Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Listing Standards for Recovery of Erroneously Awarded Compensation (File No. S7-12-15)

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to provide additional comment on the above-captioned Proposed Rule ("2015 Proposal"), which was published by the Securities and Exchange Commission ("SEC" or "Commission") in the Federal Register on July 14, 2015 and reopened for comment on October 21, 2021 ("Release").[2]

The Proposal would implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").[3] Under that provision, the Commission must adopt a rule directing the securities exchanges to establish issuer listing standards providing for the recovery of incentive-based compensation paid to current or former executive officers in excess of what those executives should have received, as shown by an accounting restatement, all without regard to fault. This important reform not only serves to limit systemic risk by curbing the impulse among executives to pursue short-sighted business strategies for personal gain, it also

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1 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 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.

2 Listing Standards for Recovery of Erroneously Awarded Compensation, 80 Fed. Reg. 41,144 (Jul. 14, 2015) (to be codified at 17 C.F.R. pts. 229, 240, 249, and 274); Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation, 86 Fed. Reg. 58,232 (Oct. 21, 2021).

3 Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, *codified at* 15 U.S.C. § 78j-4 (2010).

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vindicates the basic principle that it is wrong for corporate leaders to retain compensation—especially performance-based compensation—that they do not deserve.

As we stated in our original letter[4] in response to the 2015 Proposal, which we fully incorporate herein by reference, we believe that the Commission has developed a strong proposal that largely adheres to both the letter and the spirit of Section 954 of the Dodd-Frank Act. Nevertheless, the Commission can and should improve the Proposal in several respects, as detailed in the 2015 Better Markets Letter, to ensure that it fully realizes the Congressional objectives underlying Section 954. In this supplemental comment letter, we provide further comment on ways in which the SEC can improve the Proposal, in response to certain specific questions asked in the Release. Above all, however, the Commission's top priority should be to resist the inevitable calls from industry opponents to weaken or dilute this generally well-crafted Proposal.

INTRODUCTION

Major contributors to the financial crisis were misaligned incentives generally and executive compensation policies in particular at many financial institutions that motivated corporate leaders to engage in high-risk activities for short-term profit and lucrative bonuses. Citigroup CEO Chuck Prince's infamous quote captures much of what went so wrong in the suites of the too-big-to-fail banks on Wall Street:

> "When the music stops, in terms of liquidity, things will be complicated. But as long as the music is playing, you've got to get up and dance. We're still dancing,"

These short-sighted policies, fueled by misguided competitiveness and greed rather than principles of sound corporate governance, came at the expense of the long-term viability of those institutions, the entire financial system, and, ultimately, the U.S. economy. As a result, the financial crisis of 2008 will ultimately cost over $20 trillion in lost GDP, in addition to the long-lasting suffering experienced by millions of Americans who lost their jobs, savings, and homes.[5]

A specific problem in the realm of corporate governance was the tendency of some corporate executives to engage in accounting fraud or manipulation and high-risk business strategies to bulk up revenues and attempt to justify inflated compensation awards. As one Congressional study of the crisis concluded:

> "Even before the current crises, many criticized such incentive plans for encouraging excessive focus on the short term at the expense of consideration of the risks involved. This short-term focus led to unsustainable stock buyback programs, accounting manipulations, risky trading and investment strategies, or

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4 Better Markets Comment Letter to the SEC on Clawbacks (Sept. 14, 2015) ("Better Markets 2015 Letter"), https://bettermarkets.org/wp-content/uploads/2021/07/SEC-CL-Listing-Standards-for-Recovery-of-Erroneously-Awarded-Compensation-9-14-2015.pdf.

5 *See generally* Better Markets, "The Cost of the Crisis" (July 2015).

other unsustainable business practices that merely yield short-term positive financial reports."[6]

To address these abuses, Congress enacted a collection of corporate governance and executive compensation reforms in Subtitle E of Title IX of the Dodd-Frank Act, including the following:

- Section 951, requiring shareholder advisory votes on executive compensation and golden parachutes;
- Section 952, requiring new listing standards that impose enhanced independence requirements for members of issuers' compensation committees;
- Section 953(a), requiring disclosure of executive compensation in relation to company performance, and Section 953(b), requiring disclosure of the ratio between the CEO's total compensation and the median total compensation for all other company employees; and
- Section 956, mandating the disclosure to regulators of all incentive-based compensation arrangements, and prohibiting incentive-based compensation arrangements that encourage inappropriate risks by providing executives or others with excessive compensation.

