BETTER MARKETS

2021 ANNUAL REPORT

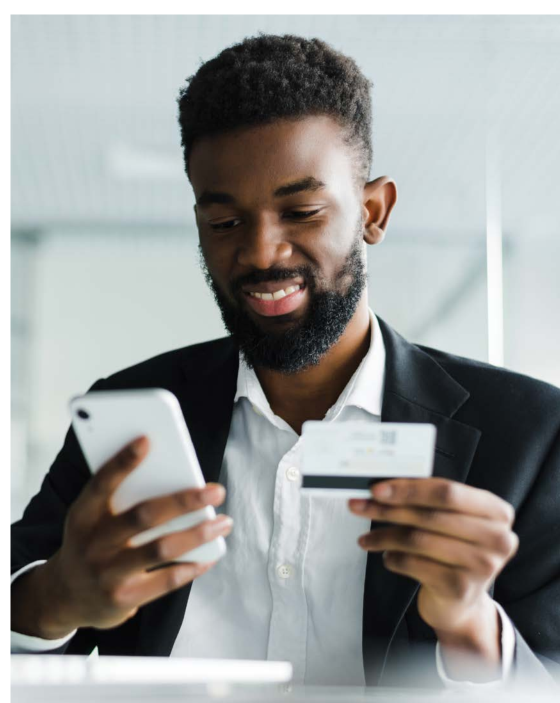


Table of Contents

Message from the

CEO and Board Chair

2021 was a year of transition. The country moved on from the dangers and dangerous policies of the Trump administration and fought to return to normalcy in the face of an unrelenting pandemic. We were proud that Better Markets and our team played an important role in influencing the policy agenda and public discourse in the key areas of economic policy, social justice, and financial regulation during this important year.

We made our mark by providing an impressive record of content, research, analysis, and advocacy that is simply unmatched on economic and financial issues that impact the lives and livelihoods of all Americans. Policymakers and decision-makers from elected officials in Congress and regulators to White House staff and administration personnel, as well as private sector leaders and the media, read and relied on our comment letters, reports, white papers, and analyses on the full range of economic and financial issues, with a focus on financial regulatory matters. They also watched us testify before Congress and comment on all the key economic and financial issues that impact the economic and financial wellbeing of families throughout our country. We engaged with and served as an important resource for Congress and collaborated with the new Presidential administration, which was facing unprecedented challenges including standing up a government in the middle of a pandemic that was hospitalizing and killing millions of Americans and required social distancing.

2021 was also a year in which the scope of our advocacy continued to expand with a dedicated focus on the financial implications of racial economic inequality, climate change, and the other "ESG" factors. We also gave voice to the increasing awareness and frustration among many, including those in the "Reddit" community, that our financial system is rigged to benefit and enrich the privileged few at the expense of the retail investor, pension funds, and buy side generally.

MICHAEL W. MASTERS

Chair and Co-founder

DENNIS M. KELLEHER

Co-founder, President and CEO

With this trend is a growing sense among the general public that financial reform issues have previously unseen consequences that impact their lives in profound ways. We will continue to shed light on these crucial issues.

In 2021 we also expanded our leadership with the addition of two new board members. We were pleased to add Dedrick Asante-Muhammad, Chief of Membership, Policy and Equity at the National Community Reinvestment Coalition, and Donnel Baird, Co-Founder and CEO of BlocPower, to our Board of Directors.

Dedrick and Donnel are both passionate about helping those who are being excluded from the American Dream because today's financial and economic systems create and perpetuate unfair treatment, inequality, and injustice. Their dedication and commitment to bringing economic power to Main Street Americans aligns with Better Markets' mission to fight for a financial system that supports the real economy, creates jobs, and offers prosperity to all Americans.

We are grateful for your continued support of our work to bring transparency, oversight, and accountability to all our financial markets and the agencies that oversee them, from securities and banking to derivatives and consumer protection. In 2022, we are continuing our fight for laws, rules, protections, and policies that promote the economic security, opportunity, and prosperity of all Americans.

We hope you enjoy the highlights of what we have accomplished together.

Mission, Vision, and Values

MISSION

To fight for the economic security, opportunity, and prosperity of the American people, particularly those who are disenfranchised, by working to ensure finance serves society, to enact economic and financial reforms to prevent another financial crash, to avoid the diversion of trillions of taxpayer dollars to bailing out the financial system, and to prevent the financial fraud and abuse that takes an enormous toll on countless hardworking Americans every year.

VISION

Protecting Americans' jobs, homes, savings, the standard of living, and retirements from an unbalanced, fragile economic and financial system that is too often tilted against Main Street families and enriches the already wealthy-from high-risk activities with little or no social value.

VALUES

Better Markets supports pragmatic rules and a balanced banking and financial system that enables stability, growth, and broad-based prosperity for all Americans, while reducing inequality and making the American Dream available to all once again.

Theory of Change

Better Markets Theory of Change and the Arc of Advocacy™

THE PROBLEM

The economy no longer works for the vast majority of Americans because, among other contributing factors, the financial system is too often a wealth-extraction mechanism for the few rather than a wealth-creation system for the many. This is because the financial sector uses its economic power to buy political power, which it uses throughout the policymaking process to protect and increase its economic power.

