their giving by an estimated 8.4%, or \$3.9 billion. This was by far the largest decline in foundation giving ever tracked by the Foundation Center.”

– FOUNDATION CENTER, 2010 FOUNDATION GROWTH AND GIVING ESTIMATES

Second, the lasting damage resulted from the crash being historically bad. The investment banks Bear Stearns and Lehman Brothers, the insurance giant AIG, the megabank Citigroup, and virtually every other substantial financial institution in the country failed or came close to failing between 2007-2009. Before President George W. Bush left office on January 20, 2009, trillions of dollars in bailouts had already been thrown at the financial industry to prevent its collapse. As President Obama entered office, the country was in the middle of the worst financial crash since the Great Crash of 1929 and was facing an economic catastrophe that was deteriorating so quickly that a second Great Depression was a real possibility.

For example, the unemployment rate **had jumped** to 7.8 percent, and continued to climb until it eventually peaked later that year at 10 percent. However, the more accurate **U-6 rate** - which takes into account people who are unemployed and those forced to work part time because they couldn’t find full time work (the so-called “underemployed”) - peaked at 17.5 percent for five out of seven months between October 2009 and April of 2010:

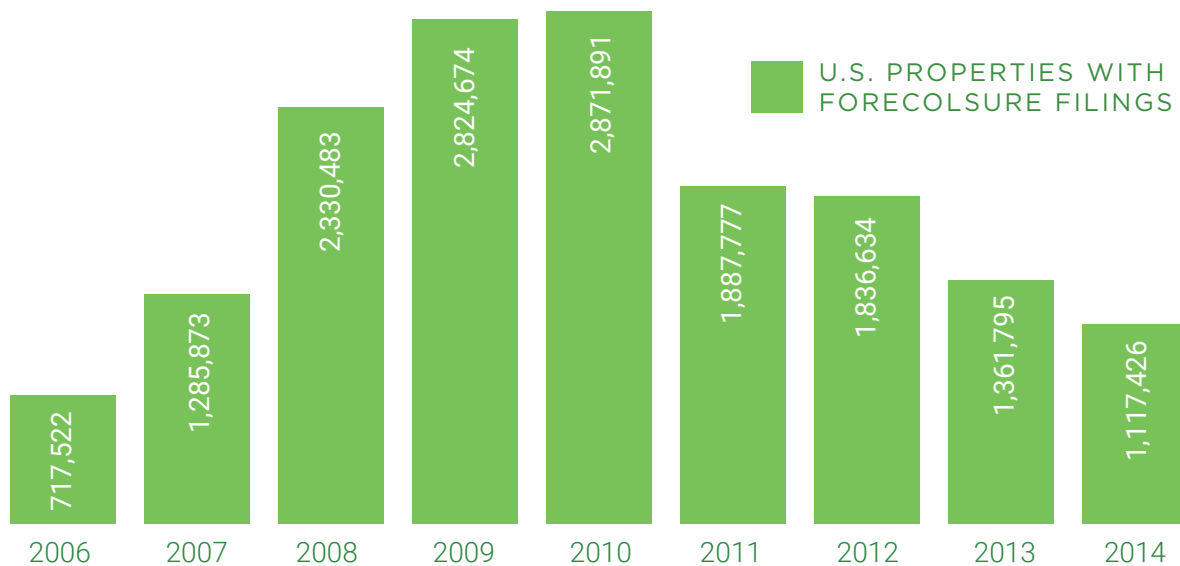
FIGURE 5
Total Un- and Under-Employed
 (At one month Peak: Almost **27 Million Americans**)



That means nearly 27 million individual Americans (an amount equal to the population of the state of Texas) were entirely out of work or desperately looking for full time work. Many of those workers were heads of households, which means that the impact of the employment crisis actually touched more than 50 million Americans.

The condition of the U.S. housing market was no better: it was in the midst of a complete collapse, ultimately with more than **16 million foreclosures filed**:

