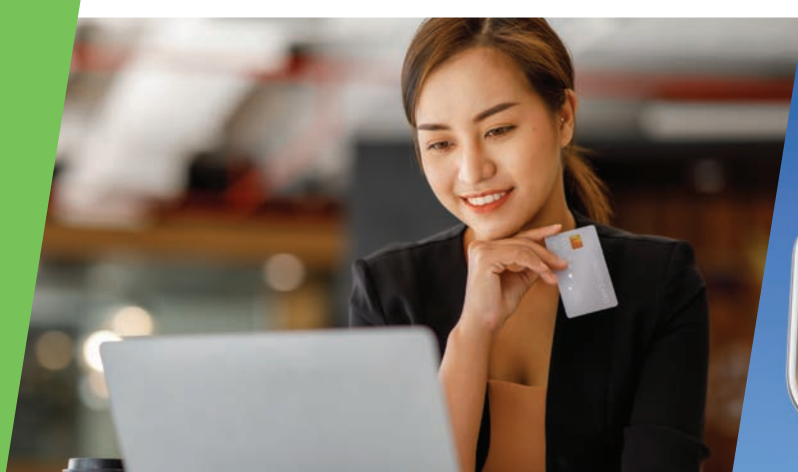
BETTER MARKETS

2022 ANNUAL REPORT


Inflation

MAIN ST.
WALL ST.

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Message from CEO and Board Chair

MICHAEL W. MASTERS
Co-Founder & Chairman of Better Markets

DENNIS M. KELLEHER
Co-Founder, President & CEO of Better Markets

2022 was an extraordinary year. Thanks to our many supporters, our accomplishments and impact were many and touched all the power centers of Washington from Congress and the White House to the regulatory agencies and the media. Whether it was pushing regulators to use their power to protect Main Street families, elevating the voice of retail investors, raising the profile of crucial issues like racial economic inequality, or exposing Washington's corrupt revolving door, Better Markets played an important role in influencing the policy agenda and public discourse in the key areas of economic policy, social justice, and financial regulation. Our team did this by producing 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.

We do all this because we want an economy that works for all Americans and a financial system that supports the productive economy, jobs, small businesses, community banks, and Main Street families, workers, and investors. That's a financial system that minimizes socially useless wealth extraction and generates broad-based wealth creation, enabling rising living standards as well as economic, social, and racial justice.

Among the many areas you'll learn about in this report is Better Markets' leadership fighting the crypto predators and crooks. The story of our crypto work in 2022, and especially our fight against the crypto exchange FTX and its CEO Sam Bankman-Friend (SBF), illustrates how we fight across the Washington policymaking and rulemaking processes for everyday Americans. For example, 60% of people who used crypto for transactions had annual incomes lower than $50,000 and they are overwhelmingly from historically marginalized communities, who were once again targeted by predators. As a result, "perhaps no other demographic group has been hit harder by the [$2 trillion] crypto bust than Black Americans." Fighting crypto isn't just a fight for consumer, investor, and financial stability protections; it is a fight for economic, social, and racial justice.

For most of 2022, until FTX blew up in November, our fight against crypto was a very lonely fight. Almost everyone was against us, including other marquee progressive organizations, a bipartisan army of powerful Congressional allies, heavyweight financial firms, industry trade groups and lobbyists, and the head of the CFTC, a critically important financial agency – they were fighting ***for FTX*** while we were fighting ***for you*** against them.

While the crypto industry generally (and FTX and SBF in particular) were buying dozens of people and organizations with tens of millions of dollars, Better Markets was the leading crypto critic. For example, we vocally opposed FTX's radical and dangerous proposal at the CFTC to change the structure and operations of the commodity markets, which are vital to every American, from their breakfast cereal and lunch sandwiches to the gas in their car and heating oil in their homes.

In recognition of how effective and influential we were in this fight, FTX tried to bribe us with "$1 million or more," but only if we supported its request at the CFTC to approve their predatory plan to rip off as many retail customers and retirees as possible. Unlike too many others, we refused to sell out and take FTX's money. We continued to aggressively oppose them, including in a face-to-face meeting with the CEO, SBF, and his team of lobbyists and in the face of aggressive support for FTX from other progressives.

To do this — to stand up to the most powerful financial and political interests in the country — requires us to be independent and that requires us to be supported by Main Street Americans like you. We don't just oppose FTX and other crypto-kingpins, but also Wall Street's biggest, most powerful and politically influential banks and numerous others in finance seeking to put their narrow special interests above the public interest.

The FTX saga is a textbook example of how the financial industry uses all the levers of the influence industry to get access to —and results from — policymakers. Main Street families, workers, small businesses, community banks, and others without lobbyists need an organization like Better Markets to be a counterweight to the industry in the Washington.

Thank you for helping us make a difference in 2022 and setting the stage for us to make an even greater impact in 2023.

Michael W. Masters
Chair and Co-founder

Dennis M. Kelleher
Co-founder, President and CEO

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

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.

Dennis Kelleher, Again Named to *Washingtonian*'s 500 Most Influential People List

In May 2022, *Washingtonian Magazine*, named Dennis Kelleher as one of "Washington's 500 most influential people." Dennis was the only public interest nonprofit leader selected in the Banking & Finance category.

"At a time when Big Finance has deeper pockets than its foes, Kelleher isn't afraid to go against the grain in promoting the public interest, including insisting that the reappointment of Federal Reserve chairman Jerome Powell be very carefully reviewed, even though he enjoyed broad bipartisan support."

This is Dennis's second year in a row to be honored by the *Washingtonian*. In 2021, Dennis was one of 250 to be named as Most Influential in Washington, DC, saying he was one of the "experts and advocates outside of government who'll be shaping the policy debates for years to come."

Arc of Advocacy™: How a Law Becomes a Reality

Schoolhouse Rock! taught us how a bill becomes a law through the popular song "I'm Just a Bill." But what happens after that? A law becomes a reality through the rulemaking process. This process is more complicated and out of spotlight—where the financial industry thrives. Better Markets, as the voice of the public interest, is dedicated to seeing laws all the way through to implementation, and we get results with the Arc of Advocacy™ method.

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 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 roll it back or if there are attempts by Congress to weaken the rule inappropriately.

FINANCIAL TIMES

"This entity {Better Markets} first shot to fame during the 2008 global financial crisis when it became a thorn in the side of Wall Street and Washington regulators because it complained loudly — and correctly — about the follies of excessive financial deregulation. Since then, it has continued to scrutinise the more recondite details of US regulation, complaining, again rightly, that the rules have recently been watered down."

-GILLIANT TETT, *FINANCIAL TIMES*

2022: The Best and the Worst of Times for Financial Regulation

In 2022, we saw the best of US financial regulators along with some of the worst. As you'll see in this report, we pushed regulators to do more to protect investors, consumers, and our financial system. We also called out regulators who failed to live up to their mission.

The Securities and Exchange Commission (SEC) returned to its core mission in 2022: to "protect investors; maintain fair, orderly and efficient markets; and facilitate capital formation." They did this despite sustained pressure from entrenched incumbent firms on Wall Street with their lobbyists and allies in Congress. On the other hand, the Commodity Futures Trading Commission (CFTC) seemed more focused on expanding its jurisdiction and becoming a key ally of the cryptocurrency exchange FTX and its former CEO Sam Bankman-Fried.

US regulators have robust agendas – except the CFTC

FT FINANCIAL TIMES

Dennis Kelleher

Markets Insight

This year looks to be both busy and consequential for the development of better protection for investors and markets in the US. The ongoing crypto carnage is the latest

issues relating to predatory practices and fragmentation in equity markets.

It had an equally active enforcement record in 2022, bringing 760 actions and recovering a record $6.4bn, including dozens of crypto-related cases.

trading, and private offerings. Elsewhere, banking regulators are focusing on climate risk as well as access to products and services.

The US Federal Reserve, in particular, has outlined an ambitious agenda,

In a *Financial Times* op-ed Dennis Kelleher looked at the work of regulators in 2022

The SEC led on protecting financial consumers, investors, markets, and business formation in 2022. Its regulatory agenda included 57 rulemakings, with 10 finalized, 32 proposed and 15 yet to be proposed. While some have criticized the agency on the volume and speed of its action, its rulemakings are consistent with previous chairs of the commission and focused on critically important topics. Through comment letters, press releases, meetings, and messaging through all forms of media to promote the best policies, we encouraged the agency to have a sense of urgency on some of the most important investor protections issues of our times.

The results are clear.

The SEC finalized rules to enable investors to obtain independent proxy voting advice and to require companies to claw back incentive-based compensation resulting from improper accounting. The SEC also proposed rules to hold special purpose acquisition vehicles (SPACs) accountable; require accurate disclosures on environment, social, and governance issues; provide more scrutiny of private funds; and address many issues relating to predatory practices and fragmentation in equity markets.

