

**OPENING STATEMENT OF  
RANKING DEMOCRATIC MEMBER PAUL E. KANJORSKI  
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE,  
AND GOVERNMENT SPONSORED ENTERPRISES  
THE NATIONAL MARKET STRUCTURE REGULATION:  
THE VIEW OF THE SECURITIES AND EXCHANGE COMMISSION  
TUESDAY, MARCH 15, 2005**

---

Mr. Chairman, we meet once more to discuss the important issue of the regulation of our capital markets generally, and the trade-through rule specifically. This time we will hear again from the Chairman of the Securities and Exchange Commission.

The ongoing deliberations over our National Market System have engendered strong emotions and considerable debate. As my colleagues already know from our extensive investigations into these matters, market structure is also an extremely complex subject.

We are, Mr. Chairman, at a crossroads. A variety of agents in our equities markets have questioned one or more aspects of the regulatory system governing our national markets during the last several years. Technological advances and competitive developments are also forcing us to confront a number of important decisions.

During his previous testimony before our panel concerning these matters, SEC Chairman Donaldson noted that in pursuing any plan to fix those portions of the National Market System experiencing genuine strain, we must ensure that we do not disrupt those elements of our markets that are working well. Chairman Donaldson knows that I share his views in these matters. We should not pursue change for change's sake.

In his recent testimony before the Senate Banking Committee, Chairman Donaldson also offered some insights into the Commission's deliberations regarding its broad set of proposals to update the regulatory structure of our stock markets. He focused his comments last week on the trade-through rule. In particular he noted that the regulation advances three important policy goals: it ensures best execution, it promotes fair and orderly markets to get the best price, and it advances market depth and liquidity.

Chairman Donaldson will, as I understand, expand on those views today by providing us with more analysis and detail about his thinking regarding these matters. In his comments today, I hope that Chairman Donaldson will once again express his support for the trade-through rule. From my perspective, this standard is one area of our regulatory structure that has worked well for nearly three decades. As one of the foundations of our National Market System, this rule has ensured that all investors get the best price that our securities markets have to offer regardless of the location of a trading transaction.

Today, I also suspect that many of my colleagues will focus on the Commission's newest proposal to alter the trade-through rule when asking questions of Chairman Donaldson. In addition to applying the trade-through rule to all securities marketplaces, the Commission's latest plan for updating the National Market System includes two alternatives for implementation: the Market Best Bid or Offer Alternative and the Voluntary Depth Alternative.

-more-

The Voluntary Depth Alternative would almost certainly result in only one way for markets to differentiate themselves -- namely, how much they are willing to pay other market participants for their order flow. In my view, promoting competition based on payment for order flow will prove detrimental in the long term to average retail investors because of the conflicts of interest it creates. This issue is one that the Commission should carefully study.

The incremental approach contained in the Market Best Bid or Offer Alternative is therefore the preferable option going forward. The adoption of this alternative will also help to ensure that the United States maintains its global leadership in our financial markets.

In closing, Mr. Chairman, it is my very strong hope that the Commission in working to finalize any changes in the market-structure rules will make certain that any regulation it promulgates will provide an improvement over the existing regulatory regime and protect the interests of retail investors. I look forward to receiving the testimony of Chairman Donaldson.

---