THE SOLUTION

Using our integrated, comprehensive Arc of Advocacy, Better Markets' professionals apply their procedural and substantive expertise throughout the policymaking cycle to protect and promote the economic security, opportunity, and prosperity of the American people, while holding Wall Street accountable. Change is certain, but progress is not. Change happens when people in power exercise that power, but progress only happens when those people exercise that power to serve the public interest. Progress is what the Arc of Advocacy is designed to accomplish.

THE GOALS

Our role is to help create and support the guardrails, gatekeepers, and guard dogs (the "three Gs") that ensure the financial sector serves society by supporting the real, productive economy that generates jobs and broad-based economic growth. The "three Gs" can also ensure that the financial system isn't focused on enriching financers on Wall Street, destabilizing the financial system, draining public resources for their own benefit, and unleashing predators on consumers and investors.

Arc Of Advocacy™

1 **Pre-Proposal:** A rule implementing a law is considered for proposal by an agency or department, sometimes with solicitation of public input on possible approaches.

- Better Markets advocates for a rule or policy change (through meetings, op-eds, speeches, newsletters, early-stage comment letters, online engagement, etc.).

---

2 **Proposed Rule:** An agency (or, less often, a group of agencies together) or a department proposes and publishes a rule for public comment.

- Better Markets reviews the proposal.
- Better Markets speaks to experts, develops its own ideas, speaks to experts, talks with allies, and confers with academics and members of the industry.
- Better Markets files comment letters on the proposal.

3 **Post-Proposal:** Comment letters are filed during the comment period. Once the comment period is closed, all the comment letters are made public. The agency then considers all the information gathered from the public or otherwise submitted, as required by the Administrative Procedure Act.

- Better Markets reviews filed comment letters.
- Better Markets meets with key policymakers to advocate our positions and rebut opposing views.

4 **Finalization Of The Rule (As Originally Proposed Or Re-Proposed):** If the agency finalizes the rule, it publishes a final rulemaking addressing comments submitted in response to the initial proposal.

- Better Markets carefully reviews the final rule for compliance with the law and administrative record.
- Better Markets comments on the final rule and strategizes on further action, if appropriate.

5 **Litigation:** The courts may review a rulemaking and uphold it or find that it is substantively or procedurally flawed. Challenged rules are often stayed pending the outcome of the litigation.

- Better Markets considers filing its own challenge to a flawed rule.
- If the new rule is challenged in court by other parties, Better Markets evaluates the challenge and, if appropriate, supports the challenger or defends the rule agency and the process via amicus briefs and other advocacy

6 **Implementation And Interpretation:** The agency interprets and applies the rule. Often, it and provides guidance for those subject to the rule (and too often, it creates exemptions or relief from compliance) relating to the rule.

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

7 **Enforcement:** The agency also must then enforce the rule.

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

8 **Rollback:** Sometimes, an action to repeal, dismantle, or otherwise diminish the effect of a law or regulation is taken.

- Better Markets works to defend the rule if the agency seeks to rolls it back or if there are attempts by Congress to weaken the rule inappropriately.

2021: Back from the Brink

Rolling Back the Trump-Era Deregulation and Setting a New Agenda

2021 was a year to begin rolling back the Trump administration's assault on crucial financial protection rules implemented after the 2008 financial crisis. While there is much work left to do, we have helped to turn the tide and shift the focus towards Main Street families and kitchen-table issues, rather than the interests and bonuses of Wall Street's banks.

We were pleased to work closely with the Biden administration as it looked to move the country towards recovery and get serious about protecting investors, financial consumers, retirees and investors, strengthen financial stability, and refocus banking back to supporting the real economy, jobs and growth. Dennis Kelleher served as a member of the Biden Transition team, focusing on the various financial agencies and the Departments of Treasury and Justice, and we have engaged in an ongoing dialogue with the administration since taking office.

For example, the Securities and Exchange Commission (SEC) is actively pursuing an important, broad, and multi-faceted agenda to protect investors and markets while promoting capital formation. At the CFPB, Director Rohit Chopra, and at CFTC, Chairman Rostin Behnam, are also making an important impact on the key consumer protection and commodities markets issues that are vital to the lives, livelihoods, and standard of living of the American people. Meanwhile, the President's experienced, talented, and diverse appointments to the Federal Reserve Board signal a clear change that all Americans will have a seat and voice in the corridors of power.

That said, 2021 was yet another reminder that Wall Street is well-funded and relentless when it comes to protecting its special interests and fighting common-sense regulation. While legislative gridlock largely continues and the outcome of the 2022 midterm elections remain uncertain, the good news is that regulatory agencies will be controlled by the President's nominees or appointees through 2024 (and, indeed, until at least January 2025). There are numerous opportunities to promote the economic security and prosperity of the American people. The regulatory agencies are moving in the right direction in many areas, and we continue to push them to stand up to Wall Street's interests and do even more.

DENNIS KELLEHER, NAMED TO WASHINGTONIAN'S 250 MOST INFLUENTIAL PEOPLE LIST

In March 2021, Washingtonian magazine named Dennis Kelleher as one of "Washington's most influential people" in banking and finance, saying he was one of the "experts and advocates outside of government who'll be shaping the policy debates for years to come."