Section 954 is part of this collection, and it was specifically designed to ensure that corporate executives are not allowed to retain incentive-based compensation that was awarded based upon materially inaccurate financial statements. Once implemented, it will help curb high risk activities, increase compliance with accounting standards, and promote fairness to shareholders by ensuring that they are not forced to pay executive compensation that was undeserved.[7] It is one of many important reforms that are necessary to help reduce excessive risk-taking by financial market participants and thereby decrease the likelihood of another financial crisis.

COMMENTS

I. THE SEC MUST CONTINUE TO RESPECT CONGRESS'S BROAD, MANDATORY POLICY CHOICE TO ADDRESS UNDESERVED EXECUTIVE COMPENSATION.

Although Section 954 contains some technical terms that are not susceptible to easy definition, or that otherwise implicate some complexity in interpretation ("accounting restatement," "material noncompliance," etc.), it is a relatively straightforward provision. If an issuer is required "to prepare an accounting restatement," because of the issuer's "material

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6 Congressional Oversight Panel Special Report on Regulatory Reform, "Modernizing the American Financial Regulatory System: Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability," (2009).

7 *See* S. Rep. No. 111-176 (2010).

noncompliance with financial reporting requirements," then it must recover any erroneously awarded compensation over the prior three years. The language of the provision is both **broad** and **mandatory,** by intention, as made clear in the Senate Report discussing the provision:

> "Section 954 requires public companies to have a policy to recover money that they erroneously paid in incentive compensation to executives as a result of material noncompliance with accounting rules. This is money that the executive would not have received if the accounting was done properly and was not entitled to…. The Committee believes it is unfair to shareholders for corporations to allow executives to retain compensation that they were awarded erroneously."[8]

It is also important to note what is **not** in Section 954. Section 954 does not contain exceptions or loopholes. It does not instruct the SEC to take into account the burden on issuers of requiring recovery of erroneous compensation, or the burden on covered executives, or the impact on anyone else. Simply put, it reflects Congress considered policy judgment that it is unfair to shareholders for executives to retain compensation they are not entitled to. The SEC's final rule, including the definition of key terms, must be consistent with the broad and mandatory nature of Section 954.

II. CONSISTENT WITH THE STATUTE, AND IN LIGHT OF DEVELOPMENTS SINCE THE PROPOSAL WAS ISSUED IN 2015, THE SEC SHOULD BROADEN THE TYPES OF ACCOUNTING RESTATEMENTS THAT TRIGGER THE CLAWBACK OBLIGATION. (QUESTIONS 1 AND 3)

The Proposal would have defined an "accounting restatement" as "the result of the process of revising previously issued financial statements to reflect the correction of one or more errors that are material to those financial statements."[9] This definition is too narrow, it would create a serious gap in the final rule, and it should be broadened to close that gap.

As the SEC notes, the originally proposed definition would **not** trigger the clawback requirement in certain increasingly common circumstances where a clawback would in fact clearly be appropriate. Most notably, as the Release explains, the definition of "accounting restatement" would exclude situations

> "where an issuer's previously issued financial statements are required to be restated in order to correct errors that were not material to those previously issue financial statements, but would result in a material misstatement if (a) the errors were left uncorrected in the current report or (b) the error correction was recognized in the current period."[10]

As the SEC correctly notes in the Release, these sorts of so-called "little r restatements" or "revision restatements" have become increasingly common in recent years and make up an

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[8] S. Rep. No. 111-176 (2010).
[9] Release at 58,234.
[10] Release at 58,234.

increasing percentage of accounting corrections.[11] These are accounting corrections that are not considered material to prior year reports, but still need to be made to ensure that current reports are not materially misleading. Importantly, because they are not considered material to prior year financial statements, those prior year statements need not be re-issued and investors need not be notified.[12]

