OPENING STATEMENT OF
RANKING DEMOCRATIC MEMBER PAUL E. KANJORSKI

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

A REVIEW OF THE SECURITIES ARBITRATION SYSTEM

THURSDAY, MARCH 17, 2005

Mr. Chairman, we meet today to discuss the issue of securities arbitration. I greatly appreciate the courtesy that you have extended to Congressman Frank, the Ranking Democrat on the Financial Services Committee, in agreeing to convene this hearing. Securities arbitration is an important issue that deserves careful examination.

The securities industry has long relied on arbitration to resolve disputes. As I understand, the New York Stock Exchange has used arbitration throughout most of its history. In addition, more than 125 years ago, the Big Board expanded its arbitration program to include investor complaints.

For many decades, investors had the option of pursuing claims against brokers through either litigation or arbitration. In 1987, a U.S. Supreme Court ruling determined that brokerage firms could compel customers to agree to arbitrate claims in an industry-sponsored forum as a condition of opening a brokerage account. In such agreements, customers would forfeit their right to pursue individual claims in court.

Since the Supreme Court ruling, the use of mandatory arbitration agreements has grown. In my view, there is nothing inherently wrong with arbitration *per se*. It can prove to be a more efficient and less expensive dispute-resolution mechanism than courtroom litigation. However, for arbitration to work well and to foster investor trust, it must be fair.

We have before us a panel with a demonstrated breadth and depth of knowledge on arbitration issues. They will be able to help us understand how arbitration works and whether there is a need for statutory, regulatory, or procedural reforms. I look forward to learning of their insights, as I approach these matters with an open mind.

As we proceed today, I nevertheless hope that we will explore a number of issues. For example, some have questioned the mandatory nature of securities arbitration. We should therefore examine whether investors should once again be offered a choice. We should also discuss the inclusion of an industry-related arbitrator on arbitration panels, and the process for selecting arbitrators. In particular, we should focus on the disclosure of potential conflicts.

One other issue that we are certain to review today concerns the transparency of arbitrators' decisions. In the past, arbitrators have not had to justify their decisions with written rulings. As a result, a customer often had little understanding of how an arbitration panel reached its decision in a case.

To address this concern, the NASD recently proposed giving the participants in arbitration proceedings the option, prior to the first hearing, to request written explanations of decisions for an additional fee. The adoption of this proposed reform will help to better transparency and may increase investor satisfaction with and confidence in the fairness of arbitration proceedings.

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In closing, Mr. Chairman, I commend you for convening this proactive hearing to examine the securities arbitration process. I also look forward to receiving the testimony of our distinguished experts.
