OPENING STATEMENT OF
CHAIRMAN PAUL E. KANJORSKI

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

HEARING ON ASSESSING THE LIMITATIONS OF THE SECURITIES INVESTOR PROTECTION ACT

SEPTEMBER 23, 2010

Nearly two years have passed since the massive $65 billion Madoff Ponzi scheme came to light. Since then, we have enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among many other things, this law amended the Securities Investor Protection Act, the statute that works to return money and securities to customers of failed brokerages.

To better protect the customers of failed brokerages going forward, the Dodd-Frank Act increases cash protection limits and bolsters the resources of the reserve fund used to replace customers' missing cash and securities. This new law also quintuples penalties for misrepresentations of membership in or protections offered by the Securities Investor Protection Corporation. Moreover, the statute makes important changes to prevent, rather than simply replace, the loss of customer property, including new custody safeguards for customer assets held by certain financial professionals.

The Dodd-Frank Act additionally requires the auditors of broker-dealers to register with the Public Company Accounting Oversight Board, and this regulatory body has the authority to regulate these market gatekeepers. This change ought to put incompetent and unscrupulous one-man auditor shops like the one which blessed the books of the Madoff brokerage out of business before investors get harmed.

Much more, however, remains to be done to protect investors. The victims of the Madoff Ponzi scheme and the Stanford Financial fraud include many hardworking families and frugal retirees who invested their hard earned money with now imprisoned or indicted con artists. Numerous press stories have relayed accounts about how these victims who sought to play by the rules have now had to greatly modify the ways that they live. The victims of these frauds believe that SIPC has fallen short in meeting its responsibilities, and they want more change. I do, too.

We have many questions to explore today. For example, although SIPA's protections do not currently extend to the customers of investment advisers, we must explore the issue of expanding SIPA's coverage as investment advisers may also commit fraud.

In any serious efforts to reform SIPA, we must also consider what responsibility SIPC has to honor the broker statements that customers receive. SIPC has denied the claims of customers based on the seemingly legitimate paperwork provided to them by their brokers, yet SIPC expects customers to use those very same statements to report unauthorized trading in their accounts. This inconsistency is unacceptable, and we must work to resolve it.

Investor trust, for which SIPA was designed to preserve, has been seriously eroded by SIPC's narrow interpretations of its statutory mandate. While SIPC's actions may follow the letter of the law, many would argue that SIPC has ignored the spirit of the law. We therefore must consider the best way to change the tone at SIPC and refocus this body on maintaining confidence in the financial system and promoting investor protection. To the extent possible, we ought to also explore how SIPC could learn from the success of the Federal Deposit Insurance Corporation in maintaining the public's trust.

To address these questions and many others, SIPC has formed a modernization task force, and several members of this panel will appear before us today in their personal capacities. I, for one, expect this task force to complete its work with great transparency, considerable outreach, and much speed. Moreover, this task force must view its mission as broadly as possible and work to provide Congress with a comprehensive plan for reforming SIPA.

In closing, we can further improve SIPA by building on the reforms of the Dodd-Frank Act. The witnesses before us today are recognized securities experts. Their recommendations—along with those offered by the Madoff victims at our hearing last December—will undoubtedly help us in our work to update SIPA and better protect investors.