The CFPB had an equally active year protecting financial consumers across the entire range of financial activities, including removing medical debt from credit reports, reforming overdraft fees, fighting Zelle payment scams, and increasing oversight of nonbanks. Also, the CFPB Director has focused on repeat offenders in a concerted effort to increase deterrence, one of our top priorities. We supported the CFPB as it pursued its ambitious agenda, despite relentless and hyperbolic attacks from the financial industry.

In contrast to the SEC and CFPB, the CFTC had regrettably few accomplishments in 2022. The agency exists to police derivatives and commodities markets but spent much of 2022 being a cheerleader for the crypto industry while trying to expand its jurisdiction even at the expense of the SEC's duty to police securities lawbreaking. **We worked tirelessly to hold the CFTC accountable as it continued to fail the public.**

POLITICO

Morning Money

Delivered daily by 8 a.m., Morning Money examines the latest news in finance politics and policy.

THE CHAMBER AND CHOPRA, PART 2 — Dennis Kelleher, president and CEO of Better Markets, emailed MM with another thought on the Chamber of Commerce's public campaign against CFPB Director Rohit Chopra. Some MM readers suggested Wednesday the attacks would add fuel to Chopra's agenda. But Kelleher said there's nothing wrong with it!

"CFPB Director Chopra isn't 'airing his grievances' or 'radically reshaping' anything," He is doing exactly what the law mandates: aggressively protecting financial consumers. He's being targeted because the CFPB is once again a smart, effective cop on the beat and its Director can't be intimidated and isn't looking to spin through the revolving door for a job in the financial industry."

Once President Biden's team arrived, especially the Vice Chair for Supervision (VCS) in July, the Federal Reserve outlined an ambitious agenda, including strengthening all-important capital requirements and resolution plans to deal with failed banks. It also announced an upcoming climate scenario analysis. We engaged with the Fed in these areas and more, including pushing the VCS to pursue an aggressive and long overdue agenda to protect the banking system after years of deregulation. We also advocated for the Federal Reserve, OCC and FDIC to make urgently needed changes to the Community Reinvestment Act, trying to bring meaningful changes in homeownership among low and moderate income communities.

With most of the major personnel positions at regulatory agencies now filled there is a tremendous opportunity for them to build on the progress made in 2022 and accomplish much more in 2023. Better Markets will be working with them and holding them accountable every step of the way.

Below are a few of the 45 issues and rulemakings we engaged with federal agencies on in 2022.

Clawing Back Excessive CEO Compensation Will Help Prevent the Next Financial Crisis

The Standards for Recovery of Erroneously Awards Compensation, known as the claw back rule, will go after executive compensation policies that incentivize financial firms and others to engage in accounting fraud and other manipulative practices.

Requiring Mutual Funds to Have Accurate Names Will Help Ensure Investors are Not Misled by False or Misleading Names

Funds that claim to be committed to ESG investments should actually have significant ESG investments. Seems pretty simple, but Wall Street has vigorously fought the SEC's proposal to ensure investors are not misled by fund investment and names.

The CFTC Should Reject Request To Allow Gambling On Elections

The law expressly prohibits 'gaming' contracts also requires the CFTC to reject contracts that are illegal under state law, and more than a dozen states protect the integrity of elections by outlawing gambling on elections. For the sake of our markets, investors, and our democracy, the proposal should be rejected.

After Years of Ripping off Investors, SEC Proposal Takes Away SPAC's License to Lie

The sordid story of SPACs since 2020 includes jazzy celebrity endorsements, high-profile sponsors, promises of exorbitant returns, and retail investors left holding the bag. We supported the SEC's proposed rule to enhance investor protections when it comes to SPACs

Transparency for Short Selling Will Empower Retail Investors

The heavy short selling in GameStop and other meme stocks could not have happened without financial firms lending their securities, directly or indirectly, to hedge funds and others so they could short stocks—sell shares that they don't actually own. All aspects of that process must be subject to more transparency and regulation, and the SEC's securities lending proposal is an important step in that direction.

Improving Disclosures of Stock Buybacks Will Protect Investors

Stock buybacks, especially by the largest corporations, have increased dramatically in recent years and is a way for rich executives to line their pockets at the expense of the company, its employers and its shareholders. Improving and expanding disclosures of stock buybacks will help investors better understand the impacts.

Establishing Comprehensive Cybersecurity Disclosure Requirements

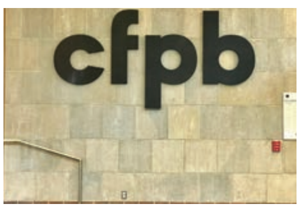
Cybersecurity disclosure requirements for publicly traded companies will provide investors with more standardized and timely material information about the cybersecurity risks, governance, and incidents that face publicly traded companies in today's financial markets.

Reformed Clearing Agency Governance Will Help Address Conflicts of Interest, but SEC Must Go Further

The ownership of a clearing agency will always have some power over the board, so removing some extra financial conflicts isn't enough. The SEC should require the owners to have some "skin in the game" by providing funds when a participating entity defaults on a trade; this will give the ownership incentives to choose directors who have a healthy respect for risk management and systemic stability, not just short-term profits.

The Department of Justice Must Work With The Banking Regulatory Agencies To Strengthen The Bank Merger Review Guidelines

After nearly forty years of ever-increasing consolidation in the banking industry, the agencies need to strengthen the merger review process in order to enhance the public interest while reducing, or at least not increasing, the level of risk in the system.



Better Markets Supports CFPB Rule Requiring Robust Small Business Lending Data Collection To Fight Gender, Racial Financial Inequality

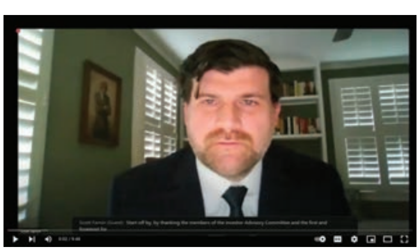
The Proposal would appropriately require that lenders collect and report a range of information about the businesses seeking credit, loan pricing, and lenders' credit decisions. Assembling this comprehensive data is a critical step in addressing the unjustifiable economic inequality that has plagued our society and our economy for centuries.

The Fed Should Strengthen its Proposed Guidelines on Access To Fed Accounts For Risky Institutions

Better Markets supports consistency and transparency in the process to assess access to Fed accounts and services as well as efforts to reduce risk to the Federal Reserve system, the financial system, and the economy, but the proposed guidelines fail to do that.

Federal Agencies Must Address the Rampant Fraud and Extreme Volatility Of Digital Assets To Protect Consumers, Investors, Businesses, And Markets

Digital assets must be regulated to address the real, current risks and consumer protection issues that they are actually causing, as proved by the recent Crypto carnage and ongoing rampant consumer fraud.



On December 8, Better Markets' Legal Counsel Scott Farnin took part in an SEC Investor Advisory Committee panel discussion of single stock ETFs. The panel focused on the recent rise of single-stock ETFs, which give investors leveraged returns to the daily returns of specific stocks.

Community and Reinvestment Act

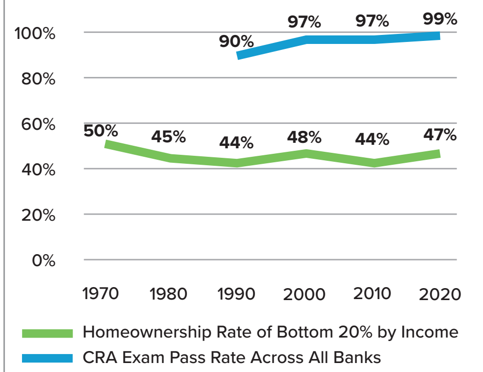
The Community Reinvestment Act (CRA) was intended to improve access to credit, investment and banking services for historically underserved individuals and communities. "Historically underserved" is a euphemism for decades of blatant discrimination that deprived low-income areas of the most basic banking services and capital needed for home loans and small businesses, the foundation for wealth accumulation in America. They are the two bottom rungs on the ladder of economic opportunity that were denied these "red lined" areas. The CRA was supposed to require reinvestment in these communities so that they too would have an equal chance to fully participate in the economic life of the country.

Unfortunately, for far too many Americans, the promises of the CRA have remained unfulfilled. Homeownership rates have remained stagnant, wealth gaps have grown, and a significant proportion of American society remains un- or under-banked. Compounding the injustice, these deficits disproportionately impact communities of color.

First and foremost, the CRA was supposed to address decades of "red line" discrimination in housing that effectively eliminated mortgage lending in low- and moderate-income neighborhoods for credit worthy borrowers. Proving the utter failure of the CRA, such homeownership has not improved in the 45 years since the CRA was passed, actually it has slightly declined, as shown in *Figure 1*.