Here are just a few examples of our work in 2021 to influence policy and hold Wall Street accountable:

The Agenda for New SEC Chairman Gary Gensler

In a Financial Times op-ed, Dennis Kelleher laid out a bold agenda for the new SEC Chair "to protect investors; facilitate capital formation; promote fair, orderly, and efficient markets; and strengthen financial system resilience and stability."

SEC's Redelegation of Enforcement Investigation Authority is Critical to Protecting Investors by Quickly Identifying and Stopping Fraud

Dennis Kelleher issued a statement in response to the SEC's decision to redelegate authority to enforcement staff to act more swiftly to detect and stop ongoing frauds, preserve assets, and protect investors.

Putting the SEC cops back on the Wall Street beat

In a May 2021 Hill op-ed, Dennis Kelleher argued that under new leadership it was time for the SEC to hold Wall Street accountable and vigorously enforce financial rules to protect all Americans.

Better Markets' Applauds Biden Administration's Budget Request Increases for The SEC and CFTC, But They Are Still Far Too Low to Protect Investors And Markets

We applauded President Biden's 2022 budget request increases of 5% for the SEC and nearly 30% for the CFTC but also made the case that the agencies are still significantly underfunded and, therefore, unable to fulfill their critical missions.

Better Markets Urges CFTC to Remedy Position Limits Rulemaking

Better Markets Legal Director and Securities Specialist Stephen Hall signed a letter to Acting CFTC Chair Behnam urging the agency to revisit and repair its rule on position limits to protect the critical functions of the derivatives markets, the businesses that rely on them, and the consumers who pay the price when excessive speculation distorts the markets.

In a Comment Letter, Better Markets Urged the CFPB to Fix Abusive Debt Collection Rules

Back in 2020, the CFPB, under the leadership of former Director Kathleen Kraninger, finalized two rules on debt collection that would favor abusive debt collectors at the expense of consumers. In a comment letter, Better Markets urged the CFPB to draft debt collection rules that protect consumers from repeated harassment and from inherently deceptive conduct.

The GameStop Frenzy and the Growing Voice of Retail Investors

The Reddit-fueled and Robinhood-facilitated frenzied trading of GameStop and a number of other public companies in 2021 raised serious investor protection and market integrity issues. Indeed, it exposed a vast predatory ecosystem underpinning too much of modern finance, including the anti-retail trader and the anti-buy side practices enabled by a rigged market structure.

These events have, once again, exposed the need to investigate the conduct of numerous financial firms and market intermediaries, including brokers, hedge funds, dealers, short sellers, and Wall Street's megabanks. And it called for renewed scrutiny into trading practices that have become ingrained in the markets, including leverage, liquidity, derivatives, fragmentation, complexity, interconnectedness, high-frequency trading, the gamification of retail trading, market manipulation, and conflicts of interest.

While some of these issues are new to the public, Better Markets has been working on them for many years and has been at the forefront of clarifying them to regulators, legislators, policymakers, and the media. And we've been a leading advocate in the call for reform to address the threats to investors and to financial stability that this market turmoil exposed.

That's why, from the beginning of the GameStop frenzy, Better Markets provided insights into how these events occurred, the key players, and many of the topics, terms, and activities relevant to these topics.

These include:

- Whitepaper: Select Issues Raised by the Speculative Frenzy in GameStop and Other Stocks
- Fact Sheet: Key Issues raised by Robinhood, Reddit, Citadel, GameStop, and rigged markets.
- Citadel Fact Sheet: Who is Citadel and why should you care?
- Short Selling Fact Sheet: Selling: 10 Recommendations for Improving the SEC's Regulatory Framework
- CAT Fact Sheet: Explaining the "consolidated audit trail," a long overdue transparency, and accountability measure to protect investors and the integrity of the U.S. securities markets.

HOUSE FINANCIAL SERVICES COMMITTEE HEARING

The House Financial Services Committee asked Dennis Kelleher to testify at a hearing on the trading frenzy on March 17, 2021. In his testimony and in answering the questions of the members, he emphasized how retail investors are virtually guaranteed to get worst execution and lose money given the payment for order flow (PFOF) schemes employed by many firms in the market. He also addressed the immediate need for tougher regulatory oversight to reform our markets, end predatory and other harmful practices, and stop what too many in the financial industry continue to view as a game, among other topics. Read Dennis' written testimony here and his five-minute opening statement here.

COMING SOON TO A STREAMING PROVIDER NEAR YOU

The trading frenzy also spawned movies, documentaries, and TV shows focusing on the GameStop frenzy. In 2021, Dennis Kelleher was interviewed extensively for three documentaries focusing on payment for order flow, short selling, gamefication, and how the markets work, or more accurately, how they don't work. *Gaming Wall Street* will be out on HBO Max in March 2021, *Eat the Rich: The GameStop Saga* on Netflix in September 2021, and *Apes Together Strong* in the Fall of 2022.

DENNIS KELLEHER PARTICIPATED IN A REDDIT AMA

Reddit is an online platform that has numerous forums for like-minded people to meet and discuss whatever might interest them. These are called subreddits and there are a number of them focused on finance and on financial issues, most prominently r/wallstreetbets and r/superstonks. Dennis Kelleher was asked to do what is called an AMA or "ask me anything" on r/GME where he answered questions from the community about the GameStop trading frenzy. Dennis addressed questions on topics ranging from short selling, Robinhood, and Citadel Securities to dark pools, the SEC, and payment for order flow.