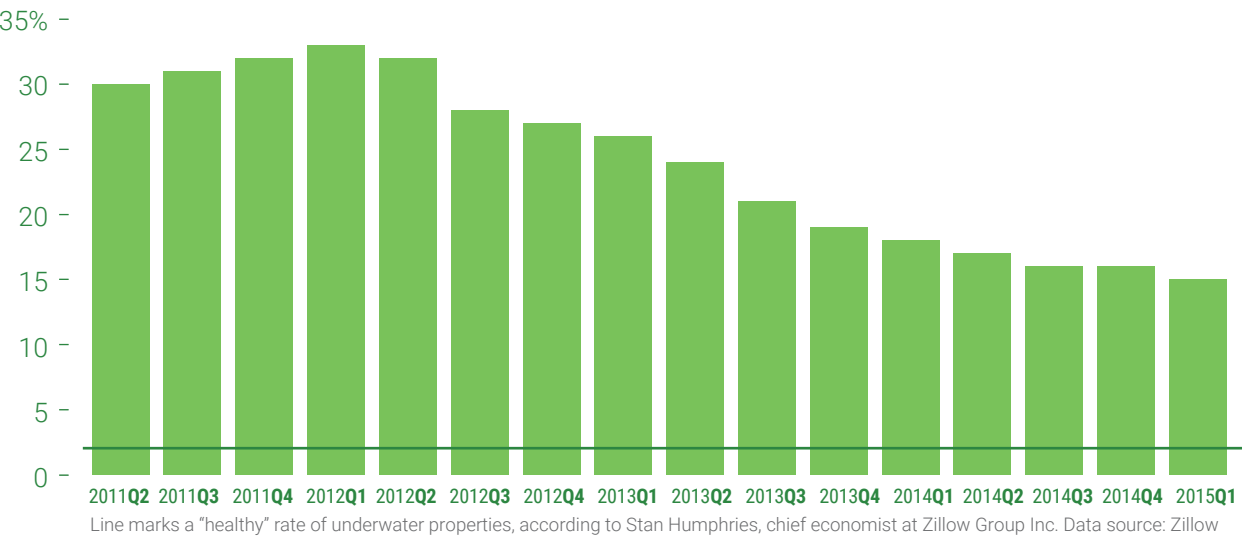
FIGURE 6
Historical Foreclosure Activity



Those job losses and foreclosures spread the economic calamity like a conveyor belt throughout neighborhoods and entire communities as prices for homes plummeted to 2001 levels. This caused underwater mortgages (where the mortgage was higher than the value of the house) to skyrocket:

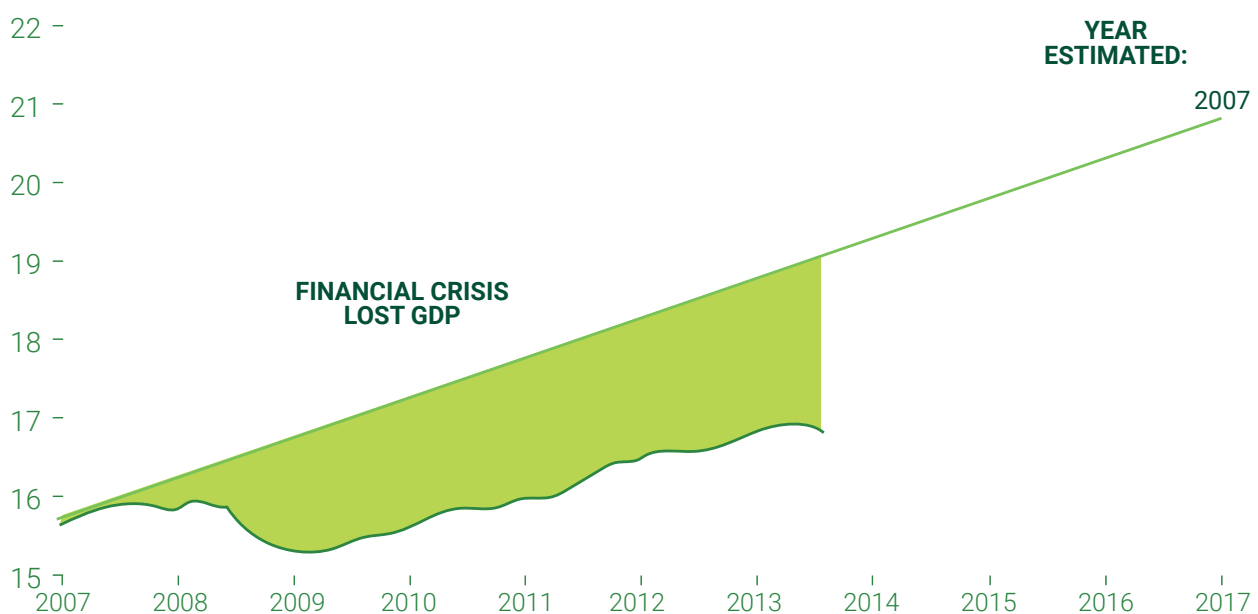
FIGURE 7
Underwater and Still Above Normal

Share of mortgages in negative equity has been halved in almost four years, but a long way from healthy