Equally shocking, if not surprising, banks pass with flying colors year after year the lending tests banking regulators have created for the CRA even though there has been zero progress as measured by home ownership. That not only illustrates that the implementation of the law is fundamentally flawed, but that generations of Americans continue to be deprived of the means to build wealth through homeownership, which, with small business formation, is essential, as shown in *Figure 2*.

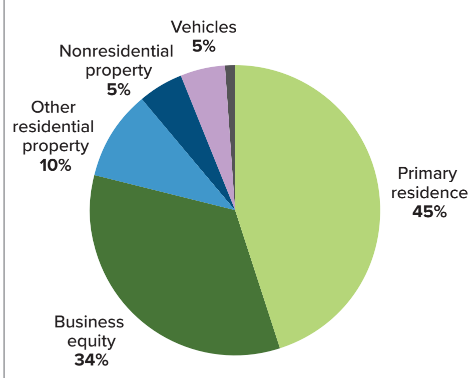
Forty five years of literally zero progress in homeownership but almost 100% CRA pass rate



Source: U.S. Census Bureau Decennial Surveys

Figure 1

Proportion of Household Wealth from Nonfinancial Assets



Source: Board of Governors of the Federal Reserve System (2020), *2019 Survey of Consumer Finances.*

Figure 2

As a result, it is no surprise that the wealth gap continues to be indefensibly large and growing, as shown in *Figure 3*.

The banking agencies have been considering a "modernization" of the CRA for several years and proposed one in early 2022. Better Markets has been fighting throughout that time for a markedly improved CRA that actually results in measurable improvements in reinvestment and home ownership in America's low- and moderate-income communities.

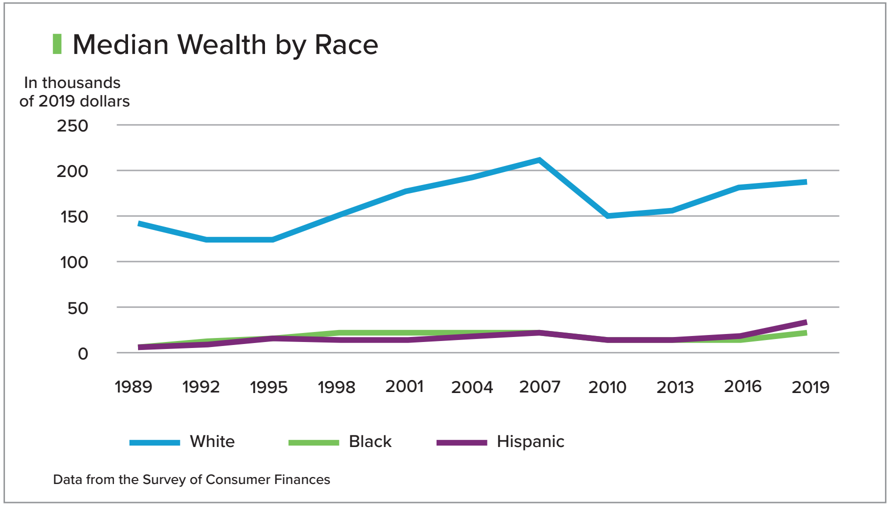


Figure 3

In connection with the proposal itself, we filed a detailed [comment letter] with the Federal Reserve, OCC, and FDIC and met with the staff and principals to discuss the failures of the current CRA implementation, the agencies' proposal to attempt to strengthen and modernize the it, and how that proposal must be improved and expanded to ensure the law's mandates are achieved through robust supervision as well as greater measurability and transparency. We also released a [fact sheet] discussing and illustrating these issues.

An updated CRA rule must implement the law in a way that provides a concrete, measurable, robust assessment of the provision of and access to financial firms, services, and products for lower-income individuals and communities. Additionally, the rule must require the banking agencies to disclose full, complete, and properly formatted data to the public to ensure public oversight and accountability. We will continue our advocacy until the proposal is finalized, interpreted, implemented, and enforced, and we see concrete improvements on Main Streets across America.

Racial Justice Op-Ed in American Banker

Dennis Kelleher partnered with Dedrick Asante Muhammad, Chief of Membership, Policy and Equity at the National Community Reinvestment Coalition, and Better Markets board member, to highlight the urgent need for financial market regulators to address racial economic inequality and lay out steps to tackle these persisting issues in an [Op Ed in the American Banker].

Historic Change at the Fed

Historic Appointments

The saga of President Biden's five nominees for the Federal Reserve Board reached an end in 2022. We supported and fought for four of these nominees from start to finish, including rebutting baseless attacks against highly qualified nominees, particularly by the fossil fuel industry.

We stayed focused on the key issues, releasing a report early in the process asking "Should Federal Reserve Chair Jay Powell Be Reappointed?" Regrettably, substance was often overshadowed by an overly politicized process that was hijacked by the fossil fuel industry pushing its special interests at the expense of the Fed's key role in risk identification and mitigation. This is ominous and threatens to undermine the Fed's regulatory independence and key role in protecting the stability of the financial system.

Nevertheless, after overcoming Republican and industry obstruction and delays, the Senate confirmed the eminently qualified Dr. Lael Brainard as Vice Chair and Dr. Lisa Cook as a Governor. We applauded those confirmations and celebrated Dr. Cook's historic trailblazing role as the first Black woman to serve on the Fed Board in its 109-year history. We were also pleased to see the Senate confirm Dr. Philip Jefferson as Governor and Michael Barr to be Vice Chair for Supervision.

Unfortunately, the fossil fuel industry killed the nomination of the highly qualified, mainstream nomination of Sarah Bloom Raskin, who we vigorously defended.

Better Markets Identifies The Real Threat To The Federal Reserve's Independence From The Oil And Gas Industry In Op-Ed For The Hill

Fact Check Memo: Critics Of Sarah Bloom Raskin For The Federal Reserve Board Distort Her Climate Statements Which Align With Chair Powell, Former Vice Chair Quarles, Wall Street Banks & Others

Better Markets Applauds Senate Confirmation Of Lael Brainard To Be Vice Chair Of The Federal Reserve Board

The Historic Confirmation of Dr. Lisa Cook Today to Be Governor Of The Federal Reserve Board Is Long Overdue And Cause For Celebration

"Dr. Cook is an unquestionably accomplished & well qualified economist. Her historic nomination as the first Black woman to serve on the Fed in its 109 year history is a long-overdue step towards increasing diversity at the Fed.

Dr. Cook's confirmation should make all Americans proud.

DENNIS KELLEHER, BETTER MARKETS

Setting the agenda for the Vice Chair for Supervision

After four years of dangerous deregulations during the Trump administration and the weaknesses in the financial system revealed by the 2020 pandemic-caused market and economic stress, it is imperative that banking regulation and supervision be materially strengthened and that the Federal Reserve works to minimize risks to financial stability. There is now a unique opportunity for regulators like the VCS to analyze how that architecture and those ecosystems performed.

Immediately upon the confirmation of Vice Chair for Supervision Michael Barr, Better Markets released a detailed agenda for regulation and supervision at the Fed. In a speech given after our memo Barr pledged to take on many of our recommendations, including:

- Perform a comprehensive, 360-degree, all-inclusive, data-driven review of:
    1. the post-financial crisis regulatory reforms,
    2. the deregulatory actions that affected them, and
    3. the current and emerging threats to the banking system, including those from the nonbank financial sector;
- Strengthen capital and liquidity standards to reduce the likelihood of large bank failure and taxpayer bailouts;
- Enhance requirements around bank resolution preparedness so large banks can be shut down and/or be taken apart and sold off piece-by-piece more easily in the event they do fail;
- Assess emerging and previously un- or under-addressed risks – such as risks from climate, financial technology companies, and cryptocurrencies – and putting in place supervisory programs and regulations that address those risks;
- Refocus supervisory efforts to prioritize safety, soundness, and financial stability rather than "efficiency;"
- Strengthen supervisory consequences for the largest banks to increase incentives for appropriate conduct by those responsible, boards of directors and senior management in particular;
- Modify the merger application assessment process to more appropriately consider risks to financial stability and the convenience and needs of affected communities; and
- Broaden the provision of banking products and services through the finalization of the Community Reinvestment Act-related rulemaking and promoting competition by and usage of community-focused financial institutions.

As we said when he was sworn into office in July, the U.S. economy and financial system are on a knife's edge, including because of neglect and backsliding on the most basic financial protection and systemic stability rules. Our proposed agenda is targeted on those weaknesses. There's no question that Vice Chair Barr has the right goals, priorities, and agenda to change this and be a leader for a safer and fairer financial system. The questions now are whether he has the will and whether Chair Powell and the Fed bureaucracy will allow him to do his job prioritizing protecting the public.