The Changing Climate on ESG…

Investors, public interest advocates, the financial sector, regulators, policymakers, and elected officials in the U.S. and abroad have increased their attention to the way companies have addressed environmental, social, and governance ("ESG") issues in recent years. Over the last decade or so, more and more investors are considering how companies incorporate these factors into their operations, risk assessments, and planning as those investors make their investment decisions.

Better Markets has always been a leader on these crucial issues, and is now providing unmatched insights, analysis, and advocacy as regulators and investors consider these issues. Because Better Markets is engaged at all the regulatory agencies, it is ideally positioned to develop a comprehensive, coordinated, and integrated approach to finance, the financial markets, and the financial regulatory agencies. Moreover, because Better Markets has developed a unique advocacy approach to the financial regulatory process it is well-positioned to turn that approach into an actionable plan that gets results.

In 2021 we delivered an expansive library of content to inform the public and influence policymakers:

Our White Paper: What is ESG and Why is it So Important?, explored ESG issues, particularly the impact of climate change and the prospects of competition in a decarbonized economy.

We filed a comment letter with the Department of Labor in response to the agency's proposal to remove barriers instituted during the previous Administration that limited plan fiduciaries' ability to consider climate change and other environmental, social, and governance factors when they select investments and exercise shareholder rights.

Our team filed substantive comments in response to the SEC's request for information on climate related disclosures, like this Comment Letter: Climate Change Disclosures.

We lauded the leadership of CFTC Commissioners for their proactive climate policy in our Letter: Better Markets Writes to CFTC Commissioners Praising Their Leadership in Addressing Climate-Related Risks.

We emphasized the importance of the Fed's role in climate change in our Report: Should Federal Reserve Chairman Jay Powell Be Reappointed? (Climate Section).

And Racial Inequality

Then our team outlined the ways in which the federal banking agencies can and should use their explicit mandate and authorities to supervise and regulate climate-related risks to the banking system in a Report: Climate Change and the Banking System.

And finally we urged the next Vice Chair for Supervision of the Federal Reserve Board to adopt the recommendations for the supervision and regulation of climate-related risks in this Report: The Agenda for the Fed's Next Vice Chair for Supervision (Climate Related Arguments)

Racial Economic Inequality

The financial system and the financial industry have played a major role in creating, embedding, perpetuating, and sustaining the structural financial and economic inequalities faced by poor, underprivileged, unrepresented, and disenfranchised communities. Unaddressed, these financial, economic, political, and power imbalances will persist and intensify, increasing inequality and reducing living standards as well as threatening the economic security, opportunity, and prosperity of all other Americans.

Better Markets has served as a leader on addressing the systemic economic issues creating racial inequality in our society.

Better Markets' racial inequality focused work fights for an economic and financial system that serves all of society and benefits all Americans—not just the wealthy, connected, and powerful.

In 2021 we published our report Addressing Racial Economic Inequality Through the Banking System, identifying steps the Federal Reserve and other federal banking regulatory agencies must take to begin to level the playing field and address economic inequality and discrimination in the banking sector.

As a new team at the SEC began its work, we also created a report outlining the ways the SEC can address racial economic inequality in the securities markets.

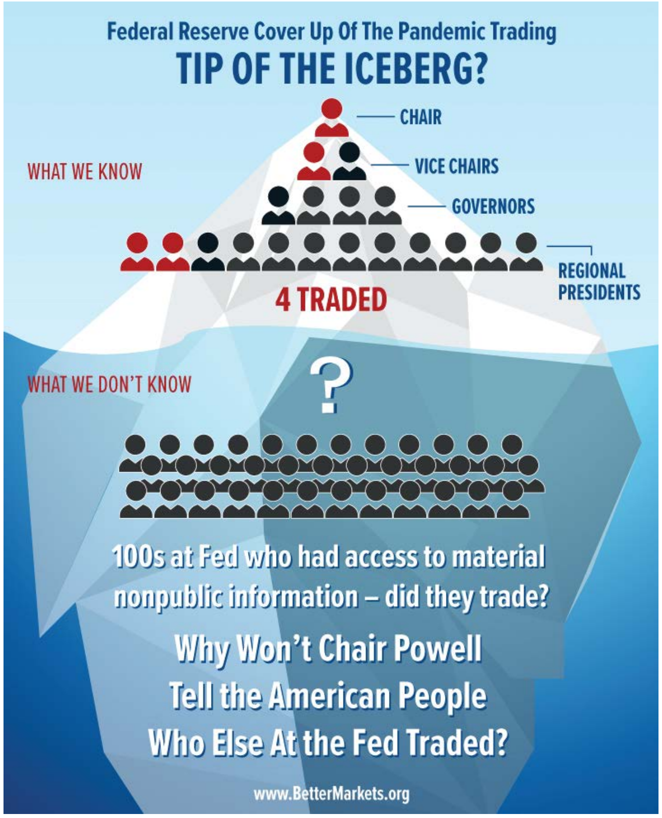
Another aspect of our work on racial equality is our push for more effective use of the Community Reinvestment Act (CRA). The CRA is a crucially important piece of legislation designed to ensure that historically underserved communities have access to credit and banking services. But for far too many Americans, the promises of the CRA have remained unfulfilled. Better Markets urged the Fed to improve the CRA for underserved communities, arguing that it must do everything in its power to ensure that the CRA's provisions are implemented and enforced so that vulnerable Americans are not excluded from the benefits of the financial system.

