

**OPENING STATEMENT OF
RANKING DEMOCRATIC MEMBER PAUL E. KANJORSKI
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE,
AND GOVERNMENT SPONSORED ENTERPRISES
HEARING ON RETURNING MONEY TO DEFRAUDED INVESTORS
WEDNESDAY, FEBRUARY 26, 2003**

Mr. Chairman, we meet today to examine the issue of investor restitution, an issue of great importance to me. Last month, the Federal Reserve determined that U.S. stock ownership increased to 51.9 percent in 2001. Because more and more Americans continue to make investments in our securities markets, we have an obligation to ensure that these individuals are appropriately safeguarded in cases of wrongdoing. Accordingly, I have made investor protection one of my priorities for my work on our committee.

Last year, in the wake of a tidal wave of cases of corporate wrongdoing, we worked to enact into law the Sarbanes-Oxley Act. This law advanced investor protection in a number of important ways, including the creation of the Fair Fund. The Fair Fund, as you know, allows the Securities and Exchange Commission to further help the victims of securities law violations by permitting the agency to add any civil penalties collected in enforcement cases to its disgorgement orders.

However, in order for the Fair Fund to work well -- serving as a deterrent and as a means of returning funds to harmed investors -- we must ensure that the SEC has an effective program that to the maximum extent possible collects the fines, penalties, and disgorgements it orders. As you know, Mr. Chairman, I have been a leader in the congressional efforts to examine these issues in recent years.

In March 2001, for example, I joined with a number of my Democratic colleagues in ordering an investigation by the General Accounting Office of the SEC's disgorgement policies. Last July, the GAO determined that the SEC's efforts to recover illegal gains from financial scam artists had fallen dramatically and required tougher oversight. Between 1995 and 2001, the SEC collected roughly \$424 million, or about 14 percent, of \$3.1 billion owed in disgorgement cases. This finding represented a sharp drop from the 50-percent collection rate the GAO previously found in 1994. As a result, I called upon the SEC to tighten its disgorgement collection monitoring and to implement other oversight improvements.

In recent years, the GAO has also examined the success of securities regulators in collecting fines and penalties. In the next few months, I expect to receive a follow-up report from the GAO regarding this issue. A previous GAO report, completed in July 2001, determined that these collection rates have generally improved in recent years, but that more improvements can be made. The SEC, for example, now collects about 91 percent of assessed penalties and fines, an increase from 83 percent in a similar GAO study in 1998.

Despite this improvement, the GAO found that the SEC could take steps to enhance the collection of fines referred to Treasury Department's Financial Management Service under the Debt Collection Improvement Act of 1996. When we hear from our distinguished witness later today, I hope that he will address this important issue.

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The effective implementation of the Fair Fund and improving disgorgement and fine collection practices are important efforts to ensure that investors receive at least partial compensation for the losses that they incur as a result of securities fraud. However, the most meaningful route for investors to receive restitution for their losses is through private litigation. We need to ensure that investors harmed by corporate wrongdoers can seek legal redress in our Nation's courts.

Accordingly, I was particularly pleased to read in the SEC's report to Congress about the benefits of private litigation. As the SEC notes, investor lawsuits complement government enforcement action by providing a mechanism to compensate investors through the award of restitution or damages. While the SEC's enforcement actions often have several aims, the objective of private litigation is exclusively to compensate injured investors.

In its report, the SEC also offers a number of recommendations for improving the effectiveness of the Fair Fund. For example, the SEC calls for legislation to exclude securities cases from state law property exemptions, such as homestead exemptions. The SEC additionally suggests that we amend the Fair Fund law to permit the agency to use penalty monies ordered in a particular matter for distribution to injured investors regardless of whether disgorgement was ordered. These ideas have merit, and we should work to address them.

In closing, Mr. Chairman, I look forward to hearing from our witness on the issue of investor restitution. I also look forward to hopefully working with you to examine and adopt the legislative recommendations offered by the SEC in the weeks and months ahead.