Crypto Carnage

For years now, too many leaders on Wall Street and Washington either looked the other way or blindly supported the crypto industry as it worked relentlessly to infiltrate our financial system and rewrite the laws and rules to benefit their special interests. This was all greased by tens of millions of dollars in campaign contributions and lobbying, including by too many former public officials spinning through the revolving door and selling out their public service by engaging in influence pedaling.

Dennis Kelleher Discusses FTX and the Future of Crypto on CNN (11/16/22)

Leaders (including the Chair of the CFTC, elected officials in Congress, and blue-chip venture capital firms) should have known better than to simply accept the pixie dust claims of "innovation," the fairytale of crypto riches, and FTX founder Sam Bankman-Fried's claimed "vision." Stunningly, they did so without doing the most basic due diligence or asking the most obvious questions, too often due to the receipt, hope, or promise of becoming fabulously wealthy.

THE NEW YORKER

WASHINGTON NEEDS A CRYPTO RETHINK

"The C.F.T.C. has been chronically underfunded, and it is easily penetrated and captured by an industry it is supposed to regulate," Kelleher said. "FTX and other crypto firms wanted the weakest possible regulator, and thats the C.F.T.C."

The crypto industry followed the financial industry's standard playbook of using all the levers of the influence industry to buy access and special treatment for its special interests at the expense of the public interest. One of the most corrupt aspects of that, which FTX used extensively, is a revolving door strategy of hiring former government officials, especially from the CFTC, to buy their unique inside knowledge, special access, and unfair influence at the agencies, in Congress and all across Washington to move FTX's agenda.

Better Markets has stood against the crypto tidal wave of money, stood up to FTX's powerful supporters (including at the CFTC, in Congress, and the media), asked the tough questions (including of Sam Bankman-Fried directly in our conference room), and aggressively opposed FTX's radical, dangerous, and predatory proposals.

Read more about our comprehensive work on crypto on our website.

Dennis Kelleher at a Brookings panel on crypto

Report: In a examination of the SEC's work on crypto, our team details the facts of what the #SEC has actually done and why it has been as effective as possible under the circumstances. (1/24/23)

Blog: Our team examined the stunning impact of the revolving door between the CFTC and FTX. (12/26/2022)

Letter to Senate Agriculture Committee: We raised numerous concerns over an FTX endorsed crypto bill that would jeopardize investor, consumer, and financial stability protections. (1/10/23)

Fact Sheet: Before the Senate Agriculture hearing on a crypto bill that was FTX's main priority, we asked the CFTC and Members of Congress to consider 10 key questions about the legislation. (11/30/22)

Fact Sheet: Setting the record Straight on Crypto, FTX and Sam Bankman-Fried, and Financial Regulators. (11/29/22)

Fact Sheet: Before a CFTC roundtable on FTX's application, we outlined the key questions that both the CFTC and FTX should address as they considered the company's application. (5/24/22)

Press Release: We called on Congress to know the facts before considering legislation putting the underfunded CFTC in charge of the crypto Industry. (11/21/22)

Letter: Our letter to the CFTC urged the agency to have a "transparent, robust, and meaningly inclusive" process for evaluating FTX's application. (6/16/22)

Comment Letter: Better Markets Criticized FTX's proposal before the CFTC, noting the threats posed to customer protection and systemic stability by cryptocurrency investments. (5/11/22)

Press Release: We called for an investigation of the CFTC's FTX Failures and push for crypto-friendly legislation. (11/15/2022)

Press Release: Our statement criticized the CFTC for failing to properly regulate or supervise FTX. (11/14/22)

Democratizing Wall Street to Work for Main Street

On the first anniversary of Robinhood's IPO in August of 2022, we highlighted how the financial industry has failed Main Street Americans and how we can truly democratize Wall Street.

The Better Markets team authored an extensive law review article in the Western New England Law Review where we argued that Wall Street and finance more generally can and should be democratized. However, Robinhood's model, based on maximizing frequent high-risk trading, prompted by predatory gamified apps to generate as much short-term profits for Robinhood as possible, is not how. These are exploitive, manipulative practices that enrich Wall Street at the expense of Main Street customers and, often, those least able to afford the losses. (Tellingly, this was also FTX's and SBF's predatory model for the commodities futures markets, which is why we filed this law review article with our opposition to FTX at the CFTC.)


OPEN FORUM *On Fintech*

Main Street needs true Robin Hood

By Dennis M. Kelleher

Robinhood's stock price is plummeting and it has cut its workforce by a third after a flurry of regulatory sanctions.

In an August op-ed for the San Francisco chronicle, Dennis wrote that we need a "Real Robin Hood" on Wall Street that "actually provides Main Street investors genuine opportunities to affordably trade, invest and build wealth."

BLOOMBERG TV: [Dennis Kelleher discusses the Robinhood IPO Anniversary]

Dennis joined Bloomberg TV's The Close with Caroline Hyde, Taylor Riggs and Sonali Basak to discuss the anniversary of Robinhood's IPO, its predatory practices, & how we can actually democratize Wall Street.

HBO Max Documentary

The two-part documentary Gaming Wall Street premiered on HBO MAX in March 2022, with the work of Better Markets highlighted throughout. The documentary explores the GameStop trading frenzy, retail investors, high frequency trading, short-sellers, Robinhood's action shutting off the buy button, how Wall Street is rigged, and much more. The entire show is worth watching, but, if you want to see the clips focused on Better Markets, you can watch those here.

SEC trading proposals

The GameStop and meme-stock trading frenzies that occurred in early 2021 highlighted longstanding market integrity and investor protection issues in the U.S. equities markets. Indeed, they exposed a vast predatory ecosystem underpinning too much of modern finance, including the anti-retail trader, anti-buy side practices enabled by a rigged market structure. For the last two years we spoke out against these unfair practices and called for significant reforms.

In December 2022, the SEC proposed a set for four related reforms aimed at addressing some of these harmful market characteristics and practices. They would 1) establish a new SEC "best execution" requirement; 2) require at least some types of orders to be exposed to competition in fair and open auctions before they can be executed internally; 3) expand the monthly reporting on execution quality that firms must make; and 4) reduce the minimum pricing increment at which stocks may be quoted and traded, so that buyers and sellers can get better prices on their trades.

As the SEC began to discuss its proposals for reforms to help retail traders, Dennis Kelleher explained why these changes could be crucial.

As the SEC began to discuss its proposals for reforms to help retail traders, Dennis Kelleher explained why these changes could be crucial.

When the proposals were released, Better Markets commented and responded to the entrenched Wall Street interests that benefit from the current dysfunctional system and oppose making markets more fair for retail investors. The Better Markets team is currently reviewing the proposals and encouraging retail investors to make their voices heard as the process moves forward in 2023.

Enforcement

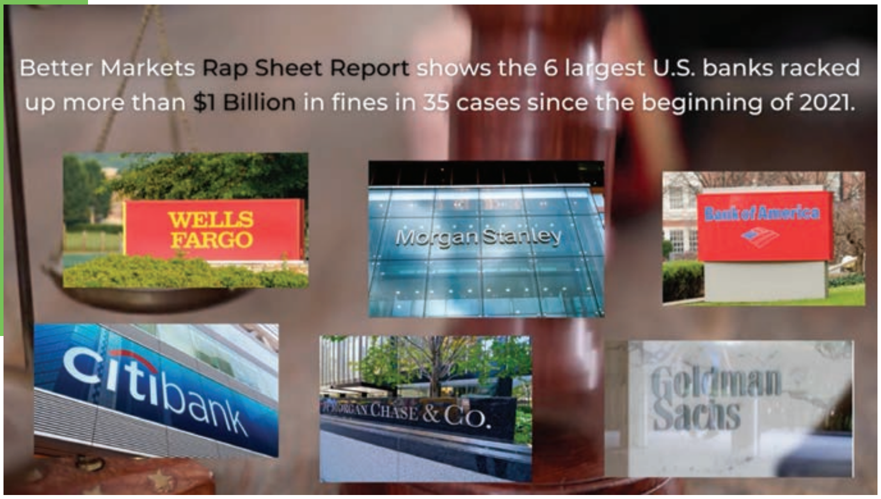
As it has since we were founded in 2010, enforcement remains an important priority for us because, unless lawbreakers are meaningfully punished, they won't be deterred and they will continue to rip off investors and destabilize the markets. For example, the SEC had an active enforcement record in 2022, bringing 760 actions and recovering a record $6.4bn, including in dozens of crypto-related cases. That was good but the SEC must do better, starting with targeting and severely punishing individuals in every case, particularly supervisors and executives. As we have said, ***banks don't break the law; bankers do***, and, until regulators and prosecutors punish them, especially by taking away all their money, the lawbreaking will continue and get worse.

Throughout 2022 we highlighted Wall Street's lawbreaking and pushed regulators to do more to protect Main Street with strong enforcement actions.