It is tempting to believe that this trend has emerged because issuers are simply getting better at avoiding the larger accounting errors that are supposed to result in more substantial restatements. However, the evidence suggests the reason is not so benign. One researcher examining the increasing prevalence of revision restatements, seemingly in place of more substantial "re-issuance restatements," found that at least a third of corrections issued as revision restatements are "suspect" because they meet at least one of the criteria for a more substantial "re-issuance restatement," which "suggests that managers often use their materiality discretion to report misstatements" as revision restatements rather than re-issuance restatements.[13] Moreover, the same researcher found that companies are "significantly more likely" to report suspect restatements as revision restatements rather than re-issuance restatements if that company has a clawback policy that is triggered by re-issuance restatements but not by revision restatements.[14] In other words, there is strong evidence that companies with clawback policies modeled after the SEC's Proposal are taking advantage of the proposed loophole and avoiding the obligation to recover erroneously awarded compensation through misclassification (or at least suspect classification) of restatements.

Thus, in response to Question 1, Better Markets strongly urges the SEC to expand the interpretation of an "accounting restatement due to material noncompliance" to encompass not only restatements that correct errors that are material to previously issued financial statements but also restatements that would result in a material misstatement if (a) the errors were left uncorrected in the current report or (b) the error correction was recognized in the current period. This is clearly necessary because companies have already revealed their strategy for evasion of the dictates of the Proposal should it be finalized as is—they will simply classify as many restatements as "little r" "revision restatements" as they think they can get away with. Armed with this knowledge about how the industry would circumvent its proposed rule, the SEC must revise the definition of "accounting restatement" to close the loophole.

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[11] Release at 58,234; *see also* Jean Eaglesham, *Shh! Companies Are Fixing Accounting Errors Quietly*, Wall St. J. (Dec. 5, 2019), https://www.wsj.com/articles/shh-companies-are-fixing-accounting-errors-quietly-11575541981.

[12] Release at 58,234; *see also* Jean Eaglesham, *Shh! Companies Are Fixing Accounting Errors Quietly*, Wall St. J. (Dec. 5, 2019), https://www.wsj.com/articles/shh-companies-are-fixing-accounting-errors-quietly-11575541981.

[13] Rachel Thompson, Reporting Misstatements as Revisions: An Evaluation of Managers' Use of Materiality Discretion at 2 (Sept. 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3450828.

[14] Rachel Thompson, Reporting Misstatements as Revisions: An Evaluation of Managers' Use of Materiality Discretion at 3 (Sept. 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3450828.

The SEC actually should go further and eliminate any unnecessary provisos surrounding the triggers for the clawback provision. Simply put, any type of accounting restatement should suffice. Doing so would make the rule more consistent with the text and spirit of Section 954. The core definitional element in Section 954 is the "accounting restatement," a very broad term. Section 954 only embellishes that phrase with another broad concept that covers any accounting restatement that is "due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws." Notably, Congress did not restrict the universe of accounting restatements beyond these broad concepts. It did not carve out "revision restatements" from the scope of the rule or otherwise suggest that it is limited to restatements that impact the materiality of prior year financial statements.[15] The broad language reflects the broad intent of Congress to limit incentives to engage in high-risk activities and to end the inherent unfairness to investors of allowing executives to keep money they are not entitled to.[16] The SEC's rule should respect both the breadth of the language Congress chose to use and the breadth of Congress's intent.[17]

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[15] The industry has tried strenuously to argue that "revision restatements" are not really considered "restatements." *See* Letter from Sullivan & Cromwell LLP on Clawbacks at 1-2 (Nov. 16, 2021), https://www.sec.gov/comments/s7-12-15/s71215-9379991-262288.pdf. However, while some accountants may consider a "restatement" only to be a correction that results in the re-issuance of a prior year's financial statement, it is also quite common in accounting literature to also refer to a revision restatement as a restatement. For example, a prominent accounting firm's educational materials on error correction define both "revision restatements" and "re-issuance restatements" as "restatements" that are distinguishable from the less serious "Out-of-period adjustment," which presumably would be recognized as "not a restatement" in the accounting community. BDO, Accounting Changes and Error Correction at 4, https://www.bdo.com/getattachment/1989c81b-e13b-41ed-91ce-2be6de0362a8/attachment.aspx?ASSR_Accounting-Changes-and-Error-Corrections.pdf; *see also* Philip Keunho Chung & Ronnie Cohen, *Hiding in Plain Sight: Stealth Restatements and Their Implication for Litigation Risk,* 15 N.Y.U. J.L. & Bus. 257, 285 (2019) ("We term these kinds of restatements as non 4.02-8K restatements. Such restatements are also known as "stealth restatements,' 'revision restatements,' or 'non 4.02 restatements.'"). No court, especially one properly applying *Chevron* deference, could reasonably conclude that the SEC had acted unreasonably or in derogation of the statute by including a type of accounting error correction commonly referred to as a "revision restatement" as one form of "accounting restatement."