Change at the Federal Reserve

The past 4 years have been a tumultuous time for the Federal Reserve, from navigating the dynamics of an impulsive and erratic President to helping steer the economy through the worst global pandemic in over 100 years. 2021 was an opportunity to evaluate the Fed as it emerged from this period, consider the tenure of Jerome Powell as he faced reconfirmation, and evaluate new candidates nominated to its board.

As President Biden considered who should lead the Fed, our team released a report providing a balanced overview of Chairman Powell's record. The report noted

> **The Fed is the Supreme Court of Economic and Financial Policymaking. With so much at stake, the next leader of the Fed, be it Jay Powell or some other candidate, must only be selected after all these critical issues and policies are rigorously examined. Because the Fed's policies and actions impact virtually every American, their standard of living, and their economic wellbeing, they deserve no less."**



We also created an ambitious yet achievable agenda for the Fed's next Vice Chair for Supervision, who has tremendous influence over the setting of rules for and supervisory oversight of the U.S. banking system. We encouraged the next Vice Chair to get the Fed back on the right track when it comes to enforcement, promoting greater resiliency of our financial system, and redirecting the banking system so that it works for all Americans.

Better Markets also defended the public interest by serving as a strong voice for transparency and accountability in the shocking pandemic profiteering trading scandal by senior Fed officials.

More examples of our engagement with the Fed include:

The Federal Reserve’s 2021 Stress Test Results: All Bark and No Bite

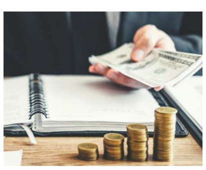
In our fact sheet, we reviewed the de-regulatory changes that have been made to the Fed’s stress testing program and the dangerous effects those changes have had on the stress tests, capital requirements, and capital planning for the largest banks.

The Fed’s Proposed Rulemaking on Debit Card Transactions Will Promote Lower Fees

Better Markets filed a comment letter to the Federal Reserve Board supporting its proposed clarifications to its Regulation II that would help to ensure competition for card-not-present debit card transactions, such as online purchases. Recent years have seen substantial growth in such transactions, particularly over the COVID-19 pandemic, and the proposed clarifications would promote lower associated fees for merchants and consumers.

Commenting On a Proposed Rule on Bank Supervision

Better Markets filed a comment letter on a proposed rule that threatens to weaken the role of supervisory guidance in bank supervision. In our comment letter, we urged the five agencies (Federal Reserve System, the OCC, the FDIC, the CFPB, and the NCUA) to withdraw the proposal or at least limit its scope and state plainly that guidance can and will continue to inform supervisory criticisms of banks.



Law 360 Op-Ed: Next Fed Supervision Vice Chair Must Restore Bank Oversight

Phillip Basil, Better Markets Director of Banking Policy, discussed the deregulation under the Trump administration and how the next Fed Supervision Vice Chair should move forward.

Monitoring the Markets in the Courts

Every year, the federal courts confront and decide a significant number of legal cases and issues that directly impact the economic and financial well-being of all Americans. The cases are sometimes related to finance, financial regulation, contract law, corporate conduct, and administrative law, but, whatever the particular body of law, these cases can have a huge impact on kitchen table issues, including the amount of money Americans are able to earn, spend, save, invest, and set aside for retirement.

For example, almost everyone in the country has checking or savings accounts, debit or credit card, or a loan of some types and is therefore a financial consumer. Courts decide how much protection they get—or not—from the law. The courts also decide how broadly the financial laws are applied, whether agencies will have the tools they need to combat fraud, and whether investors will have a meaningful remedy in court when they are victimized—or be thrown into a pro-industry, secretive arbitration proceeding.

As often as possible, Better Markets is in court standing up for financial consumers, investors, financial stability, and the protection of markets that work for Main Street Americans and grow the economy. We track the key cases and often file an amicus curiae or "friend of the court" briefs urging courts to consider the public interest, the plight of investors and consumers, and the need to make our markets as fair, transparent, and stable as possible.

No Court has a more profound, widespread, or lasting impact than the U.S. Supreme Court. Every term, from October through the following Spring or Summer, the Court decides cases addressing not just major social policies such as abortion and gun control but also financial and economic issues that profoundly affect Americans' lives. We regularly issue reports on the Supreme Court's cases and the Justices that sit on the bench and decide Americans' financial fate.

Below are some of the Supreme Court cases we tracked, including those in which we participated as an amicus in 2021:

Supreme Court Decision Guts Critically Important, Longstanding, Pro-Investor, Pro-Consumer Enforcement Power, *AMG Capital Management,* LLC v. FTC, No. 19-508 (Apr. 22, 2021)

The Supreme Court handed the FTC a major defeat in its fight to deprive con artists of their ill-gotten gains and return funds to injured investors. It held that the FTC lacks the authority to seek monetary relief such as disgorgement and restitution when it asks a federal court for an injunction against illegal practices. In light of the Court's decision, the FTC will have to follow more elaborate procedures to recover money on behalf of fraud victims, delaying and likely diminishing their prospects for

recovery. Or, the agency will have to undertake the arduous fight to persuade Congress to repair the damage done by the Supreme Court's decision, always with an uncertain outcome.