Wall Street's Ongoing Crime Spree

Better Markets' Wall Street Rap Sheet showed that six of the nation's largest banks—Bank of America, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, and Wells Fargo—amassed more than $1 billion in fines in 35 cases over the span of 15 months and a total of 430 legal actions and nearly $200 billion in fines over the last two decades.

The shocking breadth, depth, and persistence of repeated lawbreaking by these banks year after year proves that even big fines are meaningless. Only meaningfully and personally punishing individual lawbreakers, including executives and supervisors, will stop this Wall Street crime spree.



Watch our video detailing the findings of the Rap Sheet report.

JPMorgan Metal Traders

In 2022, three former JPMorgan Chase officers were convicted for crimes in manipulating the precious metals markets, in a case where JPMorgan has already pleaded guilty to criminal charges – the bank's third and fourth criminal plead deals. While prosecuting and convicting these individuals was a signal to executives that they are not above the law, such actions are too infrequent to deter lawbreaking bankers.

Like everyone on Main Street, those who commit crimes on Wall Street should be charged and, if convicted, go to prison even if they wear a suit and tie and work at JPMorgan Chase. If individual bankers, especially executives and supervisors, were prosecutor more often, then the message that even white-collar officers at JPMorgan Chase, making millions of dollars a year, driving fancy cars, living in mansions, flying in private jets, and being toasted as a master of the universe, will not insulate you from being tried and convicted for breaking the law.

The corrosive double standard of justice — tough on Main Street Americans and light for Wall Street bankers — must end and, hopefully, these convictions are just the beginning of the rule of law being applied to Wall Stret as it is to Main Street.

For more information on JPMorgan's crime spree, read our July 5, 2022 "gamechanger" Memo; our August 10, 2022 Release when two JPMorgan Chase officers were convicted; our December 9, 2022 Release when an additional officer was convicted; and our prior September 30, 2020 Release and Report on JPMorgan Chase's crimes, criminal pleads, lawbreaking, and sweetheart settlement the Department of Justice (for manipulating the Treasury market for seven years and the precious metals markets *for eight years*, leading to its 3rd and 4th criminal actions in the last several years).

COMPANIES · CRYPTOCURRENCY

'The fiction of crypto was visible to all who wanted to see': One of DC's top financial reform voices tears into the 'greed' and 'FOMO' that led to the FTX collapse

BY TRISTAN BOVE

November 14, 2022 at 6:45 PM EST

Dennis Kelleher has some strong words for FTX and the crypto industry overall.

"If the sector goes up in flames, the writing was likely on the wall, according to Dennis Kelleher, one of DC's most influential voices in banking and finance."

-TRISTAN BOVE, *FORTUNE MAGAZINE*

1MDB

While the JP Morgan case provided some hope for holding Wall Street accountable to a slightly greater degree, Goldman Sachs' lawbreaking in the 1MDB case sadly illustrates how far we still have to go.

Goldman Sachs enabled one of the largest global money laundering crime sprees in history. It involved the looting of 1Malaysia Development Berhad (1MDB) and the corruption of democracy in the country of Malaysia. Without Goldman's imprimatur and management of the private placement of $6.5 billion of bonds in three offerings in less than a year, there would have been no money to launder or loot, no money to bribe, buy votes and corrupt democracy and justice, and no murder of a prosecutor investigating those activities. The scale, scope, and consequences of 1MDB's crimes along with the depth, breadth and scope of Goldman's role (as detailed here) cannot be overstated, but DOJ's response was scandalously understated.

Pathetically, notwithstanding the shocking egregiousness of Goldman's involvement, its apparent willingness to do literally anything for a big fee, and the innumerable red flags that Goldman ignored (evidencing actual knowledge and willing participation in the crimes), the DOJ handed Goldman a sweetheart settlement (ignoring two decades of lawbreaking) and then prosecuted just one junior partner guilty plea from the Goldman partner in charge of the deal, but instead of moving up the corporate chain of command, DOJ moved down and used him to testify against his subordinate.

Goldman and DOJ pretended that those two partners were some kind of criminal masterminds who fooled all the supposedly smartest, highest paid bankers in the world as well as all of Goldman's claimed state-of-the-art, high-tech, robust, comprehensive layers of risk, compliance, legal and audit systems, and controls, and all of Goldman's management. DOJ's prosecution of just one junior Goldman Sachs partner when more than 30 executives and supervisors were involved in enabling 1MDB's crimes sends the wrong message to Wall Street lawbreakers.

While DOJ has lately been making noises about getting tougher on white collar crimes like those committed by JPMorgan Chase and Goldman Sachs, only time will tell. Regardless of what they do, we will continue to press prosecutors and regulators to enforce the law against banks and bankers, exact meaningful sanctions, and throw the book at individuals. Only then will the crime spree stop.

Too-Big-To-Fail Bank Mergers

The catastrophic 2008 financial crisis was caused by Wall Street banks that were too big, complex, leveraged, interconnected, and systemically important. They were so big that elected officials, policymakers, and regulators faced a difficult choice: bail them out with taxpayer money or let them fail and risk precipitating a second Great Depression. That's why those gigantic banks are called "too big to fail." Their failure would collapse the financial system and economy and, thereby, ruin the lives and livelihoods of tens of millions of Americans.

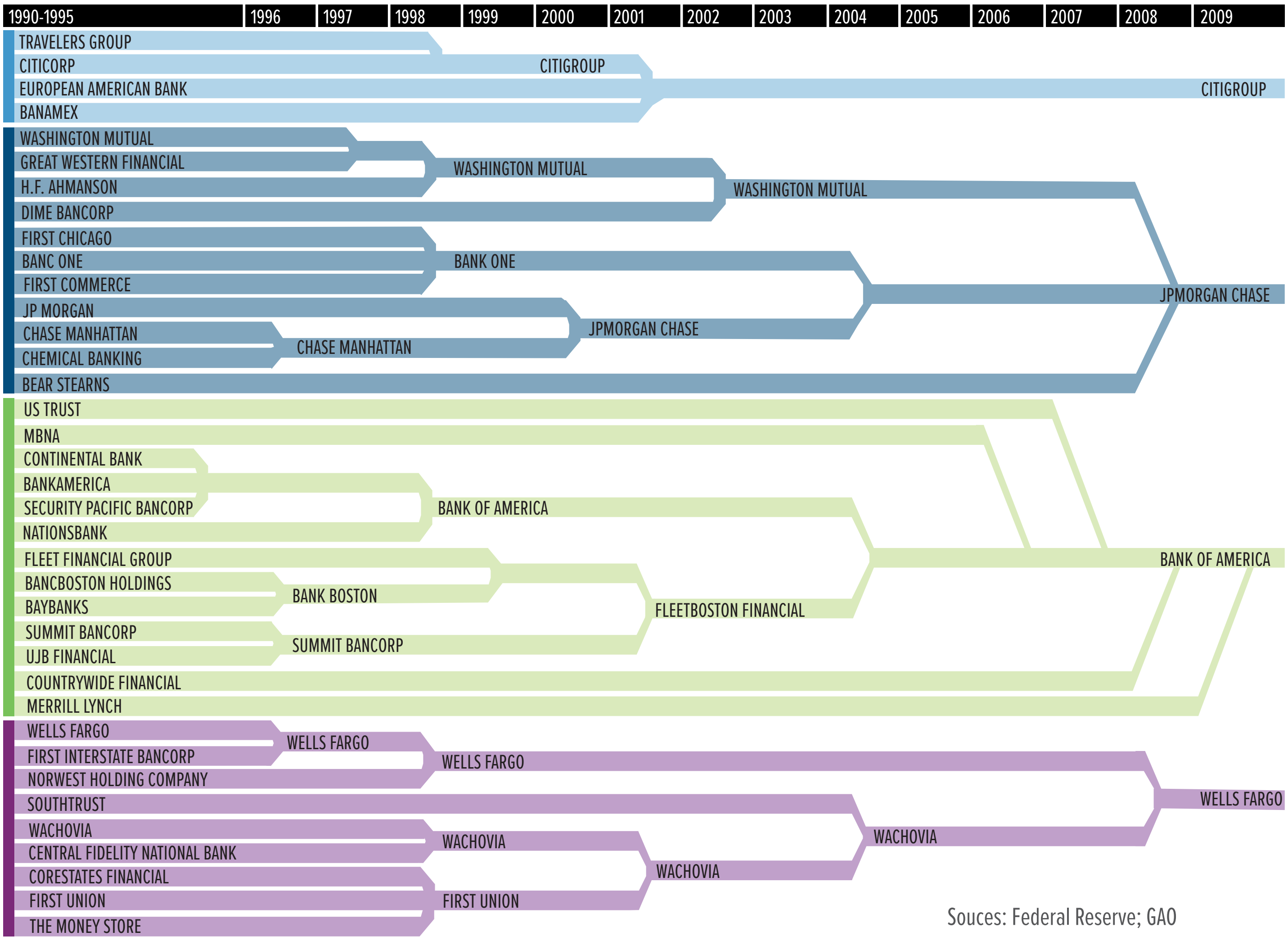
Even JPMorgan Chase CEO Jamie Dimon has argued that all banks, including especially too-big-to-fail (TBTF) banks, must be readily able to be resolved in bankruptcy if they fail. We wholeheartedly agree with what we call the "Dimon Rule."