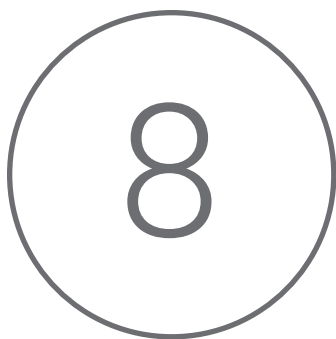
When all this economic devastation is added up, it is going to cost the United States more than \$20 trillion in lost gross domestic product (GDP), or more than \$170,000 for every man, woman and child alive in the country today, as outlined in Better Markets' [The Cost of the Crisis report](#). The following chart highlights some of the lost GDP from the pre-crash 2007 economic activity projection to the post-crash reality, with the green area (below) representing all the goods and services never produced; the growth never achieved; and the jobs, savings and homes lost:

FIGURE 8
Actual and Potential GDP



Third, this is why we must finalize financial reform and continue refocusing and rebalancing Wall Street: to prevent future crashes that will cost the American people trillions of dollars more. The rulemaking process that fully implements the Dodd-Frank Act must be completed. That will bring transparency, regulation and systemic stability to Wall Street's highest-risk activities. It will also level the playing field and allow other non-systemically important firms to enter the markets and bring much needed competition and lower prices for everyone. Finally, it will substantially reduce if not eliminate the risk posed by the too-big-to-fail banks, nonbanks and their activities.

With the financial sector once again supporting the real economy, jobs and growth along with broad-based prosperity and decreasing inequality should follow.



Appendix B

Selected Comment Letters Filed by Better Markets

1. Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments (CFTC) (6/19/2017)
2. Potential Enhancements to Certain Engagement Programs (FINRA) (6/19/2017)
3. Regulation Automated Trading (CFTC) (5/1/2017)
4. Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption (on substance) (4/17/2017)
5. Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption (on delay) (DOL) (3/17/2017)
6. Position Limits for Derivatives (CFTC) (2/28/2017)
7. Risk-Based Capital and Other Regulatory Requirements for Activities of Financial Holding Companies Related to Physical Commodities and Risk-Based Capital Requirements for Merchant Banking Investments (FRS) (2/17/2017)
8. Universal Proxy (SEC) (1/9/2017)
9. Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants (CFTC) (12/17/2016)
10. Disclosure of Ordering Handling Information (SEC) (9/26/2016)
11. Arbitration Agreements (CFPB) (8/22/2016)
12. Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements (FRS, FDIC, OCC) (8/5/2016)
13. Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions (FRS) (8/5/2016)
14. Incentive-Based Compensation Arrangements (FRS, FDIC, OCC, SEC, FHFA, NCUA) (7/22/2016)

15. Business and Financial Disclosure Required by Regulations S-K (SEC) (7/21/2016)
16. Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps (CFTC) (7/18/2016)
17. Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (SEC) (7/18/2016)
18. Position Limits for Derivatives; Certain Exemptions and Guidance (CFTC) (7/13/2016)
19. Elements of Regulation Automated Trading (CFTC) (6/24/2016)
20. Amendment to the Final Order in Response to a Petition from Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas from Certain Provisions of the CEA Pursuant to the Authority Provided in the Act (CFTC) (6/15/2016)
21. Single-Counterparty Credit Limits for Large Banking Organizations (FRS) (6/3/2016)
22. Use of Derivatives by Registered Investment Companies and Business Development Companies (SEC) (3/28/2016)
23. Consultative Document: Identification and Measurement of Step-In Risk (BCBS) (3/17/2016)
24. Regulated Automated Trading (CFTC) (3/16/2016)
25. Regulation of NMS Stock Alternative Trading Systems (SEC) (2/26/2016)
26. Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Certain Unsecured Debt of Systemically Important U.S. Bank Holding Companies (FRS) (2/19/2016)
27. Liquidity Coverage Ratio: Public Disclosure Requirements, Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements (FRS) (2/2/2016)
28. Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-opening of Comment Period for Investment Company Reporting Modernization Release (SEC) (1/13/2016)
29. Consultative Document: Guiding Principles on the Temporary Funding Needed to Support the Orderly Resolution of a Global Systemically Important Bank ("G-SIB") (FSB) (1/4/2016)
30. Proposed Amendments to Statement of Financial Accounting Concepts; Proposed Accounting Standards Update (FASB) (12/8/2015)
31. Amendments to the Commission's Rules of Practice (SEC) (12/4/2015)
32. Rules to be Reviewed Pursuant to the Regulatory Flexibility Act (SEC) (11/24/2015)
33. Aggregation of Positions (CFTC) (11/13/2015)
34. Amendments to Swap Data (CFTC) (10/30/2015)
35. Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security-Based Swaps (SEC) (10/26/2015)
36. Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice (DOL) (9/24/2015)
37. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants- Cross-Border Application of Margin Requirements (CFTC) (9/14/2015)
38. Listing Standards for Recovery of Erroneously Awarded Compensation (SEC) (9/14/2015)
39. Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent (SEC) (7/13/2015)
40. Consultation Report: Sound Practices at Large Intermediaries: Alternatives to the Use of Credit Ratings to Assess Creditworthiness (IOSCO) (7/8/2015)
41. Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1990 (FDIC, FRS, OCC) (5/14/2015)