Supporting Investors Seeking to Hold Goldman Sachs Accountable for Fraud—*Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System,* No. 20-222 (June 21, 2021)

Before the Supreme Court was a group of Goldman Sachs investors seeking to hold the bank accountable for its misrepresentations through a class action which allows lots of harmed investors to band together in one lawsuit rather than each one suing Goldman alone. The issue at this stage is whether the case can even be brought on a class basis. Goldman is making the brazen argument that its misrepresentations were too general to actually matter to investors. Better Markets filed an amicus brief in which we urged the Supreme Court to consider Goldman's history of intense conflicts of interest before and during the financial crisis and the reasons why the bank's false assurances that it was effectively managing those conflicts would be important to investors.

The Court's decision in June 2021 required courts to take the generic nature of misleading statements into account, and it ultimately increases the risk that Goldman Sachs and other corporations will be able to lie to investors with impunity through bold yet sweeping assurances and misrepresentations. The ultimate outcome is uncertain because the Supreme Court sent the case back to the lower court to review the issues in light of the principles articulated in the Supreme Court's decision.

Holding Retirement Plan Fiduciaries Accountable in *Hughes v. Northwestern,* No. 19-1401 (Jan. 24, 2022)

We joined in an amicus brief in an important case titled *Hughes v. Northwestern University,* which provided the Court an opportunity to improve the lives of countless retirement savers by giving them a chance to hold those who administer retirement plans accountable when they breach their fiduciary duties in selecting available investment options. *Hughes* is all the more important as the retirement crisis in this country intensifies and Americans increasingly rely on prudent administration of their 401(k)s to close the gap between their savings and what they'll need to maintain a decent retirement. The Court's decision was largely a victory for retirement savers, as the Court rejected the notion that retirement plan fiduciaries can satisfy their fiduciary duty simply by including some reasonable investments along with a confusing array of overpriced options.

We also tracked and weighed in on cases in the lower federal courts, including these:

[Fighting for Investors to Get Their Day in Court–*Ford v. TD Ameritrade,* No. 18-3689 (8th Cir. Apr. 23, 2021)]

The Eighth Circuit Court rejected a proposed class-action lawsuit from investors who accused TD Ameritrade of securities fraud, thus insulating the industry from meaningful scrutiny and accountability. Better Markets filed an amicus brief in support of the investors, who alleged that brokers routinely violate their duty to seek the best execution for their clients' trades by routing those trades to maximize payments from exchanges and others, not to get the best possible price as the duty of best execution requires. We supported the plaintiffs' legal position and also pointed out the essential role of class action relief as the only realistic means of recovering damages and holding firms accountable for these abusive practices. Unfortunately, the Court held that the class shouldn't be certified and allowed to prove its case because proof of damages for each investor in the class would require too many individualized determinations—even though the plaintiffs had developed an algorithm to calculate those damages efficiently for all members of the class.

Fighting Back Against Predatory High-Frequency Traders Ripping Off Everyday Investors—*Citadel Securities LLC v. SEC,* No. 20-1424 (D.C. Cir.)

The SEC approved an innovative new order type developed by a pro-investor exchange known as IEX, which levels the playing field between Main Street investors and high frequency trading firms like Citadel. Citadel wants to nullify the SEC's decision and preserve its highly profitable trading model, so it went to court. We filed an amicus brief, explaining the advantages that HFTs enjoy, the harm they inflict on investors, and the beneficial impact that the "D-limit" order type can have in addressing predatory trading practices. The case was argued on October 25, 2021, and we await the Court's decision.

[Fighting Against Forcing Investors to Use Biased, Unfair, Secret Arbitration When They Are Ripped Off or Companies Break the Law—*The Doris Behr Irrevocable Trust v. Johnson & Johnson,* No. 22-1657 (3rd Cir.)]