"We have to get rid of anything that looks like too-big-to-fail. We have to allow our big institutions to fail. It is part of the health of the system, and we should not prop them up. We have to allow them to fail. And I would go one step further. You want to be sure they can fail and not damage the American economy and the American public."

JAMIE DIMON, CHIEF EXECUTIVE OFFICER OF JPMORGAN CHASE

A key part of ensuring that banks can be resolved and are not too big to fail is to be much trougher in the bank merger review process. Before the 2008 crash, banks went on a merger spree that resulted in numerous gigantic TBTF banks, as illustrated here:

1990–2009 HISTORY OF CONSOLIDATION FOR CITIGROUP, JP MORGAN CHASE, BANK OF AMERICA, AND WELLS FARGO



Unfortunately, during and after the 2008 crash, the biggest TBTF banks actually got bigger. Last year, we pointed out that the Federal Reserve and OCC are rubber-stamping mergers without requiring the banks to have robust resolution plans and creating the biggest bank merger spree since the devastating 2008 financial crash. This is creating too many dangerous TBTF banks, which threaten the stability of the financial system, future taxpayer bailouts, and Americans' jobs, homes, and savings, as was painfully proved in the aftermath of the 2008 collapse of numerous TBTF banks. Regulators have to do better to prevent history from repeating itself and banks continuing to get bigger and more dangerous, threatening another catastrophe.

The Federal Reserve and OCC Should Stop Rubber Stamping Too-Big-To-Fail Bank Mergers Without Real Resolution Plans

In a Barron's Op-ed Dennis Kelleher made the case for reform of the flawed bank merger review process.

Capital Report

[Protecting Our Economy By Strengthening The U.S. Banking System Through Higher Capital Requirements]

The only thing standing between a failing bank and a taxpayer bailout is the amount and quality of capital a bank has to absorb its own losses. Better capitalized banks create a stronger, more resilient, and stable financial system that is less likely to cause or exacerbate economic and financial downturns. When large banks are undercapitalized, such downturns are not only more likely, but also more likely to become severe financial and economic crises that can cause tremendous harm to Americans from coast-to-coast and lead to taxpayer-funded bailouts. Additionally, research shows that higher bank capital "significantly lower[s] the cost of a crisis by sustaining bank lending during the resulting recession."

The largest banks in the U.S. remain subject to insufficient capital requirements that undermine the stability of the financial system and leave the possibility of future banking crises too high. Capital standards must be strengthened to provide the benefits to society that come from a strong and resilient banking system, especially during period of financial and economic stress. None of the industry's arguments against higher requirements are supported by real-life experience or research, while the costs of insufficient capital requirements have been real and devastating for the American people. Capital requirements were irresponsibly low prior to the 2008 Crash, resulting in bank failures, massive taxpayer bailouts, and a catastrophic financial and economic collapse with a $20 trillion impact to the economy.

It's clear that capital requirements must be strengthened for our largest banks, and that this would benefit the American people. Our report discussed the reasons those requirements must be increased, the baselessness of industry talking points, and two key aspects in which the capital framework must be strengthened.

What is Bank Capital?

- A source of funding that banks use to invest in assets, such as loans and securities
- Capital does not have to be repaid to shareholders. It absorbs losses when bank assets lose value
- It is like a down payment on a home – the down payment serves as a buffer to the mortgage lender if the home price declines
- Banks do not hold capital in the sense that it is money they are unable to use. Capital is a separate source of funding that comes from the ownwers and shareholders, not the despositers and creditors.

Shadow Banking Series

Nonbank financial institutions that make up the largely unregulated "shadow banking sector" pose serious risks to the U.S. financial system. Their growth in size, scope, and interconnectedness over the last decade has made them an increasing threat to financial stability and the safety and soundness of the regulated banking sector. The experiences of the 2008 financial crash and the 2020 pandemic-caused market stress have demonstrated that the risks in the shadow banking sector significantly exacerbate the pace and depth of market stress, spillover directly into the banking sector, and threaten to virtually shut down key financial markets and the economy.

Over the last year, Better Markets has released a series of reports on the Shadow Banking sector:

- The first report provides an overview of the structure of and risks within the shadow banking sector as well as actions financial regulators could take to mitigate risks to the U.S. financial system.
- The second report covers money market funds (MMFs) and the systemic risks they pose to the U.S. financial system. MMFs are the proverbial "canary in the coal mine" whereby MMF runs quickly transmit into the short-term money markets and then into the core of the banking and nonbank financial systems, pushing them to the brink of collapse and precipitating bailouts. Our reports demonstrates that the industry must finally be sufficiently regulated to protect the taxpayer, financial system, and economy.
- The series will continue in 2023 with a report on U.S. Treasury Markets.

Dennis Kelleher also wrote an op-ed for CNBC with Rob Nichols, ABA President, about the risks that crypto companies and other nonbanks pose.

"As the unseen risks of more unregulated nonbanks materialize and the shadows of an economic recession lengthen around the world, it's more critical than ever to bring crypto and other shadow banks into the light."

– DENNIS KELLEHER AND ROB NICHOLS

Climate & the Financial Regulatory Agencies

The reality of climate change is indisputable—average global temperatures are rising, as are sea levels, threatening coastal cities and communities. It's been made clear by a number of organizations, including the United Nations, that unless countries around the world follow through on commitments to reduce CO2 emissions, this is just the beginning.

Climate change looms as one of the inevitable triggers of profound instability and eventual crisis in our financial system and our entire economy if it is not aggressively attacked on all fronts. Better Markets' objective is to wage that fight in the financial regulatory sphere. It's our view that banks and other financial institutions have not been doing enough to manage and account for the risks of climate change or to support the transition towards a more sustainable economy.

Better Markets' work in 2022 continued to highlight the widespread, mainstream consensus from Washington to Wall Street and beyond that climate change poses serious and dangerous risks to the financial system and the economy.

Fact Sheet: Financial Risks Related to Climate Change Must Be Addressed—Republicans, Democrats, Wall Street Banks, Finance Leaders Agree (2/9/2022)

Comment Letter: Better Markets Applauds OCC Proposal to Incorporate Climate-Related Risks Into Bank Supervision & Assessment (2/14/2022)

Comment Letter: Better Markets Endorses Basel Committee's Proposed International Standards For Addressing Climate-Related Financial Risk (2/16/2022)

Op-Ed: Better Markets Identifies The Real Threat To The Federal Reserve's Independence From The Oil And Gas Industry in The Hill (3/14/2022)

Press Release: We Welcome the SEC's Climate Proposal Today, Which Recognizes Investors' Need For Greater Disclosure (3/21/2022)

Comment Letter: FDIC Takes Important Step Towards Managing Climate-Related Financial Risks (6/3/2022)

Comment Letter: We Support the SEC's Climate-Risk Disclosure Proposal, A Very Strong Measure That Can Be Made Even Better (6/17/2022)

Comment Letter: Better Markets Welcomes Basel Committee's Inclusion Of Our Suggestions In Finalized Climate-Related Financial Risk Management Principles (6/22/2022)

Comment Letter: SEC Rules Will Help Provide Reliable and Comparable Information for the Growing Number of Investors Interested in ESG Funds (8/7/2022)

The New York Times: Cracking Down on a Wall Street Trend: E.S.G. Makeovers (9/17/22)

Comment Letter: CFTC Must Act Now to Protect America's Families from the Real Risks Climate Change Poses to Their Lives and Livelihoods, as Detailed in Our Comment Letter (10/7/2022)

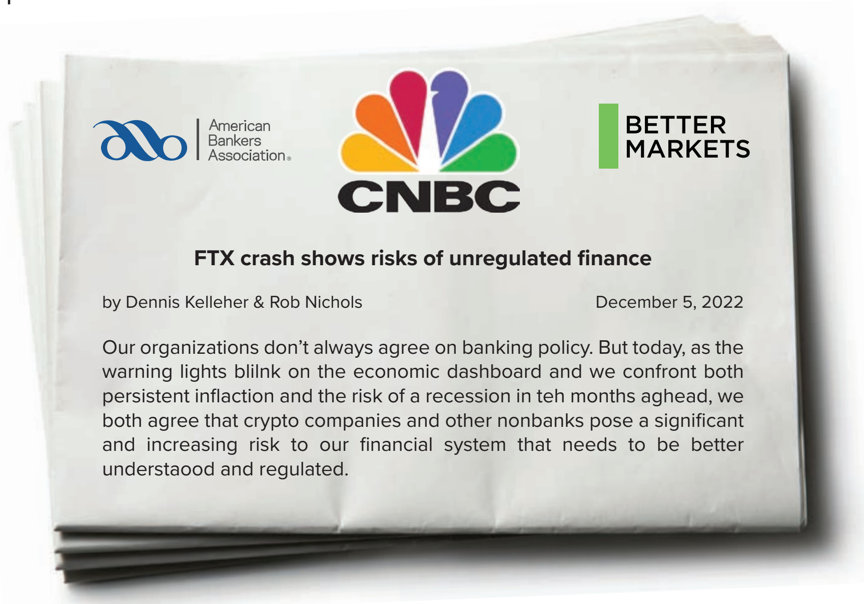
Stronger Together

In 2022, we worked frequently with numerous other nonprofits, advocates, academics, and financial firms on many 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 force-multiplying the knowledge, expertise, and connections of our partners to make an even greater impact.