[16] S. Rep. No. 111-176 (2010).

[17] With respect to Question #4, if the final rule does expand the type of accounting restatements that trigger a clawback analsyis, then in the interest of transparency, and as suggested in the Release, at 58,235, the final rule should certainly include checkboxes or other disclosure devices to clearly indicate whether a previously issued financial statement included in a filing contained an error correction and whether any such corrections were restatements that triggered a clawback analysis during the fiscal year. Otherwise, as also explained in the Release, this important information is less likely to be divulged. Restatements attributable to errors that were not material to previously issued financial statements (but which nevertheless could result in material misstatements if left uncorrected) are not always treated as "restatements" nor subject to certain form filing requirements. Closing this potential information gap is an important element of any final rule.

The Release raises the related question (Question #3) as to whether the SEC should define the key terms in the final rule or instead rely on common understanding and "existing guidance, literature and definitions concerning accounting errors."[18] The SEC should adopt whichever approach would establish the broadest, clearest, and most enforceable definition. It would seem that codifying a definition in the final rule itself would best achieve these regulatory objectives. Otherwise, unintended loopholes may result, issuers may adopt inconsistent interpretations, and the SEC may confront enforcement challenges if it relies on definitions supplied entirely by non-binding and unenforceable documents such as guidance.[19] One approach to defining "accounting restatement" would be to simply define an accounting restatement as *either* a revision restatement or a re-issuance restatement.[20] Issuers are familiar with each of these concepts, and so that definition should minimize confusion.

III. THE SEC SHOULD PRESERVE THE "REASONABLY SHOULD HAVE CONCLUDED" LANGUAGE FROM THE CLAWBACK TRIGGER (QUESTION 2).

The SEC also asks in the Release whether it should change the formula for calculating the commencement of the three-year lookback period. Specifically, in the Proposal, one trigger for starting the lookback period would have been the earlier of the date on which the responsible body at the issuer concludes "or reasonably should have concluded" that an account restatement is needed. As Better Markets explained in 2015, this language "is critically important, as it will create a more objective standard that limits board discretion and the potential for evasion."[21] Nevertheless, Question 2 of the Release asks whether the "reasonably should have concluded" should be removed in light of the potential broadening of the definition of "accounting restatement," or for other reasons. While it is certainly appropriate for the SEC to thoughtfully consider whether a potential change to one aspect of the Proposal may necessitate changes to other aspects, in this instance, the SEC must retain the "reasonably should have concluded language" in the final rule for several reasons, regardless of whether it broadens the definition of "accounting restatement."

First, removing the reasonableness language would be inconsistent with the language and intent of Section 954. Section 954 provides that the lookback period begins on "the date on which the issuer **is required to** prepare an accounting restatement."[22] The use of the phrase "is required to" is telling, as it clearly incorporates the idea of an objective, binding obligation, independent of the issuer's discretion. In other words, Congress clearly intended to remove discretion on the part of issuers as to when the lookback period will begin. The reasonableness language helps supply that independent, objective obligation. If that language is removed in the final rule, the lookback

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18 Release at 58,235.

19 Existing guidance and other sources could, of course, inform the definition.

20 By contrast, the SEC should not attempt to define "material noncompliance" with financial reporting requirements, as "material noncompliance" depends far to much on individual facts and circumstances. Better Markets 2015 Letter at 4.

21 Better Markets 2015 Letter at 4, https://bettermarkets.org/wp-content/uploads/2021/07/SEC-CL-Listing-Standards-for-Recovery-of-Erroneously-Awarded-Compensation-9-14-2015.pdf.

