BETTER MARKETS

September 19, 2021

Via Email

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: The Pandemic Profiteering Trading by Federal Reserve Officials Requires Immediate Full Disclosure as well as an Independent Investigation by the SEC and DOJ

Dear Chairman Powell,

In 2020, as hundreds of thousands of Americans were dying and tens of millions were being thrown out of work due to a catastrophic pandemic that gripped the country with fear, some of the most senior officials at the U.S. central bank, the Federal Reserve System, were making dozens of multi-million-dollar trades, seeking to profit on the disaster. That alone should disqualify them from their positions. But their conduct is much worse than that. They did that at a time when the Fed was (1) dropping interest rates to near zero, (2) flooding the financial system with trillions of dollars, and (3) creating numerous programs to support various financial products and markets, all of which impacted the value of most if not all financial assets, including those being traded by those Fed officials. That meant that many/most/all senior Fed officials were in possession of a wide range of material, nonpublic information relating to virtually all financial markets for much or all of 2020, which would have conferred enormous advantages on anyone trading based on that information.

Thus, such conduct may not only be unethical; it may well be illegal.

For those officials to now claim that their trading conduct was permissible because their subordinates and direct reports approved their bosses' trading and/or because the Fed's so-called "code of conduct" allowed such trading only reveals how grossly deficient their ethical standards and the code of conduct are. Moreover, rules designed for the ordinary course when typical pre-FOMC meeting "black out" periods are appropriate are entirely inapplicable when a once-in-100-year pandemic hits and the Fed engages in innumerable extraordinary and historic actions in the financial markets, including unprecedented interventions in the corporate bond markets (including junk bond markets), muni markets, and virtually every other financial market.

1825 K Street, NW, Suite 1080, Washington, DC 20006
TELEPHONE (1) 202.618-6464
FAX (1) 202.618.6465
WEBSITE bettermarkets.com

All of those many actions by the Fed, which were ongoing throughout 2020, involved highly sensitive, likely market-moving information that should have prompted any reasonable person to understand that they were in possession of such inside information at virtually all times, and that they should have acted accordingly, including by refraining from all trading. Their conduct, seeking to profit in the middle of a pandemic that was wreaking havoc and pain across the country, is an insult not only to the American people but also to the thousands of hardworking staff at the Fed, many of whom were working nights and weekends to respond to the pandemic-caused shutdown of the economy and trying to prevent a financial collapse.

This trading activity is, at best, pandemic profiteering and, at worst, illegal insider trading, which threatens to further erode the public's trust and confidence in the ethics, integrity, judgment, and priorities of the Fed and its officials. This requires you to take immediate, concrete, and meaningful action, not just PR pronouncements of internal investigations and an internal review of the ethics code, neither of which will adequately address these serious issues.

First, the public has a right to know if the several individuals already identified reflect the true scope of this pandemic profiteering conduct or if the revelations thus far are merely the tip of an iceberg of more widespread trading by Fed officials seeking to profit off the pandemic while potentially in possession of inside information. Therefore, you must require the full and immediate disclosure of

(1) any and all trading activities (including all long and short positions, whether direct, indirect, or synthetic[1]) by any and all Fed officials and staff at the Board, FOMC, or regional Feds who had access to information, analysis or other materials that played any part in the Board's decision-making process regarding its (a) "traditional" monetary policy, (b) "unconventional" monetary policy, or (c) pandemic-related facilities and programs since the beginning of the pandemic though today and the details of their trading; and

(2) all documents related to any review, approval and/or denial of any such trading.

Considering that all of the Federal Reserve's actions since March of last year have been intended to have a material impact on markets and the economy, the same logic that applies to the pre-FOMC blackout should have applied to decisions for action or inaction on any of the Federal Reserve's activities at least throughout 2020, if not to date.[2]

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[1] There is reason to believe that at least Dallas Fed President Robert Kaplan, who was a member of the FOMC throughout 2020, may have engaged in short selling activity during 2020. *See* Pam Martens and Russ Martens, "Dallas Fed President Traded S&P 500 Futures. Dallas Fed Will Not Say If He Shorted the Market During Pandemic Crisis in 2020," WALL STREET ON PARADE (Sept. 18, 2021), *available at* https://wallstreetonparade.com/2021/09/dallas-fed-president-traded-sp-500-futures-dallas-fed-will-not-say-if-he-shorted-the-market-during-pandemic-crisis-in-2020/.

[2] It is difficult to understand how such trading could be permissible even under the current Code of Conduct which requires officials to "be careful to avoid any dealings or other conduct ***that might convey even an appearance*** of conflict between their personal interests, the interests of the system, and the public interest." It also forbids officials from holding bank stocks or funds with holdings concentrated in the financial sector because the Fed oversees banks and the financial sector. That same logic should have been extended to virtually all financial markets and products because of the Fed's actions since the beginning of the pandemic. Similarly, the logic behind pre-FOMC meeting blackout periods would apply to all of the Fed's 2020 activities. Put differently, it should have been obvious to everyone that all of 2020 should have been a blackout period.

Second, you must request that the Department of Justice, the Securities and Exchange Commission, and the Fed's Inspector General conduct thorough investigations of all such trading to determine whether any laws were broken. Anything less than such independent investigations will lack credibility, if not be viewed as a deficient whitewash or cover-up. Regrettably, this is particularly necessary in light of the recent apparent cover up and nondisclosure related to the conduct of former Richmond Fed President Jeffrey Lacker, who reportedly leaked highly sensitive Board information to a hedge fund in 2012 and apparently misled what was claimed to be a rigorous internal Fed investigation of that leak. Adding insult to injury, when it was disclosed five years later by the media in 2017 that the FBI had identified him as the source of the leak, he was allowed to resign with no other known consequences. That deficient internal Fed investigation was unacceptable then and repeating it now would be intolerable.

Moreover, any internal Fed investigation conducted by people who may be subordinates to some of those who have traded and will be investigated will not be credible. Indeed, any such internal Fed investigation will also lack credibility given the ***numerous Fed officials who have already prejudged the trading conduct*** here and taken positions that it was allowed, permissible, and consistent with the Fed's policies. Such an ***exoneration before an investigation*** will inevitably have a chilling effect and likely lead to an outcome-oriented "investigation" that rubber-stamps the prior statements by Fed officials.

Third, you must commit to publicly releasing the details and results of those investigations. There will be no credibility of the investigations and the conduct of Fed officials unless the public is fully informed of the trading activity and the details and results of the investigations. Don't compound the trading violation of the public's trust by covering up the investigations into that trading. The public has a right to know this information and judge for themselves whether the investigations and any actions taken were thorough, comprehensive, and appropriate.

I know you share our concern about conflicts of interest, including the appearance of conflicts of interest, and how corrosive they can be to public faith, trust, and confidence in government officials. As the Fed stated last week, "the trust of the American people is essential for the Federal Reserve to effectively carry out [its] important mission." You have the authority – and, we would say, the duty – to take all appropriate action. I look forward to your prompt and comprehensive actions consistent with what the situation here requires as detailed in this letter.

Sincerely,

Dennis M. Kelleher
President and CEO

CC: Vice Chairman Richard H. Clarida
Ms. Ann E. Misback, Secretary, Board of Governors
Senator Sherrod Brown, Chairman, Senate Banking Committee
Chair Maxine Waters, House Financial Services Committee

1825 K Street, NW, Suite 1080, Washington, DC 20006 TELEPHONE (1) 202.618-6464 FAX (1) 202.618.6465 WEBSITE bettermarkets.com