Chris Jurgens, Omidyar Senior Director of Reimaging Capitalism; Michele Jawando, Omidyar's SVP; Elena Botella, Omidyar Principal and book author; Dennis Kelleher.

- Better Markets joined Public Citizen and the Consumer Federation of America in an Amicus Brief in *Lee v. Fisher*, a case in the United States Court of Appeals for the Ninth Circuit in which investors are challenging corporate tactics—including the use of forum selection clauses--for evading accountability under the securities laws.
- Better Markets and the Consumer Federation of America filed an amicus brief in *In re: Overstock Securities Litigation*, urging the U.S. Court of Appeals for the Tenth Circuit to reverse a district court's dismissal of a case brought against Overstock.com and several of its principals for a brazen market manipulation.

- Better Markets and several other prominent public interest organizations sent a letter to the U.S. Department of Labor's Employee Benefits Security Administration supporting its recent Compliance Assistance Release, which cautions plan fiduciaries to "exercise extreme care" before adding cryptocurrency investment options to 401 (k) plans.
- We don't always agree with the American Bankers Association on policy, but we do agree crypto companies and other nonbanks pose significant risks. In a CNBC op-ed, Dennis Kelleher and ABA President Rob Nichols argue it's critical to bring crypto &other shadow banks into the light.



FTX crash shows risks of unregulated finance

by Dennis Kelleher & Rob Nichols December 5, 2022

Our organizations don't always agree on banking policy. But today, as the warning lights blilnk on the economic dashboard and we confront both persistent inflaction and the risk of a recession in teh months aghead, we both agree that crypto companies and other nonbanks pose a significant and increasing risk to our financial system that needs to be better understaood and regulated.

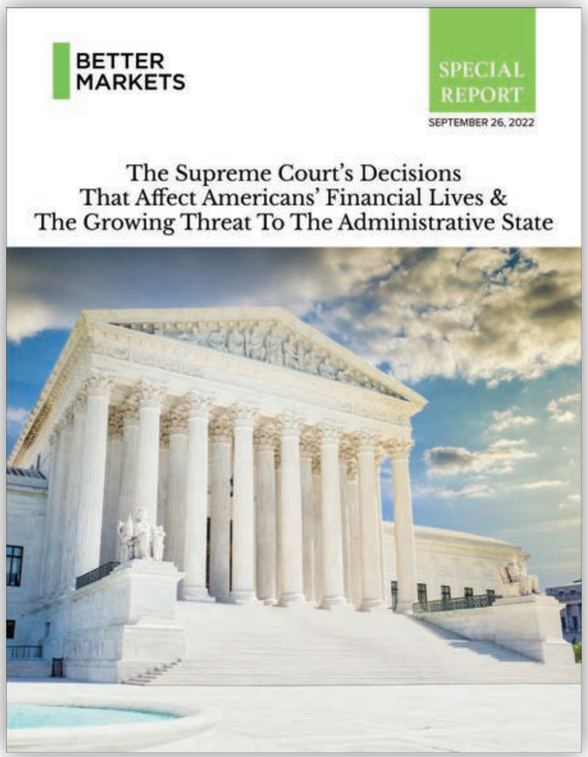
Our friend and tireless investor advocate, Joe Saluzzi, co-founder of Themis Trading, discussed market structure issues, including payment-for-order-flow (PFOF), on Zeroes TV. Joe kindly mentioned Better Markets' work as "the anti-lobbyists" and saying that "they speak the language of DC. Dennis Kelleher knows all the players and can go toe to toe with them." Jo e does the same in the markets where he's fighting and outsmarting the financial predators every day.

The Courts

Every year, the federal courts confront and decide a significant number of legal issues that directly impact the economic and financial well-being of all Americans. The cases are related not just to financial regulation but also to administrative law and even constitutional law. But whatever the particular body of law is involved, 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 a checking or savings account, debit or credit card, or a loan of some type and is therefore a financial consumer. Courts decide how much protection these financial consumers receive under the law: 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 will instead be thrown into a pro-industry, secretive arbitration proceeding.

Better Markets is in court standing up for financial consumers, investors, financial stability, and the integrity of the financial markets that help grow the economy and enable Main Street Americans to meet their financial needs and plan for a dignified retirement. We track the key cases in the courts, highlighting those of special importance in our monthly newsletter. We also file 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. And we prepare special reports on the cases that have the widest and broadest impact, which are those issued by the U.S. Supreme Court.



Below are some of our key legal activities in 2022:

Better Markets' Supreme Court Reports

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.

Our annual Supreme Court report examines the Court's decisions in the most consequential cases involving financial regulation and also looks ahead, identifying the key cases the Court will be resolving in the following term. For example, our report issued in September 2022 highlighted the Court's favorable decision in *Hughes v. Northwestern University*, where the Court affirmed the duty of retirement plan administrators to remove overpriced investment options from those available to retirement savers. Yet only a few months later the Court issued its opinion in *West Virginia v. EPA*, where the Court firmly established the "major questions doctrine," a powerful weapon likely to be deployed against regulation of all types.

We also looked ahead to some cases in the Court's upcoming term that will further shape financial life in this country. They include *SEC v. Cochran*, in which the Court will decide whether those who violate the securities laws can launch a preemptive attack SEC enforcement in federal court. In *United States v. Texas*, the Court is considering whether or when state governments will continue to play leading roles in anti-regulatory challenges. And, in late February 2023, the Court issued its decision in *Bittner v. United States*, with an unfortunate result that dramatically reduced the deterrent effect of monetary penalties against those who violate Bank Secrecy Act rules requiring the disclosure of foreign accounts.

In the Spring last year, we also issued a special report profiling the newest member of the Supreme Court, Justice Ketanji Brown Jackson. Based on a review of Judge Brown's character, intellect, and judicial experience, we forecasted that she would be an exemplary Justice, one who gives everyday American consumers and investors a fair hearing and a fighting chance when they are pitted against a powerful and too often predatory financial system that enriches itself at the expense of the real economy.

Better Markets' Objected To Goldman Sachs' Request For A License To Lie

Better Markets field an amicus brief filed in the case of *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.* in the United States Court of Appeals for the Second Circuit.

In the years before the 2008 financial crisis exploded and began dismantling our economy, Goldman Sachs organized, promoted, and sold mortgage-backed securities that, unbeknownst to investors, were essentially designed to fail. Goldman had become convinced that the residential mortgage market was headed for collapse, and it saw a rich profit opportunity. So it bet against the investments even as it foisted them onto countless unsuspecting investors who were persuaded to take the "long side" of the deal. The bank thus had a huge and undisclosed conflict of interest. And in addition to misleading investors, Goldman also misled the public—including its own shareholders—by falsely proclaiming that it had "extensive procedures and controls in place" to manage such conflicts of interest and by reassuring everyone that clients "always come first." When the truth came out, the bank's stock price fell, shareholders suffered losses, and a lengthy class action began.

In March 2021, we filed an amicus brief in the Supreme Court supporting the investors, detailing Goldman's history of mishandling its conflicts of interest, and showing why it was clearly important for Goldman's shareholders to have truthful disclosures about the way the bank managed—or mismanaged—its conflicts. The Court clarified the applicable legal standard governing so-called generic misrepresentations and sent it back to the lower courts. The district court got it right, holding that Goldman's phony claims about how well it managed its conflicts of interest were not so generic as to diminish their role in artificially maintaining the price of Goldman's stock. In the appeal in the Second Circuit, Better Markets once again filed an amicus brief in favor of the investors and arguing that their claims should be heard.