22 15 U.S.C.A. § 78j-4(b)(2) (emphasis added).

date would simply begin on the date the board (or other responsible body) of the issuer concludes that an accounting restatement is needed (setting aside the comparatively rare scenarios in which a court directs the issuer to restate its financials). In other words, the issuer would essentially be able to determine for itself when the lookback period starts. This is plainly inconsistent with the language and intent of Section 954, which provides that the lookback period starts when the issuer is "required to prepare an accounting restatement," not when the issuer "decides to prepare an account restatement. Deleting this important check on the issuer's discretion would also undermine the purposes of the statutory reform embodied in Section 954, leading to fewer restatements, fewer clawbacks, and weaker deterrents against high-risk, short-sighted corporate behavior.

Second, and relatedly, removing the reasonableness language from the lookback trigger would enable easy evasion of the clawback rule. It is easy to see how this would work. If the lookback period is only triggered following an entirely discretionary decision on the part of the issuer to make an accounting restatement, issuers could avoid clawing back compensation simply by electing not to prepare a restatement until after the relevant three-year period has passed. Quite obviously Congress did not pass Section 954 to enable issuers to so easily avoid its dictates, and the SEC should act to prevent such easy evasion of such an important rule.

Third, proponents of removing the reasonableness language have not provided any coherent reasons why the SEC should remove the reasonableness language. For example, some commenters argued that no reasonableness language is needed because other provisions of the securities laws, including the anti-fraud provisions, will prevent issuers from trying to delay making an accounting restatement so as to avoid having to claw back previously award executive compensation.[23] However, at best, this is an unpersuasive argument, as different provisions of the securities laws have different concerns, different scopes, and different elements posing different evidentiary challenges. For example, liability under the anti-fraud provisions of the securities laws requires evidence of intent to deceive, which is "one of the most difficult elements to prove in a securities fraud case."[24] The anti-fraud and other provisions in the securities laws may be implicated in any attempt to evade the requirements of Section 954, but it is unlikely that those other provisions would by themselves effectively prevent all acts of evasion.

At bottom, the real concern some issuers and their allies undoubtedly have about the reasonableness language is that it could lead to actual accountability for their imprudent or even reckless decisions made in the overly aggressive pursuit of profit. This is evidenced by their insistence that inclusion of the reasonableness language could result in increased litigation over when it was reasonable for the board (or other responsible body) to recognize the need for a restatement. This argument is either untrue or beside the point. In reality, preserving the phrase in question will in many cases reduce the likelihood of litigation, as it will induce at some issuers

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[23] ExxonMobil Comment Letter on Clawbacks (Sept. 14, 2015), https://www.sec.gov/comments/s7-12-15/s71215-22.pdf.

[24] Philip Keunho Chung, Ronnie Cohen, *Hiding in Plain Sight: Stealth Restatements and Their Implication for Litigation Risk*, 15 N.Y.U. J.L. & Bus. 257, 262 (2019).

to act prudently to avoid the risk that their decisions regarding the need for a restatement will be subject to an objective standard of reasonableness. Alternatively, to the extent issuers attempt to evade the clawback obligation notwithstanding the reasonableness standard, then litigation is the appropriate outcome, and the rule will at least provide a standard to govern the dispute. In short, the "reasonably should have concluded" language imposes an enforceable obligation on the issuer, to act reasonably, that a court is capable of enforcing. Without that language, the date an issuer is "required" to make a restatement would be entirely discretionary on the part of the issuer, and (absent something like fraud) no court would have any basis on which to hold issuers accountable for its decision, no matter how unreasonable it was. In fact, litigation, whether by the SEC or private litigants, is one of the most important ways to hold issuers accountable. It is the SEC's job to protect investors and the markets, not reduce issuer's litigation expenses. The SEC should not eliminate an important provision that will enhance accountability simply because issuers would prefer not to go through the process of having the reasonableness of their actions assessed by an independent adjudicator.

IV. THE COMMISSION SHOULD REQUIRE DISCLOSURE OF HOW ISSUERS CALCULATE THE RECOVERABLE AMOUNT.

The Release appropriately points out that calculating the recoverable amount in the clawback analysis poses special challenges where an executive's compensation was based on the issuer's stock price or total shareholder return.[25] In those instances, the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the accounting restatement. And while the original proposal required issuers to maintain documentation of the determination of the reasonable estimate of that amount, it did not explicitly require disclosure of ***how*** issuers calculated the recoverable amount.