42. Green Paper: Building a Capital Markets Union (European Commission) (5/13/2015)
43. Regulations SBSR-Reporting and Dissemination of Security-Based Swap Information (SEC) (5/4/2015)
44. Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation (TREAS) (4/7/2015)
45. Risk-Based Capital Guidelines: Implementation of Capital Requirements for Global Systematically Important Holding Companies (FRS) (4/3/2015)
46. Position Limits for Derivatives and Aggregation of Positions (CFTC) (3/30/2015)
47. Revisions to the Standardized Approach for Credit Risk (BCBS) (3/27/2015)
48. Asset Management Products and Activities (FSOC) (3/25/2015)
49. Consultative Document: Net Stale Funding Ratio Disclosure Standards (BCBS) (3/6/2015)
50. Consultation Report: Task Force on Cross-Border Regulations (IOSCO) (2/23/2015)
51. Regulatory Capital Rules: Regulatory Capital, Proposed Revisions Applicable to Banking Organizations Subject to the Advanced Approaches Risk-Based Capital Rule (FDIC, FRS, OCC) (2/17/2015)
52. Consultative Document: Adequacy of Loss-Absorbing Capacity of Globally Systemically Important Banks in Resolution (FSB) (2/2/2015)
53. Position Limits for Derivatives and Aggregation of Positions (CFTC) (1/22/2015)
54. Application No. D-11819, Credit Suisse AG Exemption (DOL) (1/15/2015)
55. Consultative Document: Corporate Governance Principles for Banks (BSBC) (1/9/2015)
56. Forward Contracts with Embedded Volumetric Optionality (CFTC) (12/22/2014)
57. Strengthening Oversight and Regulation of Shadow Banking: Regulatory Framework for Haircuts on Non-Centrally Cleared Securities Financing Transactions (FSB) (12/15/2014)
58. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (CFTC) (12/4/2014)
59. Consultative Document: Cross-Border Recognition of Resolution Actions (FSB) (12/1/2014)
60. Consultative Document: Guidance on Cooperation and Information Sharing with Host Authorities of Jurisdictions Not Represented on CMGs where a G-SIFI has a Systemic Presence (FSB) (12/1/2014)
61. Margin and Capital Requirements for Covered Swap Entities (FCA, FDIC, FHFA, FRS, OCC) (11/24/2014)
62. Removal of Certain References to Credit Ratings and Amendments to the Issuer Diversification Requirement In the Money Market Fund Rule (SEC) (10/14/2014)
63. Temporary Rule Regarding Principal Trades With Certain Advisory Clients (SEC) (9/17/2014)
64. Review of Swap Data Recordkeeping and Reporting Requirements (CFTC) (5/27/2014)
65. Complementary Activities, Merchant Banking Activities, and Other Activities of Financial Holding Companies Related to Physical Commodities (FRS) (4/16/2014)
66. Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States (CFTC) (3/10/2014)
67. Consultation Paper: Feasibility Study on Approaches to Aggregate OTC Derivatives Data (FSB) (2/28/2014)
68. Aggregation of Positions (CFTC) (2/10/2014)
69. Position Limits for Derivatives (CFTC) (2/10/2014)
70. Concept Release on Risk Controls and System Safeguards for Automated Trading Environments (CFTC) (12/11/2013)
71. Re-proposal of the Volcker Rule (CFTC, FDIC, FRS, OCC, SEC) (11/21/2013)
72. Asset Management and Financial Stability (SEC) (11/1/2013)
73. Credit Risk Retention (FDIC, FHFA, FRS, HUD, OCC, SEC) (10/30/2013)
74. Establishing and Protecting a Meaningful Role for Chief Compliance Officers Under the Dodd-Frank Act Reforms (SEC) (10/18/2013)