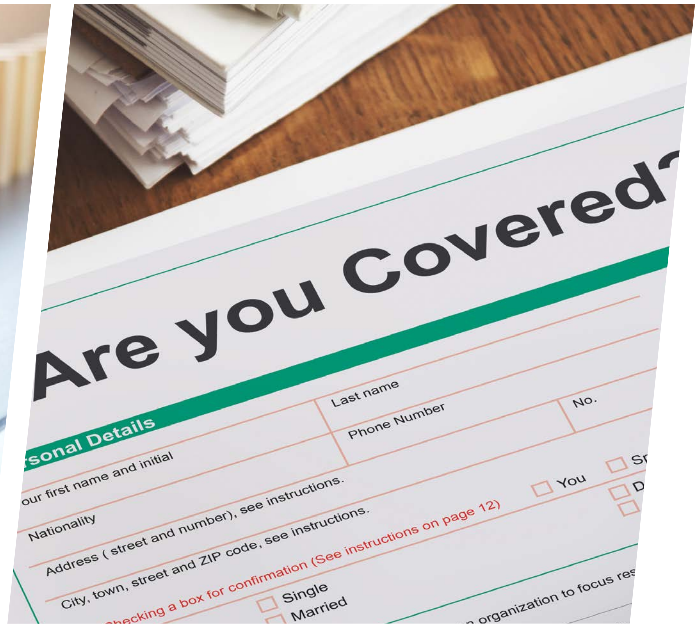
In this case, the core issue is whether a public company can impose mandatory arbitration not just on its customers but also on any shareholders with claims against the company for fraud, mismanagement, or other breaches of duty. This is called "forced arbitration" because the companies force customers, investors and others to go into biased, unfair, secret arbitration forums rather than to open court with independent judges and clear rules. If the court gets this wrong and allows this dramatic—and dramatically bad—legal development, then the toxic effects of mandatory arbitration will be further broadened, incentivizing lawbreaking by limiting the legal rights of investors to deter it by seeking damages for the harm done. Given that shareholders are the owners of public companies, and they rely on legal actions as one important way to protect their investments and police management, such a decision could have a significant and adverse impact on capital formation and allocation. Fortunately, the federal district court in New Jersey dismissed the case, but it is now on appeal to the Third Circuit, and we'll be watching closely.

Seeking Transparency About Diversity on Corporate Boards—*Alliance for Fair Board Recruitment v. SEC, No. 21-60626 (5th Cir.)*

This case is a challenge to the SEC's approval of a new rule issued by the NASDAQ that would help advance the cause of racial justice. The NASDAQ, a major national stock exchange that lists over 3,000 company stocks, recently took a major step forward on the racial injustice front by issuing a new rule that would require each company listed on the exchange to publicly disclose the self-identified gender, racial, and LGBTQ+ status of each member of the company's board of directors. The rule also requires each listed company to have, or explain why it does not have, at least two members of its board who are diverse, including at least one director who self-identifies as female and at least one director who self-identifies as an underrepresented minority or LGBTQ+. The SEC approved the rule in August 2021, and the petitioner, the "Alliance for Fair Board Recruitment," promptly challenged it in the U.S. Court of Appeals for the Fifth Circuit. The Alliance is arguing that the rule violates the petitioners' right to equal protection under the Fifth Amendment to the U.S. Constitution, that it also violates the First Amendment by requiring disclosure of controversial information, and that the SEC lacked authority under the securities laws to approve the rule. Briefing is underway. A victory in the case by the Alliance will invalidate an important measure that provides key insights into the composition of thousands of boards of directors, information that would undoubtedly and ultimately lead to greater diversity in America's board rooms, and progress toward bringing minorities into the economic mainstream.

Cutting Through the Hype on SPACs

Special Purpose Acquisition Vehicles or SPACs received an enormous amount of attention in 2021 as one of the newest trends on Wall Street. While SPACs can make some people a lot of money, mostly the already rich financial insiders on Wall Street, too often that money comes straight out of the pockets of retail investors. That's because SPACs are used to deprive investors of complete and accurate information as is required in an IPO. Worse, SPAC sponsors claim that they don't have legal liability for the statements they make in inducing investors to buy the stock of a company acquired and flipped to the public. Like most wealth extraction activities created by Wall Street, this one can be complicated. Cutting through the hype and presenting the actual facts on SPACs and their horrible track record is critical to protect investors and inform policymakers, who ideally would address the unique risks these investments pose. Our [fact sheet]() laid out some of the key points that any investor, as well as the SEC, should be thinking about when it comes to SPACs.



Stronger Together: Building Effective Partnerships

In 2021, we worked with other nonprofits, advocates, academics, and financial firms on numerous regulatory issues and court cases. We worked with allies to promote policies that helped build a stronger, safer economic and financial system that protects Americans' jobs, savings, retirements, and more.

As our work expands and deepens on issues such as ESG, racial economic inequality, and cryptocurrency, we are leveraging the knowledge, expertise, and connections of our partners to make an even greater impact.

Here are a few ways in which strategic partnerships helped advance the financial and economic well-being of Main Street Americans and businesses:

We joined several public interest groups, including **Public Citizen and the Center for American Progress**, in a letter to regulators over a wave of bank mergers and acquisitions that have been approved by the federal bank regulators in the last several years.

NCRC, Better Markets, and more than 100 other organizations strongly supported the proposed rescission of the harmful 2020 Office of the Comptroller of the Currency's (OCC's) final rule on the Community Reinvestment Act (CRA).

Better Markets joined **Americans for Financial Reform** and other allies in a letter asking the SEC to urgently review certain digital assets and related activities for compliance with the federal securities laws and related rules.

We filed an amicus brief with **AARP** in which we urged the Supreme Court to reverse a lower court decision and help protect Americans' retirement savings.

Better Markets and the **Open Markets Institute** jointly signed a letter to federal antitrust and financial regulators raising serious concerns about the CME Group's near-monopoly in derivatives markets and the recently reported potential merger between the CME and Cboe Global Markets.