Better Markets Profiled The Supreme Court's Decision In The West Virginia Case, Which Struck At The Heart Of The Government's Ability To Protect The Health, Safety, And Welfare Of The American People

The Supreme Court's decision in *West Virginia v. EPA* canonized a doctrine that threatens the ability of every federal agency to protect the public from a host of threats. In our Supreme Court report, we examined the flawed decision in detail and its troubling implications. Under the Court's holding, agency rules or orders that represent "extraordinary" or "highly consequential" actions—"major" actions—will not survive judicial scrutiny unless the agency can point to an exceptionally clear and specific grant of authority from Congress. Yet major reforms are often the ones that matter the most when it comes to protecting the public and Congress routinely intends agencies to take on those challenges without any special delegation of authority.

The extreme and ill-supported decision by the Supreme Court to limit the EPA's authority to adopt sensible and necessary greenhouse gas regulations was a major blow to the post-New Deal administrative state that was created to promote the broad public interest by protecting the health, safety, and welfare of all Americans. Recognizing that Congress did not have the expertise and was not structured or able to properly address some of the most important issues facing the country, it created regulatory agencies to hire experts, gather and analyze data, seek public input, and enact regulations to respond to the many complex issues that arise from a vast and complex economic system and a sprawling, technologically advanced country. The broad public interest is the overriding priority and guidepost of those regulatory agencies. Unfortunately, the Court in *West Virginia* created yet another major barrier for agencies seeking to write rules to protect that public interest.

Better Markets, Joined by The Consumer Federation Of America, Files Amicus Brief Urging Tenth Circuit To Give Investors Claiming Market Manipulation A Chance To Prove Their Case

In February 2022, we joined with other consumer advocates to file an amicus brief urging the U.S. Court of Appeals for the Tenth Circuit to reverse a district court's dismissal of a market manipulation case brought against Overstock.com and several of its principals.

Our brief explained not only the legal errors in the district court's decision but also the more far-reaching harm that the decision threatens unless it is reversed. We showed that the securities laws and rules were written broadly to cover fraud and manipulation as two separate forms of illegal conduct, driving home the point that manipulation schemes distort share prices and inflict harm on investors regardless of whether they were carried out using lies or traditional forms of deceit. We also highlighted the damaging impact that the district court's decision will have unless it is reversed. The plaintiffs will almost certainly be left without any remedy for their losses, and over the long-term, market manipulators will be able to fashion schemes that skirt the law but nevertheless wreak havoc in the markets and inflict untold harm among investors. We are waiting for the court's decision.

Better Markets Joins Amicus Curiae Brief To Stop Corporate Evasion Of Liability Under Federal Securities Law And Other Statutes

On November 14, 2022, Better Markets joined Public Citizen and the Consumer Federation of America to submit an Amicus Brief in Lee v. Fisher, a case in the United States Court of Appeals for the Ninth Circuit where investors seek to challenge a company's by-law provision that effectively extinguishes their right to assert claims for violations of the federal securities laws. As explained in the brief, corporations cannot be allowed to insulate themselves from liability under the federal securities laws with the stroke of a pen in their by-laws. Lee v. Fisher will determine whether The Gap and other large corporate entities can do just that, in this case by amending their bylaws to include a forum selection clause that forces any derivative actions into state court. The problem is that federal law limits many claims under the securities laws to federal court, so this maneuver prevents those claims from being heard at all. We await the court's decision.

Better Markets also tracks numerous ongoing cases that impact Main Street in our monthly newsletter. Learn more here.

BY THE NUMBERS

45
PROPOSED RULEMAKINGS

8
REPORTS

8
FACT SHEETS

9
FREQUENTLY REFERENCED IN FINAL RULES, INCLUDING 9 EXPRESSLY

137
PRESS RELEASES

45
MEETINGS

3
COURT FILINGS

In the Media

507 unique media quotes

8 Op-Eds

6 TV/Video Hits

5 Radio/Podcast hits

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.

Bloomberg

POLITICO

THE WALL STREET JOURNAL. WSJ

MarketWatch

REUTERS

The Washington Post

The New York Times

BANKING DIVE

abc NEWS

LAW360

The Boston Globe

CNBC

THE HILL

AMERICAN BANKER

FT FINANCIAL TIMES

HUFFPOST

Roll Call


acer

Better Markets Went Blow for Blow With Wall Street's Lobbyists

BARRON'S

by Dennis Kelleher

August 3, 2022

Regulators Still Aren't Serious About Ending Too Big to Fail (Our op-ed)

A spree of bank mergers is happening right now. It would create the most too-big-to-fail banks since the 2008 crash. Regulators must get serious about applying the law and ending too big to fail or history is going to repeat itself.

BPI's response—Kelleher shouldn't assume "big is bad." Big has benefits. Banks choosing to grow through M&A make that choice in today's banking reality: thriving competition, rigorous rules and stable, resilient system.

Our response to the response—BPI is wrong: We don't assume big is bad, ignore benefits of scale, or oppose mergers. We just want big banks to be good for banks and the country. That requires those banks to be readily resolved in bankruptcy without devastating collateral consequences like every other business in America and consistent with the most basic principles of capitalism.

Our Experts Were Quoted Far and Wide

LAW360

SEC's Stock Buyback Proposal Ignites Pushback

"With respect to 'information overload,' you don't hear investors or their advocates complaining about that problem," **Stephen Hall, Legal Director and securities specialist at Better Markets, told Law360.** "On the contrary, they support the rule so we can safely discount that concern. As to compliance, in this age of electronic data processing, it's hard to make a compelling case against a reporting obligation, especially one that is triggered by the issuer's discretionary decision to engage in repurchases."

Roll Call

ESG investors urge regulators to create game plan for climate risk

"The U.S. regulatory agencies remain woefully behind in managing and addressing climate-related risks in the banking system," **said Phillip Basil, director of banking policy at left-leaning financial reform advocate Better Markets.** "Addressing the potentially destabilizing risks from climate change clearly fall within the mandates of the agencies, which are to promote a strong banking system and to work to maintain financial stability."

MarketWatch

'The riskiest loans are outside the banking system.'

"Private funds have become increasingly important in the Treasury markets," **Scott Farnin, legal counsel for the financial reform advocacy group Better Markets**, told MarketWatch. "In March of 2020 we saw Treasury markets seize up and a lot of liquidity run dry," and FSOC needs detailed and timely information on such events in order to monitor systemic risk effectively, he added.

The New York Times

Disclosure issues could complicate Musk's Twitter bid, legal experts say.

Dennis Kelleher of Better Markets, a corporate and regulatory transparency watchdog, said regulators had an obligation to look into the disclosure issue to send a message that all investors are treated the same. "The rule of law breaks down if billionaires get to play by a different set of rules," he said.

...and even around the world!

This *New York Times* mention ended up in publications in countries like Italy, Austria, Turkey, Sudan, Romania, and the UAE.

Social Media

Better Markets has active accounts on Twitter, Facebook, and LinkedIn

Metrics across all three accounts:

Posts: **1,128**

Impressions: **2,122,488**

Engagement rate: **2.95%**

Followers: **34,779**

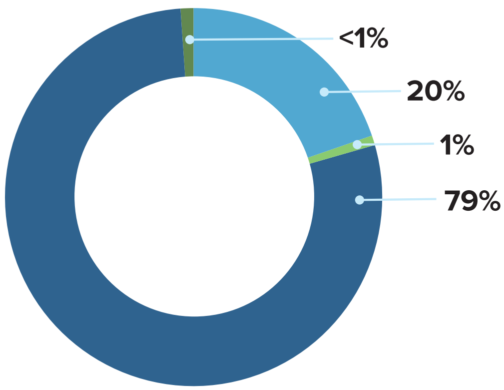
Website: **bettermarkets.org**

Total visitors: **173,094**

Pageviews: **275,211**

Financials

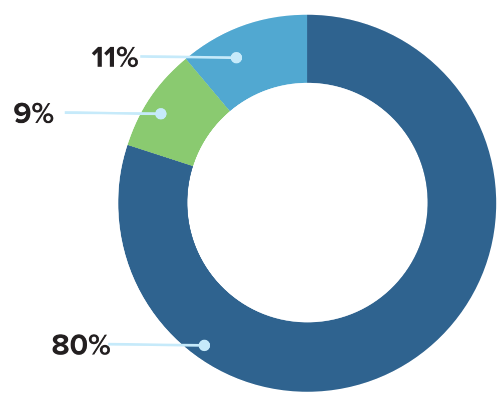
Income



Institutional Foundations	$	775,000 (Includes multi-year funding)
Corporate	$	50,905
Individuals and Family Foundations	$	3,114,400
Other (Interest & Misc.)	$	10,960
TOTAL	**$**	**3,951,265**

Expenses

Program Services	$	2,414,881
General and Administrative	$	294,500
Fundraising	$	310,390
TOTAL	**$**	**3,019,771**



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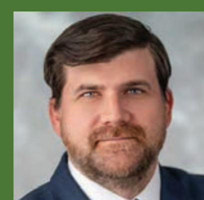

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BETTER MARKETS

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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.

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