75. Amendments to Regulation D, Form D and Rule 156 (SEC) (9/23/2013)
76. Money Market Fund Reform; Amendments to Form PF (SEC) (9/17/2013)
77. Cross-Border Security-Based Swap Activities; Re-proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants (SEC) (8/21/2013)
78. Exemptive Order Regarding Compliance With Certain Swap Regulations (CFTC) (8/21/2013)
79. Prohibition Against Federal Assistance to Swaps Entities (FRS) (8/1/2013)
80. Reopening of Comment Periods for Certain Proposed Rulemaking Releases and Policy Statements Applicable to Security-Based Swaps (SEC) (7/22/2013)
81. Removal of References to Credit Ratings in Certain Regulations Governing the Federal Home Loan Banks (FHFA) (7/22/2013)
82. Regulation Systems Compliance and Integrity (SEC) (7/8/2013)
83. Duties of Broker, Dealers, and Investment Advisers (SEC) (7/5/2013)
84. Enhanced Prudential Standard and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies (FRS) (4/15/2013)
85. RFQs, Voice Brokers, Illegal Rate Rigging, & the Proposed SEF Rules (CFTC) (4/12/2013)
86. Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule (FDIC, FRS, OCC) (3/27/2013)
87. Consultative Document: Margin Requirements for Non-Centrally Cleared Derivatives (BIS/IOSCO) (3/15/2013)
88. SEF Rules and RFT-to-1 (CFTC) (3/1/2013)
89. Further Proposed Guidance Regarding Compliance With Certain Swap Regulations (CFTC) (2/15/2013)
90. Proposed Recommendations Regarding Money Market Mutual Fund Reform (FSOC) (2/15/2013)
91. Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations (CFTC) (2/15/2013)
92. Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers (SEC) (1/22/2013)
93. Policy Statement on the Principles for Development and Distribution of Annual Stress Test Scenarios (OCC, FDIC) (1/14/2013)
94. Policy Statement on the Scenario Design Framework for Stress Testing (FRS) (1/14/2013)
95. Supplemental Letter on the Volcker Rule (SEC, CFTC, FDIC, FRS, OCC) (1/8/2013)
96. Stress Testing of Regulated Entities (FHFA) (12/4/2012)
97. Margin and Capital Requirements for Covered Swap Entities (FCA, FDIC, FHFA, FRS, OCC) (11/26/2012)
98. Study of Stable Value Contracts (CFTC, SEC) (11/1/2012)
99. Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action (FDIC, FRS, OCC) (12/22/2012)
100. Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping (SEC, CFTC) (10/12/2012)

101. Clearing Exemption for Swaps Between Certain Affiliated Entities (CFTC) (9/21/2012)
102. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (CFTC) (9/18/2012)
103. Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board To Cover the Expenses of the Financial Research Fund (TREAS) (9/17/2012)
104. Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (CFTC) (8/27/2012)
105. Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (CFTC) (8/16/2012)
106. Definition of "Predominantly Engaged in Financial Activities that are Financial in Nature or Incidental Thereto" (FDIC) (8/13/2012)
107. Lending Limits (OCC) (8/6/2012)
108. Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant" (CFTC) (7/23/2012)
109. Aggregation, Position Limits for Futures and Swaps (CFTC) (6/9/2012)
110. Follow-up Letter on Volcker Rule (SEC) (6/19/2012)
111. Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades (CFTC) (5/4/2012)
112. Annual Stress Test (FDIC) (4/30/2012)
113. Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies (FRS) (4/30/2012)
114. Annual Stress Test (OCC) (4/30/2012)
115. Volcker Rule (CFTC) (4/16/2012)
116. Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant" (CFTC, SEC) (4/6/2012)
117. Follow-up on Registration and Regulation of Security-Based Swap Execution Facilities (SEC) (3/30/2012)
118. Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board to Cover the Expenses of the Financial Research Fund (TREAS) (3/5/2012)
119. Volcker Rule (SEC, FDIC, FRS, OCC) (2/13/2012)
120. Prohibitions Against Conflicts of Interest in Certain Securitizations (SEC) (2/13/2012)
121. Position Limits for Futures and Swaps (CFTC) (1/17/2012)
122. Position Limits for Futures and Swaps (CFTC) (1/13/2012)
123. Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies (FSOC) (12/19/2011)
124. Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants (SEC) (12/19/2011)
125. The Volcker Rule and Financial Reform Generally Must be Implemented Without Delay (FDIC, FRS, OCC, SEC) (12/9/2011)
126. Supplemental Standards for Ethical Conduct for Employees of the Department of the Treasury (TREAS) (11/29/2011)
127. Government Securities Act Regulations; Replacement of References to Credit Rating and Technical Amendments (TREAS) (11/28/2011)
128. Effective Date for Swap Regulations (CFTC) (11/25/2011)
129. Treatment of Asset-Backed Issuers Under the Investment Company Act (SEC) (11/7/2011)
130. Use of Derivatives by Investment Companies Under the Investment Company Act (SEC) (11/7/2011)
131. Swap Transaction and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA (CFTC) (11/4/2011)
132. Swap Transaction and Implementation Schedule: Trading Documentation and Margining Requirements Under Section 4s of the CEA (CFTC) (11/4/2011)
133. Retrospective Review of Existing Regulations (SEC) (10/6/2011)

