

**OPENING STATEMENT OF
RANKING DEMOCRATIC MEMBER PAUL E. KANJORSKI
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE,
AND GOVERNMENT SPONSORED ENTERPRISES
HEARING ON H.R. 2179, THE SECURITIES FRAUD
DETERRENCE AND INVESTOR RESTITUTION ACT OF 2003
THURSDAY, JUNE 5, 2003**

Mr. Chairman, we meet today to examine H.R. 2179, the Securities Fraud Deterrence and Investor Restitution Act, which you recently introduced. As you know, I believe that we have an obligation to ensure that American investors are appropriately safeguarded against cases of securities fraud. I also share your concerns that to the extent possible we should prioritize efforts to compensate investors for losses resulting from securities wrongdoing.

In testimony before our Committee earlier this year, the Securities and Exchange Commission suggested a number of legislative reforms needed to enhance its ability to investigate wrongdoing, deter fraud, and compensate deceived investors. H.R. 2179 would adopt these meritorious recommendations by permitting the Commission to return more of the penalties that it collects to defrauded individuals. It would also increase the Commission's powers to collect the fines, penalties, and disgorgements that it orders. Additionally, the bill's provisions to increase access to information and raise fine levels would enhance the ability of the Commission to conduct its investigations and deter fraud.

While H.R. 2179 contains all of the recommendations proposed by the Commission earlier this year, it also contains several other additions. I have serious reservations about one of these reforms: Section 8(b). This provision would require state securities regulators to remit to the federal government any penalties or disgorgements obtained from a broker-dealer under certain circumstances.

As currently drafted, Section 8(b) poses a number of problems. Although it may be an unintended consequence, this provision would force a state that has already imposed and collected a restitution obligation to forward any additional penalty that it obtains to the federal government. In effect, the Commission would receive the state's penalty even though the state had arranged for the wrongdoer to provide full restitution to the victims. State regulators have also raised concerns that this provision would significantly limit their ability to craft appropriate remedies like mandating corrective actions in securities enforcement cases.

Moreover, by allowing the Securities and Exchange Commission to take funds from a state, Section 8(b) raises constitutional concerns. I am presently unaware of any other provision in federal law that allows the federal government to obtain the money collected by a state in an enforcement action without the state's acquiescence. One could also construe this provision as an unfunded mandate on state governments.

Historically, our dual securities regulatory system in which federal and state agencies perform specific investor protection functions has served us well. In recent cases like online and day-trading scams, penny-stock fraud, and investment banking problems with analyst research, initial action by the states eventually led to a more comprehensive response by the federal

government. We should not upset this symbiotic relationship by undermining the incentives or placing fiscal constraints on the ability of states to vigorously pursue wrongdoing in the securities industry. It is therefore my hope that we will remove this provision or significantly revise it when considering this legislation in the future.

While this bill will help to ensure that some investors will receive at least partial compensation for the losses that they incur as a result of securities fraud, I continue to believe that the most meaningful route for investors to receive full restitution for their losses is through private litigation. We therefore need to ensure that investors harmed by corporate wrongdoers can seek legal redress in our Nation's courts. As the Commission notes in its recent report to Congress, investor lawsuits complement government enforcement action by providing a mechanism to compensate investors through the award of damages.

While the Securities and Exchange Commission's enforcement actions often have several aims, the objective of private litigation is exclusively to compensate injured investors. Because the ability of investors to fully recover their losses often largely depends on the use of private actions, we need to work to restore the rights of individuals to bring actions against the perpetrators of securities fraud. Amending H.R. 2179 to provide investors with greater access to the courts in cases of securities wrongdoing would achieve this worthwhile objective.

In closing, Mr. Chairman, I look forward to hearing from our distinguished witnesses on this important legislation. I also hope that we will not rush into a markup on H.R. 2179 before we can work together to address issues like improving the access of defrauded investors to the courts and protecting the ability of states to robustly enforce their securities laws.