Better Markets, **The Center for Responsible Lending**, and dozens of consumer, faith, community, and civil rights groups wrote to strongly oppose the Office of the Comptroller of the Currency (OCC)'s proposal to unreasonably limit banks' ability to decide not to serve particular entities

By The Numbers

20
COMMENT LETTERS

6
RULE CITATIONS

6
EVENTS & CONFERENCES

10
REPORTS & POLICY BRIEFS

62
BLOG POSTS & COMMENTARIES

3
COURT FILINGS

36
MEETINGS WITH REGULATORS, LEGISLATORS, AND OTHERS

25
OTHER LETTERS, MANY IN PARTNERSHIP WITH OTHER ORGANIZATIONS

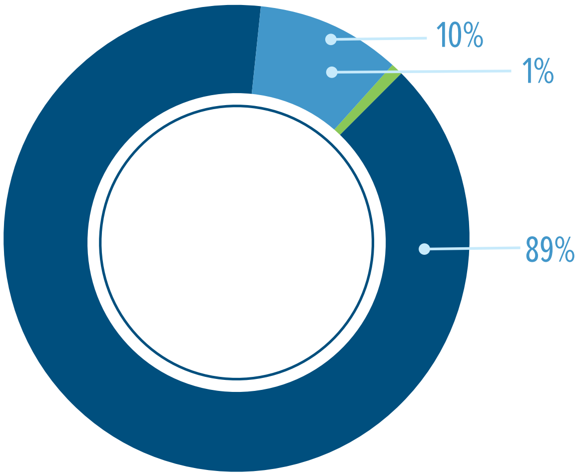
In the Media

500+
Unique Print, TV & Radio Appearances

Where you'll find us... shaping the news, amplifying the public's voice, and analyzing new policies so Main Street doesn't get left behind in the conversation about economic and financial issues and policymaking.

Financials

Better Markets' 2021 operating budget was $2,773,293, which was donated by foundation, corporation, and individuals contributing directly or through their foundations. Better Markets raises its annual budget each year through contributions and does not have an endowment.

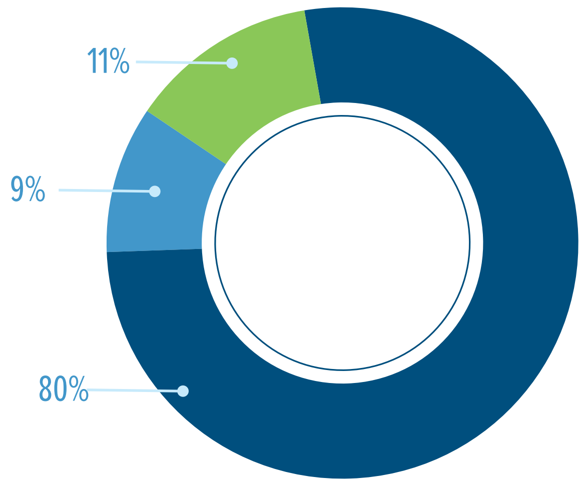


Contributions

INSTITUTIONAL FOUNDATIONS	$265,000
CORPORATE	$25,000
INDIVIDUALS and FAMILY FOUNDATIONS	$2,332,347
TOTAL	$2,622,347

Expenses

PROGRAM	2,214,093
DEVELOPMENT	310,375
MANAGEMENT and GENERAL	248,825
TOTAL	2,773,293



Board of Directors and Better Markets Staff

Board of Directors

Michael W. Masters
Co-Founder & Chairman of Better Markets

Dennis M. Kelleher
Co-Founder, President & CEO of Better Markets

David DesJardins
Philanthropist, Mathematician and Software Engineer

Mike Schell
Former Vice Chairman Global Banking, Citigroup; Former Partner, Skadden, Arps, Slate, Meagher & Flom

Adam White
Secretary of Better Markets, Founder & CEO of Digital Research & Trading, LLC

Dedrick Asante-Muhammad
Chief of Membership, Policy and Equity

Donnel Baird
CEO and Founder of BlocPower

Staff

Maryan Abdelmesih
Director of Strategic Partnerships & Development

Phillip Basil
Director of Banking Policy

Jeremy Bratt
Director of External Affairs

Andres Chovill
Research & Program Associate

Joe Cisewski
Senior Derivatives Consultant & Special Counsel

Tim P. Clark
Distinguished Senior Banking Advisor

Jason Grimes
Senior Counsel

Steve Hall
Legal Director & Securities Specialist

Natalie Shotts
Director of Administration & Human Resources

Ed Silverman
Senior Fellow

Evelyn Swan
Press Secretary

Doug Walker
Communications Director


RETIREMENT


85
SOLD
FOR SALE

Support and Follow Us

Follow the Fight:
@BetterMarkets

Current News:
/BetterMarkets

Donations:
Visit our website
www.bettermarkets.com

Watch:
/BetterMarkets

Stay Informed with our
Financial Reform Newsletter:
sign up on our website

Connect:
/Better-Markets

Better Banks

Better Businesses

Better Jobs

Better Economic Growth

Better Lives

Better Communities™

Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street and make our financial system work for all Americans again. Better Markets works to restore layers of protection between hardworking Americans on Main Street and Wall Street's riskiest activities. We work with allies–including many in finance–to promote pro-market, pro-business and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements and more.

1825 K Street NW, Suite 1080 | Washington, DC 20006 | (202) 618-6464 | www.BetterMarkets.org