134. Re-Proposal of Shelf Eligibility Conditions for Asset-Back Securities and Other Additional Requests for Comment (SEC) (10/4/2011)
135. Clearing Member Risk Management (CFTC) (9/30/2011)
136. Customer Clearing Documentation and Timing of Acceptance for Clearing (CFTC) (9/30/2011)
137. Study on International Swap Regulation Mandated by Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (CFTC, SEC) (9/26/2011)
138. Study of Stable Value Contracts (CFTC, SEC) (9/26/2011)
139. Report on OTC Derivatives Data Reporting and Aggregation Requirements (BIS/IOSCO) (9/23/2011)
140. Study on Assigned Credit Ratings (SEC) (9/13/2011)
141. Retail Foreign Exchange Transaction (SEC) (9/12/2011)
142. Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (SEC) (8/29/2011)
143. Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding Mitigation of Conflicts of Interest (CFTC) (8/26/2011)
144. Nationally Recognized Statistical Rating Organizations (SEC) (8/8/2011)
145. Credit Risk Retention (FDIC, FHFA, FRS, HUD, OCC, SEC) (8/1/2011)
146. Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping (CFTC, SEC) (7/22/2011)
147. Disqualifications of Felon and Other "Bad Actors" From Rule 506 Offerings (SEC) (7/14/2011)
148. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (CFTC) (7/11/2011)
149. Margin and Capital Requirements for Covered Swap Entities (FDIC, FCA, FHFA, FRS, OCC) (7/11/2011)
150. Investment Adviser Performance Compensation (SEC) (7/11/2011)
151. Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps (SEC) (7/6/2011)
152. Removal of References to Credit Ratings Under the Securities Exchange Act of 1934 (SEC) (7/5/2011)
153. Effective Date for Swap Regulation (CFTC) (7/1/2011)
154. Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act (TREAS) (6/6/2011)
155. Re-opening and Extension of Comment Periods for Rulemaking Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (CFTC) (6/3/2011)
156. Incentive-Based Compensation Arrangements (SEC) (5/31/2011)
157. Implementation of the Freedom of Information Act (FSOC) (5/27/2011)
158. Authority To Designate Financial Market Utilities as Systematically Important (FSOC) (5/27/2011)
159. Financial Market Utilities (FRS) (5/19/2011)
160. Antidisruptive Practices Authority (CFTC) (5/17/2011)
161. Clearing Agency Standards for Operation and Governance (SEC) (4/29/2011)
162. Listing Standards for Compensation committees (SEC) (4/29/2011)
163. References to Credit Ratings in Certain Investment Company Rules and Forms (SEC) (4/25/2011)
164. Swap Trading Relationship Documentation Requirement for Swap Dealers and Major Swap Participants (CFTC) (4/11/2011)
165. Orderly Liquidation Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants (CFTC) (4/11/2011)
166. Registration and Regulation of Security-Based Swap Execution Facilities (SEC) (4/4/2011)
167. Position Limits for Derivatives (CFTC) (3/28/2011)

168. Follow-up on the Exemption for Foreign Exchange Swaps and Futures (TREAS) (3/23/2011)
169. Risk Management Requirements for Derivatives Clearing Organization (CFTC) (3/21/2011)
170. Core Principles and Other Requirements for Swap Execution Facilities (CFTC) (3/8/2011)
171. Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest (CFTC) (3/7/2011)
172. New Information on the Proposed Exemption of Foreign Exchange Swaps and Futures (TREAS) (2/25/2011)
173. Core Principles and Other Requirements for Designated Contract Markets (CFTC) (2/22/2011)
174. End-User Exception to Mandatory Clearing of Security-Based Swaps (CFTC) (2/22/2011)
175. Swap Data Repositories (CFTC) (2/22/2011)
176. Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties (CFTC) (2/22/2011)
177. Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant" (CFTC) (2/22/2011)
178. Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant" (SEC) (2/22/2011)
179. Information Management Requirements for Derivatives Clearing Organizations (CFTC) (2/14/2011)
180. Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations (SEC) (2/14/2011)
181. General Regulations and Derivatives Clearing Organizations (CFTC) (2/11/2011)
182. Real-Time Public Reporting of Swap Transaction Data (CFTC) (2/7/2011)
183. Swap Data Recordkeeping and Reporting Requirements (CFTC) (2/7/2011)
184. Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants (CFTC) (2/7/2011)
185. End-User Exception to Mandatory Clearing of Security-Based Swaps (CFTC) (2/4/2011)
186. Registration of Swap Dealers and Major Swap Participants (SEC) (1/24/2011)
187. Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants (CFTC) (1/24/2011)
188. Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants (CFTC) (1/24/2011)
189. Security-Based Swap Data Repository Registration, Duties, and Core Principles (SEC) (1/24/2011)
190. Rules Implementing Amendments to the Investment Advisors Act of 1940 (SEC) (1/24/11)
191. Authority to Designate Financial Market Utilities as Systemically Important (FSOC) (1/20/2011)
192. Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers (CFTC) (1/18/2011)
193. Registration of Foreign Boards of Trade (CFTC) (1/18/2011)

