



Academic Study Concludes Better Markets' Activities Turned Financial Reform into a Reality

After Dodd-Frank: The Post-Enactment Politics of Financial Reform in the United States

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According to a recent academic study, Better Markets has been decisively important in turning the Dodd Frank financial reform law into reality. It refers to Better Markets as an “applied think tank” that is part of what the authors call a “stability alliance” which opposes the industry’s “self-regulation alliance.” The study (“After Dodd Frank: The Post Enactment Politics of Financial Reform in the US) finds:

“that recent reforms in U.S. financial markets hinge on intellectual resources and new organizational actors that are missing from existing concepts of regulatory capture or business power. In particular, small advocacy groups [like Better Markets] have proven significantly more successful in opposing the financial-services industry than existing theories predict. By maintaining the salience of reform goals, elaborating new analytic frameworks, and deploying specialized expertise in post-enactment debates, smaller organizations have contributed to a diffuse but often decisive network of pro-reform actors. Through the rule-writing process for macroprudential supervision and derivatives trading, these small organizations [prominently Better Markets] coalesced with other groups to form a new stability alliance that has so far prevented industry groups from dominating financial regulation to the degree that occurred in earlier cases of regulatory reform.”

The study’s conclusions are also particularly important, as indicated by this final observation:

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

The study singled out Better Markets a number of times:

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

“And in the key cases of adjudication, where industry associations made substantial investments in blocking new rules, it was the small think tank, Better Markets, rather than insurgent industry actors, that supported the CFTC’s legal arguments. In these

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

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

“Writing retrospectively about the CFTC’s work before Gary Gensler stepped down in December 2013, one of Cadwalader’s senior partners wrote of a ‘tango between the CFTC (under former Chairman Gensler) and Better Markets.’ Through this tango, he contended, ‘Regardless of the burden of regulation the CFTC would propose, Better Markets would write a comment letter asserting that the CFTC should impose a greater burden. Then, ... the CFTC would quote from Better Markets’ letters extensively.... In effect, under former Chairman Gensler, Better Markets served as a device to provide the CFTC with cover for virtually any position.’

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

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

It is noteworthy that the study came to the conclusion that Better Markets played an outsized role in enacting financial reform because the authors studied only two sets of rules, when Better Markets has participated in more than 200 rulemakings. Thus, the study, while highly complementary, barely touches on the broad and deep impact Better Markets has had in implementing financial reform.