In response to Question #7 on this point, the final rule should certainly include such a requirement. Given the complexities, nuances, imprecision, discretion, and conflicts of interest surrounding the estimate of erroneously awarded compensation that was based on stock price or total shareholder return, it is exceedingly important that issuers be required to demonstrate exactly how they arrived at their number. This is particularly important insofar as there will be considerable pressure on issuers to arrive at modest numbers, to minimize the amounts that executives must surrender. Moreover, this approach will better serve the purposes underlying Section 954: It will likely induce more compliance, as issuers will know they have to explain and in effect justify their methodology, and it will facilitate effective examinations and where appropriate, enforcement actions by the SEC and private actions by investors.

V. THE COMMISION SHOULD REFRAIN FROM QUANTITATIE COST-BENEFIT ANALYSIS.

Better Markets has for years fought against industry's attempt to foist quantitative cost-benefit analysis requirements on the SEC, and it has done so in its comment letters, special reports,

[25] Release at 58,236.

and amicus briefs.[26] In our view, cost-benefit analysis is not required of the SEC under the securities laws; it is notoriously imprecise, unreliable, and industry-biased; and it not only unduly burdens the agency but also lays the foundation for court challenges to the SEC's meritorious rules that could serve the public interest well but for all too frequent judicial nullification.

The Release raises the specter of cost-benefit analysis by inviting commenters to submit data that would allow the Commission to refine its "characterization of costs and benefits of the clawback policies" currently in use by issuers and those set forth in the Proposal.[27] We therefore reiterate all of our concerns regarding the peril of undertaking and relying upon quantitative cost-benefit analysis as the Commission develops its final rule. We especially caution against placing undue weight on the industry's complaints about the costs of the proposal, in its original form or as it may be strengthened in accordance with the Release. The point is especially telling in this case, as the Release appropriately notes that issuers are increasingly adopting clawback policies on a voluntary basis and therefore may already have systems in place that can implement and satisfy the requirements of the proposed rule *without* incurring significant costs.[28] Above all, and whatever form of cost-benefit analysis it undertakes, the Commission must be sure to properly account for the enormous public benefit that a final rule would confer by helping to prevent another financial crisis and the vast harm such a calamity would inflict on investors, markets, and the economy as a whole.[29]

CONCLUSION

We hope these comments are helpful as the Commission finalizes the Proposal.

Sincerely,

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[26] Better Markets, SETTING THE RECORD STRAIGHT ON COST BENEFIT ANALYSIS AND FINANCIAL REFORM AT THE SEC (July 30, 2012 https://bettermarkets.com/sites/default/files/Setting%20The%20Record%20Straight.pdf; BETTER MARKETS, COST-BENEFIT ANALYSIS IN CONSUMER AND INVESTOR PROTECTION REGULATION: AN OVERVIEW AND UPDATE (Dec. 8, 2020), https://bettermarkets.org/sites/default/files/Better_Markets_WhitePaper_CBA_Consumer_Investor_Investor_Protection_Dec-2020.pdf; Brief Amicus Curiae of Better Markets, Inc. in Support of Respondent at 15-25, *N.Y.S.E v. SEC*, 2020 WL 3248902 (D.C. Cir. 2020) (No. 19-1042), https://bettermarkets.com/resources/court-filing-sec-attempts-protect-investors-and-market-integrity-exposing-exchange-pricing; Better Markets Comment Letter to the FSOC on Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies at 5-6, 14-19 (May 24, 2019), https://bettermarkets.com/rulemaking/better-markets-comment-letter-fsoc-authority-require-supervision-and-regulation-certain.

[27] Release at 58,235-36 (Questions #5 and #6).

[28] Release at 58,235.

[29] BETTER MARKETS, THE COST OF THE CRISIS: $20 TRILLION AND COUNTING 66-69 (2015), https://bettermarkets.com/sites/default/files/Better%20Markets%20-%20Cost%20of%20the%20Crisis.pdf.

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