- 194. Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant (CFTC) (1/18/2011)
- 195. Regulation SBSR- Reporting and Dissemination of Security-Based Swap Information (SEC) (1/18/2011)
- 196. Process of Review of Swaps for Mandatory Clearing (CFTC) (1/3/2011)
- 197. Antidisruptive Practices Authority Contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act (CFTC) (1/3/2011)
- 198. Prohibition of Market Manipulation (CFTC) (1/3/2011)
- 199. Prohibition Against Fraud, Manipulation, and Deception in Connection With Security-Based Swaps (SEC) (12/23/2010)
- 200. Financial Resources Requirements for Derivatives Clearing Organizations (CFTC) (12/13/2010)
- 201. Position Reports for Physical Commodity Swaps (CFTC) (12/2/2010)
- 202. Determination of Foreign Exchange Swaps and Futures (TREAS) (11/29/2010)
- 203. Agricultural Commodity Definition (CFTC) (11/27/2010)
- 204. Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Securities-Based Swaps Under Regulation MC (SEC) (11/26/2010)
- 205. Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest (CFTC) (11/17/2010)
- 206. Public Input for the Study Regarding the Implementation of the Prohibitions on Proprietary Trading and Certain Relationships With Hedge Funds and Private Equity Funds (FSOC) (11/5/2010)



Appendix C

Selected Legal Matters in Which Better Markets Has Participated

1. **MetLife, Inc. v. Financial Stability Oversight Council** (FSOC), U.S. Court of Appeals for the D.C. Circuit (No. 16-5086) and U.S. District Court for the District of Columbia:
 - a. Amicus Briefs in support of FSOC and its designation of MetLife as a nonbank potential threat to the financial stability of the United States, warranting enhanced supervision by the Federal Reserve.
 - b. Amicus Brief opposing MetLife's motion to delay the appeal.
 - c. Amicus Brief arguing for disqualification of the Department of Justice as counsel for FSOC due to conflicts of interest and for appointment of independent counsel.
2. **MetLife, Inc. v. Financial Stability Oversight Council** (FSOC), U.S. Court of Appeals for the D.C. Circuit (No. 16-5188) and U.S. District Court for the District of Columbia (No. 15-cv-45): Motion to Intervene for the purpose of unsealing the record on which the district court based its decision, two-thirds of which were unilaterally put under seal by the parties and concealed from public view.
3. **Chamber of Commerce v. Dep't of Labor**, U.S. Court of Appeals for the Fifth Circuit (No. 17-10238): Amicus Brief in defense of the Department of Labor's fiduciary duty rule.
4. **United States v. HSBC Bank**, U.S. Court of Appeals for the D.C. Circuit (No. 16-308): Amicus Brief in support of an intervenor's right to access judicial records, specifically a monitor's reports, which documented whether HSBC was complying with its deferred prosecution agreement with the Department of Justice.
5. **Advocates for Basic Legal Equality, Inc. v. U.S. Bank**, Supreme Court of the United States, (No. 16-130): Amicus Brief in support of a petition for certiorari, arguing that the lower court's overly expansive interpretation of the public disclosure bar under the False Claims Act would dramatically limit the ability of whistleblowers to hold banks and other corporations accountable for illegal conduct.
6. **Market Synergy Group, Inc., v. Dep't of Labor**, U.S. District Court for the District of Kansas, (No. 5:16-cv-04083): Amicus Brief in defense of the Department of Labor's fiduciary duty rule.
7. **Nat'l Ass'n for Fixed Annuities v. Perez**, U.S. District Court for the District of Columbia (No. 1:16-cv-1035): Amicus Brief in defense of the Department of Labor's fiduciary duty rule.

8. **Perry Capital, LLC v. Lew**, U.S. Court of Appeals for the District of Columbia Circuit (Nos. 14-5243, 14-5254, 14-5260, 14-5262): Amicus Brief opposing shareholder attempts to challenge the terms of the government's rescue and conservatorship of Fannie Mae and Freddie Mac and to recover damages.
9. **Starr Int'l Co. v. United States**, U.S. Court of Appeals for the Federal Circuit (Nos. 2015-5103, 5133): Amicus Brief opposing Starr International's attempt to challenge the terms of the government bailout that saved AIG from bankruptcy during the financial crisis and request for \$40 billion in additional payments.
10. **United States v. Countrywide Bank, FSB**, U.S. Court of Appeals for the Second Circuit (No. 15-496-cv): Amicus Brief arguing that the lower court was correct when it found that the defendant banks were guilty of fraud under the Financial Institutions Reform, Recovery, and Enforcement Act and that the lower court correctly determined the penalty amount.
11. **Loan Syndications & Trading Ass'n v. Sec. & Exch. Comm'n**, U.S. District Court for the District of Columbia (Nos. 14-1240 & 14-1304): Amicus Brief in defense of the risk retention rule as applied to collateralized loan obligations, requiring securitizers to retain an interest in debt securities they issue.
12. **DTCC Data Repository, LLC. v. Commodity Futures Trading Comm'n**, U.S. District Court for the District of Columbia (No. 13-cv-624): Amicus Brief arguing that the CFTC is not required to conduct a cost-benefit analysis in its rulemakings, including its approval of self-regulatory organization rules.
13. **Sec. Indus. & Fin. Mkt. Ass'n v. Commodity Futures Trading Comm'n**, U.S. District Court for the District of Columbia (No. 13-cv-1916): Amicus Brief in defense of the CFTC's rules and guidance regulating cross-border derivatives transactions.
14. **Better Markets, Inc. v. United States Dep't of Justice**, U.S. District Court for the District of Columbia (No. 1:14-cv-00190): Complaint for Declaratory and Injunctive Relief, and related memoranda of law, challenging the \$13 billion settlement privately negotiated between Attorney General Eric Holder and JP Morgan Chase CEO Jamie Dimon because it was never subjected to judicial review to determine whether it appropriately held the bank accountable for its role in the massive fraudulent conduct that triggered the 2008 financial crisis.
15. **Nat'l Ass'n of Mfr. v. Sec. & Exch. Comm'n**, U.S. Court of Appeals for the D.C. Circuit (Nos. 13-5252 & No. 12-1422): Amicus Brief arguing that the SEC was not required to conduct a cost-benefit analysis for its rule requiring public companies to file reports regarding their use of "conflict minerals."
16. **Commodity Futures Trading Comm'n v. Int'l Swaps & Derivatives Ass'n**, U.S. Court of Appeals for the D.C. Circuit (No. 12-1668) and U.S. District Court for the District of Columbia (No. 11-cv-2146): Amicus Briefs arguing that the CFTC was not required to conduct a cost-benefit analysis for its rule establishing new position limits.
17. **Am. Petroleum Inst. v. Sec. & Exch. Comm'n**, U.S. Court of Appeals for the D.C. Circuit (No. 12-1398) and U.S. District Court for the District of Columbia (No. 12-5413): Amicus Briefs arguing that the SEC was not required to conduct a cost-benefit analysis for its rule requiring public oil and gas companies to disclose payments to U.S. or foreign governments in connection with mineral extraction activities.
18. **Investment Co. Inst. v. Commodity Futures Trading Comm'n**, U.S. Court of Appeals for the D.C. Circuit (No. 12-541) and U.S. District Court for the District of Columbia (No. 1:12-cv-6123): Amicus Briefs defending a CFTC rule which closed a regulatory gap in derivatives regulation by requiring registered investment companies engaged in significant swaps activities to register as commodity pool operators.
19. **Sec. & Exch. Comm'n v. Citigroup, Inc.**, U.S. Circuit Court of Appeals for the Second Circuit (No. 1:11-5227) and U.S. District Court for the Southern District of New York (1:11-cv-07387-JSR):
 - a. Motion to Intervene for the purpose of objecting to a settlement between the SEC and Citigroup for its lack of transparency and facially weak terms;
 - b. Amicus Brief detailing
 - i. Citigroup's fraudulent and illegal conduct,
 - ii. the undisclosed agreement between Citigroup and the SEC regarding the scope of the settlement,
 - iii. why the settlement was not fair, reasonable or adequate, and
 - iv. the District Court's ample basis and multiple valid reasons for rejecting the settlement.
 - c. Motion to provide the Second Circuit with a full, fair, and balanced presentation of the issues presented, where both parties opposed the district court's rejection of a settlement agreement, leading to the unprecedented appointment of independent counsel to defend the lower court's ruling; and
 - d. Amicus Brief supporting the decision of the lower court to reject a settlement between the SEC and Citigroup

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The New York Times

- “FACING DOWN THE BANKERS,” MAY 30, 2012



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